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

Addendum

Purpose

This paper provides information in addition to the response issued to Members on 6 February 2015 (Paper No. CB(1)527/14-15(02)).

Record-retention requirements on authorized insurers

2. Section 16 of the Insurance Companies Ordinance (Cap.41) ("ICO") requires all insurers to keep proper books of account that explain "all transactions entered into by the insurer in the course of any business carried on by the insurer" for 7 years, after the end of the financial year to which the last entry made or matter recorded therein relates. This covers all documents related to individual policies, which are transactions in the course of an insurer's business and are part and parcel of the insurer's income (e.g. premiums), expenses (e.g. claims payments) and liabilities etc. Section 26(1)(b)(i) of the ICO further stipulates that failure to comply with any provision of the ICO is a ground for the Insurance Authority ("IA") to take interventionary actions against the insurer concerned. Under the Bill, section 16 of ICO will be amended to the effect that the IIA may, by written notice, require an insurer to provide specified books of account within a specified period. An insurer which fails to comply with this requirement without reasonable excuse commits an offence and is liable to a fine at level 5. Besides, new section 41P added by Clause 55 of the Bill stipulates that contravention of any provision of the amended ICO constitutes a misconduct and IIA may take disciplinary actions, e.g. revocation or suspension of authorization, against the insurer concerned.

3. In fact, similar record-retention requirements are stipulated in other legislation applicable to insurers. For instance, section 377 of the Companies Ordinance (Cap. 622) requires a company to preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made on matter recorded in the records, or the accounts and returns, relates. A director of a company who fails/wilfully fails to take all reasonable steps to secure compliance

with this requirement commits an offence and is liable to the specified fine and/or imprisonment.

4. Section 51C of the Inland Revenue Ordinance ("IRO") (Cap. 112) stipulates that every person carrying on a trade, profession or business in Hong Kong shall keep records of their income and expenditure for not less than 7 years, and under section 80(IA) of the IRO, any person who without reasonable excuse fails to comply with this requirement commits an offence and is liable to a fine at level 6.

5. For life insurers, section 20 of Part 3 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO") (Cap. 615), requires insurers to keep, among other things, the original or a copy of the documents, and a record of the data and information, obtained in connection with each transaction for 6 years after completion of the transaction. By virtue of section 5 of AMLO, an insurer that contravenes the said requirement, together with an employee who works for it or is concerned in its management and knowingly causes or permits the insurer to contravene such requirement, commit an offence and are liable to the specified fines and imprisonment.

6. In addition, IA may, from time to time, issue guidance notes to set out in further detail the types of records that need to be retained. For instance, the Guidance Note on Anti-Money Laundering and Counter-Terrorist Financing has set out, inter alia, the need to keep records and documents relating to customers' accounts (including account opening form, insurance application form and risk assessment form) and business correspondence with customers. The Guidance Note on Underwriting Class C Business requires insurers that carry on Class C business to retain all the policy documents, audio records of post-sale calls, confirmation letters and email/SMS alerts for 7 years from the date on which the policy expires or terminates.

Financial Services and the Treasury Bureau
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