

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

**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meeting on 12 January 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 12 January 2015.

Appropriation to the independent Insurance Authority ("IIA")

2. New section 5C, added by Clause 15 of the Bill, provides that "*for each financial year*, the Government must pay to the Authority out of the general revenue the monies appropriated by the Legislative Council for that purpose. Section 14 of the Securities and Futures Ordinance (Cap. 571) ("SFO") provides that "*for each financial year of the Commission*, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.". The term *financial year* has been defined in new section 5A added by Clause 15 of the Bill. There is therefore no need to mention "*financial year of the Authority*" in new section 5C. The other differences in the Chinese text between Clause 15 of the Bill and section 14 of SFO are simply textual modifications.

Penalties relating to authorization of insurers, approval of controllers, directors or key persons in control functions appointed by authorized insurers

3. A Member pointed out at the last meeting that, under new sections 13A(11), 13AB(13), 13AC(11) and 13AD(3) (with respect to the appointments of controllers and directors without IIA's approval), an individual who was found guilty was liable to a fine and an additional fine for each day of continued offence while an authorized insurer who was found guilty was only liable to a fine but not a daily fine. The penalty levels under these sections follow those provided under the existing Insurance Companies Ordinance ("ICO") (Cap. 41). We are studying whether alignments of the levels of the penalties should be made and will report to the Bills Committee on the Administration's position in due course.

Determination of the key persons in control functions of authorized insurers

4. New section 13AE(14) and (15) added by Clause 25 of the Bill empowers the Financial Secretary (“FS”) to specify a function to be a “control function” by notice published in the Gazette. The notice, which is subsidiary legislation, will be subject to negative vetting by the Legislative Council (“LegCo”) under the procedures prescribed in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). New section 134 added by Clause 84 of the Bill further provides that before issuing the notice, FS must publish a draft for inviting public representations.

5. Section 28(1)(c) of Cap. 1 specifies that where an ordinance confers power on a person to make subsidiary legislation, the subsidiary legislation may be amended by the same person in the same manner by and in which it was made. For the purpose of this provision, “amend” in general includes “repeal”. It thus follows that FS will also have the power to amend or repeal the subsidiary legislation. Section 34(2) of Cap. 1 gives LegCo power to amend subsidiary legislation in any manner consistent with the power to make such subsidiary legislation. Hence, LegCo is empowered to amend or repeal any new control functions prescribed in the notice published in the Gazette.

Disclosure of conditions imposed by IIA on the approval granted under sections 13A, 13AC and 13AE of the amended ICO

6. New section 13AF added by Clause 25 of the Bill provides that IIA may impose conditions on granting approval of the appointment of controllers (under new section 13A), directors (under new section 13AC) or key persons in control functions (under new section 13 AE). Examples of such conditions include requiring an individual serving as the controller of an insurer to be based in Hong Kong or an individual can only serve as key person in control functions of an insurer for certain lines of business in which he/she has proven expertise.

7. Section 53A of the ICO imposes a duty on IIA and a person to, save some exceptions, preserve secrecy of any matters coming to his knowledge in the course of performing a function under the ICO. In situations which fall within the exceptions set out in the same section, IIA may consider disclosure of the approval conditions in an appropriate manner.