

**Bills Committee on  
Insurance Companies (Amendment) Bill 2014**

**Transition and Miscellaneous Matters**

**INTRODUCTION**

This paper briefs Members on the following matters in relation to the Insurance Companies (Amendment) Bill 2014 (“the Bill”)

—

- (a) arrangements for the transition from the Office of the Commissioner of Insurance (“OCI”) and the Self-regulatory Organizations (“SROs”) to the independent Insurance Authority (“IA”);
- (b) policy objectives of various ancillary provisions related to the performance of the functions of the IA, the operation of the statutory licensing regime for insurance intermediaries and other supplementary matters (contained in the existing Parts VIIA and IX and new Part XIII of, and new Schedule 11 to, the Insurance Companies Ordinance (“ICO”) (Cap. 41), as provided for in Clauses 64 to 67, 70, 84 and 94 of the Bill); and
- (c) related and consequential amendments.

**POLICY OBJECTIVES AND MAJOR PROVISIONS**

**(a) Transition from OCI to the IA**

Provisional Insurance Authority and transition to the IA

2. At present, the “Insurance Authority” (“IA”) is a public officer under the ICO. She is supported by OCI which is a government department. Upon enactment of the Bill, we plan to commence the new Ordinance in three stages to allow for a transition from OCI and the SROs to the IA. To avoid the costly mode of setting up a provisional authority as a company and then subsequently winding it up, the Bill is so drafted that in the first stage, the IA will be renamed as “Provisional Insurance Authority” (“PIA”) immediately after its establishment (see

new section 4AAA added by Clause 9 of the Bill). The PIA will be given certain administrative powers to undertake essential preparatory work, such as recruiting key personnel, leasing office premises and procuring office and IT equipment, etc., for the new insurance regulator to take over the work of OCI. In the second stage, the PIA will be renamed as “the Insurance Authority” (see new section 4AAA added by Clause 9 of the Bill), the official name of the IIA in the amended ICO. The IIA will take up the existing duties of OCI such as those on the prudential and conduct regulation of insurers and anti-money laundering regulation. In the interim, the self-regulatory system for insurance intermediaries will continue, allowing time for the IIA to prepare the necessary tools for regulating insurance intermediaries in consultation with the industry and the general public. These will include subsidiary legislation and code of conduct for insurance intermediaries, guidelines for imposing financial penalty, etc. The third stage will commence after these regulatory tools are in place for the IIA to take over the regulation of insurance intermediaries from the three existing SROs.

3. The tentative timeline is as follows –

<u>Stage One:</u> Establishment of PIA	Within 3 months after enactment day
<u>Stage Two:</u> IIA to take over OCI	6 to 12 months after PIA's establishment
<u>Stage Three:</u> IIA to commence the licensing and regulatory regime for insurance intermediaries	12 to 20 months after PIA's establishment

#### Savings provisions and provisions on transitional arrangements

4. In the process of replacing the existing regulator by the new regulator, we need to ensure the continuity of OCI's regulatory activities and decisions as well as the proper transfer of records after the establishment of the IIA. Parts 2 and 3 of new Schedule 11 provide for the savings provisions and transitional arrangements to ensure a smooth institutional migration from the existing IA to the IIA<sup>1</sup>.

---

<sup>1</sup> Provisions on the SROs' transfer of records and provision of assistance to the IIA were discussed in an earlier paper titled “Transitional Arrangements for Insurance Intermediaries (New Schedule 11)”.

5. Section 2 of new Schedule 11 deals with actions (including legal actions) and decisions taken as well as applications and appeals handled by the existing IA before the date of the IIA's establishment (i.e. Stage Two, labelled as "the commencement date" under the Bill) and provides for other savings arrangements. Section 2(1) provides that if there was an act being done by or in relation to the IA immediately before the commencement date, the act may be continued by or in relation to the IIA. Section 2(5) further provides that if the IA, in performing its functions, committed an act which was still in force immediately before the commencement date, or is to take effect on or after that date, the act has effect as if the functions were performed by the IIA. Section 2(7) provides that an authorization, consent, approval or exemption that was in force immediately before the commencement date is to continue in force for the remainder of its validity period.

6. To enable the IIA to undertake the existing functions of the IA without any interruption, there is a need to ensure that the IA can legally transfer all its existing records to the IIA. Section 3 in Part 3 of new Schedule 11 sets out the legal basis for this transfer. Section 3(1) of new Schedule 11 provides that all records in the custody of the IA which are, in the opinion of the IIA, required for it to perform its functions, must be transferred to it on the commencement date or as soon as practicable after that date. The IIA should ensure that there are proper procedures and systems to safeguard against unauthorized access to record transferred (see section 3(3) of new Schedule 11). The Personal Data (Privacy) Ordinance ("PDPO") (Cap. 486) will continue to apply as if the personal data contained in the records were received by the IIA (see section 3(4) and (6) of new Schedule 11). The IIA must ensure that the data is used, disclosed and retained for the purpose for which the data was to be used at the time of the collection (see section 3(5) of new Schedule 11). Transferring the records by the IA to the IIA will not amount to a breach of duty of confidentiality or a contravention of the PDPO (see section 3(7) of new Schedule 11).

#### **(b) Miscellaneous provisions**

7. We discussed the functions of the IIA in our previous policy papers submitted to the Bills Committee. To facilitate the IIA to

perform these functions and administer its affairs effectively, we need to provide for the following matters –

- (i) powers to make regulations, rules, codes and guidelines;
- (ii) offences and related matters;
- (iii) preservation of confidential information and immunity of the IIA and its functionaries; and
- (iv) service of notices by the IIA.

Provisions covering the above areas are already contained in the existing Parts VIIIA and IX of the ICO<sup>2</sup>. The proposed amendments aim to update and modernize these provisions as appropriate in order to enable the IIA to perform its functions effectively under the proposed regulatory regime.

(i) Powers to make regulations, rules, codes and guidelines

8. In line with other regulatory regimes, the primary legislation contains provisions to lay down fundamental principles, essential requirements, and general powers. It is necessary to empower the IIA to make subsidiary legislation to set out the detailed regulatory requirements and non-statutory guidelines to provide regulatees with guidance to facilitate compliance. This framework will allow flexibility for the IIA to respond to changing market practices and global conditions. Clause 84 adds new sections 127 to 131 to update the relevant existing provisions in the ICO to reflect the aforesaid framework.

9. New section 127(1) empowers the IIA to make rules, which are subsidiary legislation subject to the scrutiny of the Legislative Council, to provide for specified matters (see **Annex**). In addition to the power to make rules for matters under section 127(1), the IIA may, after consulting the Financial Secretary (“FS”), make other rules that are necessary for the performance of any of its functions (see new section 127(2)). This allows the IIA to make other rules in response to future market development. New section 130 requires the IIA to publish a draft of the proposed rules for public consultation before making any rules under the ICO.

---

<sup>2</sup> Clause 70 of the Bill repeals Part IX. The provisions in the existing Part IX are to be enacted under the new Part XIII (Miscellaneous) (containing new sections 116 to 136).

10. New section 131 empowers the IIA to publish codes or guidelines for matters in relation to the functions of the IIA and the operation of a provision of the amended Ordinance. This is to provide the industry with practical guidance to facilitate compliance with the regulatory requirements. New section 131(4) provides that if a person fails to comply with the provisions set out in a code or guideline, it does not render the person liable to any judicial or other proceedings. However, such code or guideline is admissible in evidence.

11. The IIA would be financially independent of the Government, with the major sources of revenue from payments of fees by insurers and insurance intermediaries, and levy on insurance premium. To ensure proper oversight on the setting of fees and levies, the powers to make orders and regulations for payments of fees and levies will be vested in the Chief Executive (“CE”) in Council (new sections 126 and 132).

12. The new section 133 empowers the CE in Council to reduce the amount or rate of levies. If the reserves of the IIA, after deducting depreciations and all provisions, are more than twice its estimated operating expenses for the financial year and the IIA has no outstanding debt, the IIA must consult the FS with a view to recommending to the CE in Council that the rate or amount of a levy be reduced.

(ii) Offences and related matters

13. The existing sections 55B, 56 and 56A under Part IX of the ICO provide for offences and the relevant penalty levels against acts that may undermine the integrity of the regulatory regime. These sections will be replaced by new sections 117, 118 and 120 added by Clause 84 of the Bill.

14. New section 117 replaces the existing section 56 to provide, among other things, that a person commits an offence if the person induces or attempts to induce another person to enter into a contract of insurance by a statement, promise or representation which the person knows to be false, misleading or deceptive<sup>3</sup>.

---

<sup>3</sup> A person who commits this offence is liable on conviction on indictment to a fine of

15. New sections 118 and 120 make necessary updates to the existing sections 56A and 55B to continue to respectively provide that misuse of certain terms and representations associated with insurance business is an offence and requires an overseas authorized insurer to give prior written notice to the IIA for its cessation of place of business in Hong Kong. The penalty levels are the same as those under the existing sections<sup>4</sup>.

16. The new section 119 provides that except when under specific circumstances, a person commits an offence if he discloses information obtained in the course of inspection, investigation or disciplinary process. A person convicted of this offence is liable to a fine at level 4<sup>5</sup>.

(iii) Preservation of confidential information and immunity

17. The existing sections 53A to 53D in Part VIIIA of the ICO contain provisions concerning preservation of confidential information in relation to performance of functions under the ICO, disclosure of information to overseas authorities, and communication by prescribed person<sup>6</sup> with the IA. Clauses 64 to 67 of the Bill seek to update these

---

\$1,000,000 and to imprisonment for 2 years, or on summary conviction to a fine at level 6 and to imprisonment for 6 months.

<sup>4</sup> A person who contravenes new section 118(1) or (3) (or existing section 56A(1)) commits an offence and is liable to a fine of \$200,000 and, in case of an individual, also to imprisonment for 2 years. An authorized insurer which fails to comply with new section 120(1) (or existing section 55B(1)) commits an offence and is liable (a) to a fine of \$200,000 and, in the case of an individual, also to imprisonment for 2 years; and (b) in the case of a continuing offence, to a further fine of \$2,000 for each day.

<sup>5</sup> Pursuant to schedule 8 of the Criminal Procedure Ordinance (Cap. 221), the amount of a level 4 fine is \$25,000.

<sup>6</sup> The definition of prescribed person is –

- (i) an auditor, former auditor, actuary or former actuary of an insurer or a former insurer and appointed under section 15 or paragraph 4(1A) of Part 1 of the Third Schedule of ICO;
- (ii) an accountant, former accountant, actuary or former actuary of an insurer or a former insurer and appointed by the insurer or former insurer, as the case may be, in compliance with a requirement under section 35(1) of ICO; or
- (iii) an auditor or former auditor of an insurance broker or a former insurance broker appointed under section 72 of ICO.

The wording of subparagraph (iii) above is updated under the Bill to cover an auditor or former auditor of a licensed insurance broker company, a former licensed insurance broker company and a former authorized insurance broker under the pre-amended ICO. Corresponding amendments need to be made to section 53D under clause 67.

provisions.

18. The existing section 53A imposes a duty to preserve secrecy of any matters relating to the affairs of an insurer on certain types of persons such as public officers and persons assisting the IA. The provisions need to be updated to reflect that the IIA will become an independent statutory body and insurance intermediaries will come under the regulatory regime.

19. The amended section 53A (Clause 64 of the Bill) requires the personnel of the IIA, such as members, employees, agents, consultants or advisors of the IIA, to preserve secrecy with regard to all matters (instead of merely matters relating to insurers) that come to their knowledge in the performance of their statutory functions. The exceptions have also been updated to facilitate the operation of the new regulatory regime, e.g. disclosure of information to the Insurance Appeals Tribunal (see new section 53A(3)(ca)). There are also express provisions to empower the IIA to impose appropriate conditions if it discloses information or grants a consent a third party to disclose information in accordance with the amended ICO (see new section 53A(3F)). The power to impose conditions is also vested in the Monetary Authority (“MA”) as the MA may be delegated with the power of inspection and investigation.

20. The existing section 53B enables the IA to disclose information in relation to the affairs of an insurer to an insurance regulator outside Hong Kong. Amendments to section 53B by Clause 65 of the Bill extend the scope of the existing provision so that the IIA may disclose information on the affairs of insurance intermediaries to an overseas regulatory authority. The existing safeguards under section 53B(1) (such as that the disclosure is in line with the interests of existing and potential policy holders or the public, and that the recipient regulator is subject to adequate secrecy provisions in its own jurisdiction) and section 53B(2) (viz. the disclosure should not cover any information relating to the affairs of an individual policy holder) remain unchanged.

21. The existing section 53C requires an insurer to permit an insurance regulator outside Hong Kong to examine its accounts if the IA’s approval has been given. Clause 66 of the Bill adds new subsections

(1A) and (1B) to the existing section 53C to extend the scope of the provision so that a licensed insurance agency or licensed insurance broker company must, with the approval of the IIA, permit the examination of books, accounts and transactions by an overseas insurance regulator of the place where the agency or company or its parent company is incorporated or has its principal place of business. The IIA should only give its approval if the examination is in the interest of existing or potential policy holders or in the public interest (see existing section 53C(2)).

22. The new section 116 aims to update the existing immunity provision in section 55A. It sets out that a person (e.g. an employee of the IIA) is not civilly liable for an act done or omitted to be done by the person<sup>7</sup> in good faith in performing or purportedly performing a function under the amended ICO. This proposal is in line with the protection afforded to a regulator and its staff under other financial regulatory regimes in Hong Kong.

(iv) Service of notices

23. The new section 125 updates the existing section 55 by adding other mode of transmissions used by the IIA to serve notices to a person in addition to postage, i.e., fax transmission and electronic mail transmission.

**(c) Related and consequential amendments**

24. After enactment of the Bill, the ICO will be renamed as the “Insurance Ordinance”. The new “Insurance Authority” (i.e. the IIA) will be a statutory body instead of a public officer. Clauses 95 to 165 of the Bill set out the related and consequential amendments to other Ordinances to reflect such changes. The majority of these amendments seek to –

---

<sup>7</sup> The immunity, however, does not apply to the following persons –

- (a) an appointed auditor of the IIA or of a licensed insurance broker company (under new section 5E and amended section 72); and
- (b) an appointed auditor or an appointed actuary of an authorized insurer (under amended section 15).



- (a) replace references to the “Insurance Companies Ordinance” with “Insurance Ordinance”;
- (b) remove references to the “Insurance Authority” as a public officer;
- (c) update references to insurance intermediaries in light of amendments in relation to the new statutory licensing regime.

25. In addition, Clause 104 of the Bill adds the IIA and any of its wholly-owned subsidiary to the list of public bodies under Schedule 1 of the Prevention of Bribery Ordinance (Cap. 201). Clause 113 of the Bill adds the IIA to list of organizations to which the Ombudsman Ordinance (Cap. 397). Clauses 116 to 121 update the relevant definitions and statutory procedures under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) in relation to Mandatory Provident Fund intermediaries which are also insurance intermediaries regulated by the IIA.

**Financial Services and the Treasury Bureau**  
**December 2014**

**Rules made by the Independent Insurance Authority (“IIA”)  
(New Section 127 added by Clause 84 of the Bill)**

Pursuant to new section 127(1) added by Clause 84 of the Bill, the IIA may by rules –

- (a) provide for the determination, in such different ways as may be necessary for different provisions, of the value of the assets and the amount of the liabilities of an authorized insurer for the purposes of the amended Insurance Companies Ordinance (“ICO”) (Cap. 41);
- (b) prescribe, or provide for the determination of, any amount required or permitted to be prescribed or determined for the purposes of the amended ICO;
- (c) provide for the holding in any fund or funds maintained by an authorized insurer in respect of its long term business of part of any excess of the value of the assets of the insurer over the amount of its liabilities;
- (d) prescribe standards to be complied with by an actuary appointed under section 15(1) of the amended ICO;
- (e) provide for applications for licence, the issue of licences and incidental matters;
- (f) require licensed insurance intermediaries to carry on business in relation to a specified class of products or line of business, and in the specified manner and circumstances;
- (g) prescribe the qualifications and experience of, and training for, licensed insurance intermediaries, and provide for the obligations to be imposed in relation to the requirements, the examinations required for those purposes, and the circumstances under which exemptions may be granted;
- (h) provide for the maintenance of registers and the correction of errors in the registers maintained by the IIA;
- (i) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the IIA;
- (j) require documents and information required to be lodged, filed, submitted or retained for a provision of the amended ICO to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;

- (k) require documents and information lodged, filed, submitted or retained for a provision of the amended ICO to be completed, signed, executed or authenticated in the specified form and manner;
- (l) specify whether, when and the circumstances in which records compiled in a specified form or manner, or documents or information completed, signed, executed or authenticated in a specified form or manner, are acceptable or required for a provision of the amended ICO;
- (m) require authorized insurers and licensed insurance intermediaries to make returns at specified times to the IIA, and provide for the particulars, or the nature of particulars, to be contained in those returns, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to those returns;
- (n) require a form or a return required to be submitted under a provision of the amended ICO to be received by the IIA by or within the specified time; and
- (o) prescribe any matter that, by the amended ICO, is required or permitted to be prescribed by rules made under new section 127 added by Clause 84 of the Bill.