

**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 27 January 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 27 January 2015.

Composition of the independent Insurance Authority ("IA") and the Industry Advisory Committees ("IACs")

2. According to the Insurance Core Principle 2 promulgated by the International Association of Insurance Supervisors, an insurance regulator should be independent of the industry and the government. As specified in the new section 4AA added by Clause 11 of the Bill, IA should comprise pre-dominantly non-executive directors, including persons with knowledge of and experience in the insurance industry, as well as persons from relevant professional fields such as actuarial science, accountancy, law or consumer affairs.
3. Our original proposal was that IA should have at least one but not more than two non-executive directors with knowledge of and experience in the insurance industry. During previous public consultation, the industry expressed that having more industry practitioners would enable the IA to carry out its functions more effectively, especially in formulating and deciding new regulatory requirements, while there were calls for measures to maintain IA's impartiality and independence. To strike a balance, we have refined the proposal that IA should have at least two non-executive directors with industry knowledge and experience (see new section 4AA(3)(a)).
4. At the last meeting of the Bills Committee, Members' views on the issue were diverse. Some Members supported Hong Kong Federation of Insurers ("HKFI")'s proposal that at least 25% of the directors should be from the industry. On the other hand, some Members indicated strong objection to the proposal and suggested that we should instead consider imposing a cap on the proportion of industry members on IA. We maintain our position that our current proposal

strikes a reasonable balance between tapping industry expertise and ensuring the IIA's impartiality as well as maintaining flexibility in appointing the appropriate mix of talents to IIA. Furthermore, we are not aware of similar specifications regarding industry representation in the governing bodies of financial services regulators in other jurisdictions. Quite the contrary, in the United Kingdom, Australia and Singapore, there are provisions preventing representatives of regulatees to sit on these bodies. For instance, the Australian Prudential Regulation Authority ("APRA") Act 1998 (section 17, Division 1, Part 3) has stipulated that "a person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA".

5. We will copy the Bills Committee our response to HKFI's suggestions on the composition of IIA and IACs, issues on which IIA should consult IACs and the industry's representation in IIA and IACs.

Retention requirements of business records

Record-retention requirements

6. We are studying both the statutory and non-statutory record-retention requirements on authorized insurers, and will provide the Bills Committee with the requested information in due course.

Definition of "business record"

7. The new section 41A added by Clause 55 of the Bill defines "business record" in relation to an insurer as a record or document relating to (a) the business conducted by the insurer; or (b) a transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer.

8. We consider the scope of this definition appropriate as such coverage will be necessary for IIA to carry out inspection effectively (pursuant to new section 41B added by Clause 55 of the Bill). In formulating this definition, we have made reference to legislation in relation to other financial regulators, including section 180(1) of the Securities and Futures Ordinance (Cap. 571) and section 34ZR(9) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

Drafting issue

9. We propose to introduce Committee Stage Amendments

(“CSAs”) to amend new section 41B(1) as follows –

“An inspector may exercise the powers under subsections (2) and (3) for ascertaining whether an authorized insurer is complying with, has complied with, or is likely to be able to comply with –”

“查察員可為查明獲授權保險人是否正在或已經遵守或遵從正在遵守或遵從、已經遵守或遵從或相當可能有能力遵守或遵從以下各項，行使第(2) 及(3) 款所指的權力”

10. The above amendments align the drafting of the English and Chinese texts. The revised English text follows the wording of new section 64ZZF(1) (added by Clause 71 of the Bill) which refers to inspection powers in relation to licensed insurance intermediaries. Accordingly, we would also introduce similar CSAs to the Chinese text of new section 64ZZF(1) so as to align it with the English text of that section.

**Financial Services and the Treasury Bureau
February 2015**