

**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 9 February 2015**

Purpose

This paper sets out the Administration’s response to issues arising from the discussion at the Bills Committee meeting on 9 February 2015, and the issue of daily penalty as deliberated at an earlier meeting.

Inspections and investigations to be conducted by the independent Insurance Authority (“IIA”)

“Inspectors” and “investigators” under new sections 41B(6) and 41D(1)

2. New section 41B(6) added by Clause 55 of the Bill provides that IIA may in writing appoint “a person, or a person belonging to a class of persons” to conduct routine inspections. This would include employees of IIA and other persons whom IIA considers appropriate. Specifically, the expression “a person belonging to a class of persons” facilitates IIA to give blanket appointment to its employees in a certain division or team, or to appoint other persons (e.g. people of a certain division in an audit firm) as inspectors. The same expression is used in section 9(12) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) (Cap. 615), which was recently enacted in 2011.

3. New section 41D(1) added by Clause 55 of the Bill provides that IIA may in writing direct one or more of its employees, or, with the consent of the Financial Secretary (“FS”), appoint “one or more other persons” to investigate specific cases. The intent of this phrase is to allow IIA, with the consent of FS, to appoint outside experts to assist in the investigation work. Similar arrangements are in place under section 182 of Securities and Futures Ordinance (“SFO”) (Cap. 571) and section 11 of AMLO. We intend to adopt a similar arrangement for IIA, but are considering the feasibility of a more streamlined process in the light of operational experience.

Cost incurred by investigators who are not employees of IIA

4. New section 41D(2) added by Clause 55 of the Bill provides that the costs and expenses incurred by an investigator, other than an employee of IIA, may be paid out of moneys provided by the Legislative Council (“LegCo”). The policy objective of this provision is to allow IIA to seek LegCo’s approval for funding support for engaging outside experts in the investigation of complex cases when necessary.

5. On the other hand, inspection (as provided in new section 41B) is a routine duty. In general, inspection work will be carried out by IIA’s employees. IIA may also appoint other qualified persons as inspectors where appropriate, and we envisage that it will absorb the related costs. Inspection costs will be included in IIA’s annual estimates which will be subject to FS’s approval and the scrutiny by LegCo.

Drafting differences between provisions in relation to inspectors and investigators

6. In formulating the relevant provisions in relation to inspections and investigations (provided under new sections 41B and 41D respectively, both added by Clause 55 of the Bill), we have made reference to Part VIII of the SFO and Part 3 of AMLO.

7. New section 41B(8) relates to inspections which are routine checks for ascertaining compliance with statutory requirements and conditions by authorized insurers. Given that inspections are routine in nature, we consider it unnecessary for an inspector to produce a copy of the appointment before exercising his/her powers on each and every occasion. However, on being requested to do so, the inspector has to produce “a copy of the appointment as soon as practicable”. We will propose Committee Stage Amendments (“CSAs”) to clarify the above policy intent.

8. On the other hand, new section 41D(4) relates to investigations which are conducted only when IIA has reasonable cause to believe that, among other things, there is any contravention of the Insurance Companies Ordinance (“ICO”)¹ (Cap. 41) and may lead to disciplinary actions on insurers. Hence an investigator must produce a copy of the direction or appointment to the persons providing information

¹ The short title of the Ordinance is to be renamed as the Insurance Ordinance (please see Clause 4 of the Bill).

before first interacting with them.

FS's power to initiate investigations

9. IIA is an independent market regulator and is not required to be answerable to the Government on its day-to-day exercise of regulatory powers. FS's principal function is to ensure the accountability of IIA by, for instance, approving IIA's annual estimates. As such, the Bill does not contain any provision which empowers FS to request, on his own initiative, IIA to conduct an investigation. This notwithstanding, one of IIA's statutory functions is to assist FS in maintaining Hong Kong's financial stability by taking appropriate measures in relation to the insurance industry (new section 4A(2)(ee) added by Clause 12 of the Bill). We envisage that IIA will work closely with the Government in this respect.

10. We are not aware of any provisions under AMLO, the Banking Ordinance (Cap. 155), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Financial Reporting Council Ordinance (Cap. 588) that empower FS to initiate an investigation. The provisions on investigation in relation to authorized insurers and licensed insurance intermediaries under the Bill (new sections 41D and 64ZZH) were drafted with reference to the investigation powers of the Securities and Futures Commission under section 182 of the SFO. Sections 356 and 357 (under Part XV) of SFO empower FS to appoint inspectors to investigate into issues in relation to the disclosure of ownership of or interests in listed corporations the context of which are very different from the context of investigating a licensee of the regulator. These powers are not relevant to and not comparable with the scope of the Bill.

Drafting issue

11. The reason for using the expression "class of persons" under new section 41B(6) is explained in paragraph 2 above.

Daily penalty

12. A Member pointed out at the meeting on 12 January 2015 that, under new sections 13A(11), 13AB(3), 13AC(11) and 13(AD)(3) (with respect to the insurers' 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 during which the offence continues while an authorized insurer who was found guilty was only liable to a

fine but not a daily fine. In our earlier response (Paper No. CB(1)479/14-15(02)), we stated that such penalty levels follow those provided under the existing ICO.

13. We have further reviewed the relevant provisions under the existing ICO. We consider that the daily fine for a continuing offence should be applicable to both an insurer and the relevant individual. We will accordingly introduce CSAs to amend new sections 13A(11) and 13AC(11). For the sake of consistency, we will also introduce CSAs to the effect that an insurer would also be liable to a daily fine for a continuing offence under new section 13AE(11) i.e. appointing a key person in control functions without IIA's approval.

Financial Services and the Treasury Bureau
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