

Bills Committee on Insurance Companies (Amendment) Bill 2014

**Committee Stage Amendments
(New Section 89 and Additional Consequential Amendments)**

Further to the proposed Committee Stage Amendments (“CSAs”) discussed at the meetings on 26 May 2015 and 2 June 2015 (LC paper No.: CB(1)877/14-15(04)), Members are invited to note –

- (a) the proposed technical changes to the CSAs to new section 89 (added by Clause 84 of the Bill) at **Annex A**; and
- (b) consequential amendments to Limited Liability Partnerships (Top-up Insurance) Rules (L.N. 103 of 2015) at **Annex B**.

Technical changes to the CSAs to new section 89

2. The Bills Committee has agreed with our proposed CSAs to add new section 89(2) and (3) to clarify that a breach of a conduct requirement would not on its own render any insurance intermediary or insurance company liable to judicial proceedings.

3. Taking account of the views from the Assistant Legal Adviser on the applicability of new section 89(2) and (3) to licensed technical representatives (agent), licensed technical representatives (broker) and the licensed insurance agencies and insurance broker companies which appoint them respectively, we propose to transpose new section 89(2) and (3) to new section 91A (added by Clause 84 of the Bill) with appropriate amendments. New section 91A provides that a breach of a conduct requirement specified in new section 89, 90 or 91 would not on its own render any person liable to any judicial proceedings. For the avoidance of doubt, we will also make it clear that this new section is not intended to affect a person’s any other rights under common law, or have any implications on whether a breach of provisions, other than new sections 89, 90 and 91, may give rise to a new cause of action.

Additional consequential amendments

4. The Limited Liability Partnerships (Top-up Insurance) Rules

(L.N. 103 of 2015) (“the Rules”) was gazetted on 29 May 2015. It is necessary to make consequential amendments to the Rules to replace references to the “Insurance Companies Ordinance” with “Insurance Ordinance” and update other references as appropriate.

**Financial Services and the Treasury Bureau
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records relating to the client's assets or affairs, held at any time for the client as specified in the notice.

- (2) A person who, without reasonable excuse, fails to comply with a requirement imposed on the person under subsection (1) commits an offence and is liable to a fine of \$200,000 and to imprisonment for 2 years.

88. Permission to carry on business operations on revocation or suspension of licence

- (1) If the licence of a person is revoked under section 80, the Authority may, by notice in writing, permit the person, subject to the conditions specified in the notice, to carry on business operations for closing down the business connected with the revocation.
- (2) If the licence of a person is suspended under section 80, the Authority may, by notice in writing, permit the person, subject to the conditions specified in the notice, to carry on only essential business operations for the protection of the interests of the policy holders concerned during the period of suspension.
- (3) If the Authority has granted a permission to a person under subsection (1) or (2), the person must not, because of its carrying on business operations in compliance with the permission, be regarded as having contravened section 64G or 118.
- (4) A permission under subsection (1) or (2), and the imposition of conditions under any of those subsections, take effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

Division 4—Conduct Requirements, etc.

89. Conduct requirements for licensed insurance intermediaries

When carrying on a regulated activity, a licensed insurance intermediary—

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;
- (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;
- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;

- (h) must ensure that the ~~policy holder's~~ assets of the policy holder or the potential policy holder are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under sections 92 and 127.

90. Conduct requirements for licensed insurance agencies and their responsible officers

- (1) A licensed insurance agency—
 - (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the agency and the licensed technical representatives (agent) appointed by the agency;
 - (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency;
 - (c) must ensure that its responsible officer has sufficient authority within the agency for carrying out the responsibilities set out in subsection (2); and
 - (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).
- (2) A responsible officer of a licensed insurance agency must use the officer's best endeavours to ensure that the agency—
 - (a) has established and maintains proper controls and procedures for securing compliance with the

- conduct requirements set out in section 89 by the agency and the licensed technical representatives (agent) appointed by the agency; and
- (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency.

91. Conduct requirements for licensed insurance broker companies and their responsible officers

- (1) A licensed insurance broker company—
 - (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the company and the licensed technical representatives (broker) appointed by the company;
 - (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company;
 - (c) must ensure that its responsible officer has sufficient authority within the company for carrying out the responsibilities set out in subsection (2); and
 - (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).
- (2) A responsible officer of a licensed insurance broker company must use the officer's best endeavours to ensure that the company—

- (a) has established and maintains proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the company and the licensed technical representative (broker) appointed by the company; and
- (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company.

91A. Breach of conduct requirements

(1) A failure to comply with a requirement specified in section 89, 90 or 91 does not by itself render any person liable to any judicial proceedings.

(2) To avoid doubt, this section does not affect—

(a) the extent (if any) to which a failure to comply with any other provision in this Ordinance is actionable; or

(b) any liability of a person under the common law or any other enactment, regardless of whether the circumstances giving rise to the liability would also constitute a failure mentioned in subsection (1).

92. Rules on conduct requirements for licensed insurance intermediaries

- (1) The Authority may make rules requiring licensed insurance intermediaries to comply with the practices and standards, relating to the conduct of the intermediaries in carrying on regulated activities, that are specified in the rules.
- (2) Without limiting subsection (1) and without affecting section 129, the Authority may in the rules—

- (a) prohibit the use of any misleading or deceptive advertisement by a licensed insurance intermediary and impose conditions on the use of advertisements;
- (b) require a licensed insurance intermediary to provide specified information to its client on entering into a policy or on the request of the client;
- (c) require a licensed insurance intermediary to take specified steps to ascertain, in relation to its client, specified matters relating to the identity, financial situation and financial and insurance needs of the client that are relevant to the services to be provided by the intermediary;
- (d) require a licensed insurance intermediary to take specified steps before providing information or advice to its client;
- (e) require a licensed insurance intermediary to take specified steps to ensure that disclosure is made to its client of the coverage, terms and conditions, and risks in relation to the policy recommended to the client;
- (f) require a licensed insurance intermediary to take specified steps to ensure that disclosure is made to its client of any commission or advantage that the intermediary receives or is to receive in relation to the policy recommended to the client;
- (g) require a licensed insurance intermediary to take specified steps to comply with the conduct requirements under sections 89, 90 and 91;
- (h) require a licensed insurance intermediary not to effect a transaction in specified circumstances;

“Insurance Ordinance”.

164. Section 881 amended (permitted disclosure and restrictions)

Section 881(2)(a)(xiii), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局”.

**Division 32—Amendments to Hong Kong Export Credit
Insurance Corporation Ordinance (Cap. 1115)**

165. Section 10 amended (Advisory Board establishment)

(1) Section 10(2)—

Repeal paragraph (a).

(2) Section 10(3)—

Repeal

“the Commissioner of Insurance and”.

**Division 33—Amendments to Limited Liability Partnerships
(Top-up Insurance) Rules (L.N. 103 of 2015)**

**166. Rule 3 amended (from whom top-up insurance should be
obtained—requirements under section 7AD(2)(b) and (4)(b) of
Ordinance)**

(1) Rule 3(1)(a)—

Repeal

“Insurance Companies Ordinance (Cap. 41)”

Substitute

“Insurance Ordinance (Cap. 41) (Cap. 41), or deemed to be so authorized under section 61(1) or (2) of Cap. 41 as in force immediately before the commencement date of section 10 of the Insurance Companies (Amendment) Ordinance 2014 (of 2014) having continuing effect by the operation of section 2(7) of Schedule 11 to Cap. 41.”.

(2) Rule 3(1)(a), English text—

Repeal

“First Schedule”

Substitute

“Schedule 1”.

(3) Rule 3(1)(c), Chinese text—

Repeal

“保險業監督”

Substitute

“保監局”.

(4) Rule 3(2), definition of *company*—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

(5) Rule 3(2)—

Repeal the definition of *Insurance Authority*

Substitute

“Insurance Authority (保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41);”.

(6) Rule 3(2), definition of *Lloyd’s*—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

Schedule 1 [s. 2]

Minor Amendments to Insurance Ordinance Relating to Replacement of “Insurance Authority” by “Authority”

	Column 1	Column 2	Column 3
	Provision	Repeal	Substitution
1.	Section 4, heading	Insurance Authority	Authority
2.	Section 4(2)	(a) Insurance Authority of any of his functions (b) and the Insurance Authority	Authority of any of its functions and the Authority
3.	Section 4A, heading	Insurance Authority	Authority
4.	Section 4A(1) and (2)	Insurance Authority (wherever appearing)	Authority
5.	Section 6(1) and (2)	Insurance Authority	Authority
6.	Section 7(1) and (2)	Insurance Authority	Authority