

Bills Committee on Insurance Companies (Amendment) Bill 2014 (“the Bill”)

Summary of Public Comments on the Bill and the Administration's Response

- **Enhanced Existing Regulatory Powers in respect of Insurers (Amendments to Part II to VII) and
New Regulatory Powers in respect of insurers (New Part VA)**

Section No.	Respondent's Views	Administration's Response
Amendments to Part II to VII		
<i>Enhanced existing regulatory powers in respect of insurers</i>		
Section 13AE	<ul style="list-style-type: none"> ● The “intermediary management function” should only relate to an insurer’s management of its appointed insurance agents. Insurers cannot manage insurance brokers. [HILA] 	<ul style="list-style-type: none"> ● As pointed out by the International Association of Insurance Supervisors in Insurance Core Principle 18, insurance intermediaries serve as important distribution channels of insurance. Their interface between consumers and insurers gives them a key role in building trust and confidence in the market. We therefore attach much importance to ensuring that an authorized insurer will maintain an effective internal control system to promote good business conduct of insurance intermediaries. An insurance broker may perform functions such as underwriting, premium collection, management of insurance claims and claims appraisal. Insurers may play a role in ensuring good business conduct of insurance brokers in the aforesaid activities although insurance brokers do not act for insurers. We therefore consider that the intermediary

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		<p>management function should not be restricted to the management of its appointed insurance agents. Nevertheless, we will discuss further the scope of this function with the insurers.</p>
Section 14A	<ul style="list-style-type: none"> ● The legislation should not include the provision prescribing that the IIA may have regard to any other matters that are considered relevant in making the determination of fit and proper. All factors to be considered should be exhaustive in the legislation. [PIBA] 	<ul style="list-style-type: none"> ● In simple terms, a fit and proper person means one who is financially sound, competent, honest, reputable and reliable. While we have set out the most important factors (in new section 14A(1) of the Bill) which the IIA must consider in determining whether a person is fit and proper, the IIA should be allowed to take into account other factors on a case-by-case basis. ● We envisage that the IIA will promulgate a code or guideline on “fit and proper” to elaborate on the details.
Section 22	<ul style="list-style-type: none"> ● Oppose the requirement on the separation of accounts and funds for each class of long term insurance business. It could result in sub-optimal investment activity and increase the administrative requirements and costs. The requirement should be applicable to insurance business in Hong Kong only. [AIA] 	<ul style="list-style-type: none"> ● Our proposal is to ensure proper segregation of assets and liabilities of individual classes, thereby avoiding inter-class subsidy in case of winding up of an authorized long term insurer. It has nothing to do with how the funds should be invested and therefore will not have any impact on the investment strategy and performance of insurance assets. We also do not envisage any substantial increase in the administrative overheads as the

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		<p>majority of the authorized long term insurers in Hong Kong are currently keeping separate funds for individual classes of insurance business despite the current requirement under the existing section 22 which only requires segregation of Class G and Class H business.</p> <ul style="list-style-type: none"> ● The current requirement which applies to all assets and liabilities of authorized long term insurers irrespective of the source of business will maintain.
New Part VA		
<i>New regulatory powers in respect of insurers</i>		
Section 41H	<ul style="list-style-type: none"> ● A person should have the right to remain silent and the provision should be vetted by the Secretary of Justice. [AIA] 	<ul style="list-style-type: none"> ● During the inspection or investigation process, a person may not be able to give answer to inquiries because the information concerned is not within his/her knowledge. He/she may also use the same reason as an excuse to hinder or delay the process. It is therefore necessary to allow the regulator to require a person to verify that reason and fact by a statutory declaration in such circumstances. ● The provision provides that responses or statements made by a person for the purpose of an inspection or investigation shall not be admissible in evidence against that person in criminal proceedings, except for the prosecution of criminal offences relating to

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		perjury, the giving of false statements, and using unreasonable excuse for not compiling with requirements imposed by the IIA.
Section 41P	<ul style="list-style-type: none"> ● The legislation should set out the criterion for the IIA to make a disciplinary decision public. [AIA] ● Disciplinary decisions should not be published until appeal rights have been exhausted. [HKFI] ● There should be clear guidelines on when the IIA can make a disciplinary decision public. [HILA] ● Concerned as to whether the IIA would disclose to the public details of the investigation after the investigation is completed. [Michael Fung] 	<ul style="list-style-type: none"> ● Our proposal is that after the IIA has exercised its power to impose disciplinary sanctions against an authorized insurer, the IIA may disclose to the public details of the relevant decision including the reason and any material facts relating to the case. This power is necessary for maintaining transparency of a regulator's decisions.
Section 41P	<ul style="list-style-type: none"> ● The definition of "misconduct" is too broad. Guidelines on the interpretation and implementation of "misconduct" as well as the circumstances which may lead to penalties under new section 41P should be formulated. [AIA, HILA, HKFI] 	<ul style="list-style-type: none"> ● The proposed definition of "misconduct" is modeled on that under the SFO for the regulation of the licensees under Securities and Futures Commission. For effective regulation of licensees and protection of policy holders, we consider that the definition of misconduct should be adequate to catch all situations whereby the act of insurers may be prejudicial to the interest of policy holders or the public. ● We also envisage that the IIA will promulgate codes or guidelines to elaborate on the details.

List of Respondents

Abbreviations	Name of Organizations / Individuals
AIA	AIA Group Limited
HILA	Hong Kong Insurance Law Association Limited
HKFI	The Hong Kong Federation of Insurers
Michael Fung	Fung Kei Lap Michael
PIBA	Professional Insurance Brokers Association