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Subject: Insurance Companies (Amendment) Bill 2014

To: Bills Committee of Insurance Companies (Amendment) Bill 2014

Dear Sirs,

I am a practicing solicitor specialized in insurance and competition laws, and write to set out my observations relating to certain potential technical issues in the interpretation of Clause 64N of the Bill. I hope that the Bills Committee can kindly consider if amendment is required for the reasons stated by me below.

Clause 64N(2) reads as follows:-

- (2) An authorized insurer must not accept a referral of **insurance business from another person in Hong Kong** unless-
- a) that person is a licensed insurance intermediary; or
 - b) that person's duties only involve clerical or administrative duties.
- (2) 除非有以下情况，否则获授权保险人不得接受在香港的另一人转介的**保险业务** -
- a) 该人是持牌保险中介人;
 - b)

My observations are:

- (A) **The phrase "from another person in Hong Kong"**
1. If you look at the words highlighted in red ("...**from another person in Hong Kong**..." "在**香港的另一人**..."), the above Clause appears to have a literal meaning that the restriction of referral applies to a case only when the referrer is located in Hong Kong. In other words, if the referrer is located else in a place overseas, it should be fine. This could not be right in my view.
 2. I believe that the intention of this Clause is meant to restrict insurer not to accept such referral of business from another person (no matter where he is located) unless that person is licensed etc.
 3. Hence, if the legislation means to govern the conduct of authorized insurer on referral business, the phrase "in Hong Kong" appears to be redundant. For example, an authorized insurer, which operates globally, accepts a referral of insurance business through its overseas branch (for the benefit of its Hong Kong business), then its overseas branch refers the case to Hong Kong branch. Such activities may not be precluded by this Clause as well, because (a) the referrer is not in Hong Kong; (b) the referral also does not technically take place in Hong Kong. Again this does not appear to be correct.
 4. If I am right, Clause 64N should make a deletion of the phrase "in Hong Kong" and could instead be simply read as follows:-
 - (2) An authorized insurer must not accept a referral of insurance business from another person ~~in Hong Kong~~ unless-
 5. My observation also applies to Clause 64N(1) as well.

(B) The lack of definition of “insurance business”

6. “Insurance business” is not defined in the Ordinance or in the amendment bill. This causes some issues and loopholes.
7. Currently, we see the existence of some non-licensees who work in PRC or elsewhere to solicit customers for some local insurers. The argument they advance is that they are not conducting insurance business, because when they do this, the marketing or solicitation process has not been commenced and it is uncertain whether any insurance business will be generated. They regard this as a simple “customer referral” by giving the name to the insurer, and this is arguably not a “referral of insurance business”.
8. This interpretation may or may not be correct under the current regime of section 65(13) or under Clause 64N(2).
9. Indeed, quite usually, a so-called referral agreement is signed between an insurer and the non-licensee, so that the non-licensee will be rewarded if the insurer later on successfully sells the product. The monetary reward is not labelled as “commission” but as “referral fee”, but such reward (and its reward level) are linked to the purchase of policy. Some banks in Hong Kong, which are not registered as insurance agents, also adopt this model to refer clients to insurers for monetary reward.
10. Whilst a “pure” customer referral is common and should not be restricted, I think there is a need to clarify the position to avoid any inadvertent infringement of the laws.
11. The proper approach, may I humbly suggest, is that the referral can be accepted, provided also that the payment of referral fees are not contingent upon the referred person purchasing a policy. Clause 64N(2) should be modified to make it clear on what constitutes referral of “insurance business”.

The views expressed by me above represent those of my own personal opinion.

I can be reached at this email address, or at (mobile) / (office).

Yours sincerely,

Chiu Ling Cheong Anthony