

Insurance Companies (Amendment) Bill 2014

Debate and voting arrangements

First debate	: Clauses with no amendment – Clauses 1 to 4, 6 to 10, 12, 13, 14, 16 to 22, 27, 28, 33, 35 to 50, 53, 54, 56 to 61, 63, 65, 67 to 70, 72, 75, 76, 77, 79 to 82, 85, 88, 90 to 93, 95 to 103, 105 to 122, 124, 128 to 140 and 142 to 165
Voting	: To vote on the above clauses together standing part of the Bill
Second debate	: Clauses with amendments proposed by the Secretary for Financial Services and the Treasury – Clauses 5, 11, 15, 23 to 26, 29 to 32, 34, 51, 52, 55, 62, 64, 66, 71, 73, 74, 78, 83, 84, 86, 87, 89 and 94, the heading of Division 1 of Part 3, clauses 104, 123, 125, 126, 127 and 141
Joint debate on the original clauses and the amendments thereto.	
<u>Clauses 5, 11, 15, 23, 24, 25, 26, 29, 30, 31, 34, 55, 64, 66, 71, 73, 78, 83, 84, 86, 87, 89, 94, the heading of Division 1 of Part 3, 104, 123, 125, 126, 127 and 141</u>	
- to make textual amendments to the Chinese and/or English texts of or minor technical amendments to the various proposed provisions in the above clauses.	
<u>Clauses 5, 23, 26, 51, 52 and 84</u>	
- consequential to the addition of new clause 18A, to amend clause 5(4) to clarify the definition of “controller” in section 9 of the Insurance Companies Ordinance (Cap. 41) (“ICO”), and to make corresponding textual or technical amendments to the proposed section 13A(12) in clause 23, clauses 26(1), 51, 52(2) and (3) and the proposed section 79(1) in clause 84.	
<u>Clauses 5, 25 and 29</u>	
- to delete section 29(15) transposing the definition of “key person in control functions” to section 5(14), and to make technical amendments to sections 29(1) and 5(14);	
- to amend the proposed section 13AE(12) to clarify that in addition to the person who performs a control function, a key person in control functions includes an individual responsible for the performance of a control function, and to amend the definition of control function to cover risk management function, financial control function, compliance function, internal audit function and actuarial function on top of intermediary management; and	
- to amend the proposed section 13AE(13) to clarify that in addition to an individual solely responsible for performing a control function, a key person in control functions includes other key persons jointly responsible for the performance of relevant functions.	

Clauses 23, 25 and 71

- to amend the proposed section 13A(3)(c) in clause 23, the proposed sections 13AC(3)(c) and 13AE(3)(c) in clause 25, and the proposed section 64ZZ(1) in clause 71 to stipulate that the information to be provided by insurers should be “reasonably” required by the Insurance Authority (“IA”).

Clauses 23 and 25

- to amend the proposed section 13A(11) in clause 23, and the proposed sections 13AC(11) and 13AE(11) in clause 25 to align penalties for contravention of the same offence by authorized insurers and individuals.

Clauses 31 and 32

- to delete the proposed sections 15(3A) and (3B) in clause 31(5) and substitute them with new sections 15(3A), (3B) and (3BA), and to delete section 32 and substitute it with new section 32 (addition of sections 15AA, 15AAB and 15AAC) to stipulate the procedural requirements for the appointment of an actuary by an incorporated authorized insurer carrying on long term business in Hong Kong and the offence provisions, and to make corresponding technical and textual amendments to relevant provisions.

Clause 34

- to add subsection (1A) before clause 34(1) and subsection (5A) after clause 34(5) to empower IA to object to the appointment of an actuary by an overseas incorporated insurer carrying on long term business, and to stipulate relevant procedural requirements.

Clauses 55, 71 and 84

- to amend the proposed sections 41B(1) and 41B(8) in clause 55 for empowering IA to conduct inspection of an authorized insurer so as to align it with the proposed section 64ZZF(8) in clause 71 (similar provisions for IA to conduct inspection of a licensed insurance intermediary);
- to amend the proposed section 41P(5) in and add section 41P(6) to clause 55 to clarify that any contravention, act or omission by authorized insurer that occurred before the commencement of the new Part VA shall not be considered as misconduct under the new regime;
- to add subsection (4) to the proposed section 41Q in clause 55 and to add subsection (5) to the proposed section 81 in clause 84 to clarify the reference to “an opportunity of being heard”; and
- to amend the proposed section 41S(1)(a) in clause 55 to clarify that IA may exercise disciplinary actions in respect of authorized insurers under the proposed section 41P, and to make a similar amendment to the proposed section 83(1)(a) in clause 84.

Clauses 62, 83 and 84

- to delete clause 62 and substitute it with new clause 62 to clarify the applicability of various provisions to Lloyd's, and to amend clause 83 and delete the proposed section 118(2)(c) in clause 84 to remove the reference to Lloyd's .

Clause 64

- to amend clause 64 by adding subsection (10A) to clarify that information received in relation to the approval of directors, key persons in control functions, auditors and actuaries shall be subject to the requirements on secrecy under section 53A(2) of ICO.

Clause 71

- to amend the proposed section 64F(c) to clarify that a "controller" in relation to a company can include a legal person as well as a natural person;
- to amend the proposed sections 64J(1)(b) and (2)(e) and (f) as well as 64K(1)(b) and (2)(d) to stipulate that the restrictions in relation to personnel of licensed insurance agencies and licensed insurance broker companies only apply to a person who "manages or controls any matter relating to a regulated activity" of another insurance agency or insurance broker company as appropriate for better reflecting the original policy intent and avoiding over-regulation;
- to amend the proposed sections 64N(1)(a) and 64N(2)(a) to clarify circumstances under which an authorized insurer may enter into a contract of insurance through another person in Hong Kong or accept a referral of insurance business from another person in Hong Kong;
- to amend the proposed section 64P(2)(c) to remove the requirement for insurance intermediaries to notify IA of their fax numbers;
- to amend the proposed section 64Q(1), (2), (3) and (4) to shorten the timeframe for insurance intermediaries to give prior notification to IA of the relevant intended appointments under section 64Q from one month to 14 days;
- to amend the definition of **business premises** in the proposed section 64ZZF(10) to clarify that for the purpose of inspection in relation to insurance intermediaries, business premises does not include any domestic premises.

Clauses 71 and 74

- to add the definition of **agency agreement** to the proposed section 64F in clause 71, and to make consequential amendment to the proposed section 68A in clause 74.

Clauses 71 and 84

- to amend the proposed section 64ZS in clause 71 and the proposed section 86 in clause 84 to clarify that the provisions are subject to the proposed section 64N in clause 71. Section 64N specifies that a policy holder has the option to void a contract of insurance if it is entered into by an authorized insurer through another person who is not a licensed insurance agency or a licensed individual insurance agent appointed by the insurer or a licensed insurance broker company.

Clause 73

- to amend the proposed section 68(1) in clause 73(2), add subsections (4BA) and (4BB) to clause 73(2) and amend sections 73(5) and (6) to clarify that under certain circumstances, an authorized insurer is not liable for the act of an insurance agent.

Clause 78

- to amend the proposed section 73 in clause 78 to stipulate that licensed insurance broker companies should submit their audited financial statements to IA within 6 months after each financial year, and to make corresponding textual amendments.

Clause 84

- to add section 91A to stipulate that a breach of a conduct requirement specified under section 89, 90 or 91 does by itself render any licensed insurance intermediary or any insurer appointing the person liable to any judicial proceedings;
- to amend the proposed section 92(2)(k) to clarify that IA may specify the circumstances and conditions under which a licensed insurance intermediary may receive any property or services from another licensed insurance intermediary in consideration for referral of business;
- to add subsection (1A) to the proposed section 100 to stipulate that the Insurance Appeals Tribunal (“Tribunal”) may, with the consent of the parties to a review, determine the review on the basis of written submissions only;
- to add subsection (da) to the proposed section 118(2) to clarify that reinsurance brokers without presence in Hong Kong are exempted from restriction on use of certain terms and representations associated with insurance business, and to make technical amendment to the definition of **description** in the proposed section 118(5);
- to add subsections (2A) and (2B) to the proposed section 121 to provide for exemption for certain categories of employees from the licensing regime for insurance intermediaries;
- to amend the proposed sections 122(2)(a) and (b), 122(2), 122(3)(a) and (b), and 122(4) and (5) to clarify that the term “controller” is within the meaning of the relevant provisions, and amend the coverage of the personnel who would be held liable for an offence committed by a body corporate or partner to make it consistent with that of persons with statutory duties under the Bill, and to stipulate that the personnel would be held liable for an offence committed due to his consent, connivance, negligence or omission;
- to delete the proposed section 124(3) to delete the provisions for IA to use lay prosecutors for prosecuting minor offences in its own name; and
- to amend the proposed sections 132(1) and (2) to provide that the levy would be payable by policy holders and to further elaborate on the powers of the Chief Executive in Council in specifying the levy.

Clauses 84 and 94

- to transpose the definition of “parties” from the proposed section 1(1) of Schedule 10 in clause 94 to the proposed section 94 in clause 84.

Clause 86

- to amend the proposed section 5 of Schedule 1B to require members of IA to disclose all interests specified by IA.

Clause 94

- to amend the proposed Part I of Schedule 9 to include as appropriate certain decisions of IA under the existing ICO as specified decisions; and to make corresponding amendments to items 16 and 17 of Part 2, Schedule 9 consequential to the merger of Parts 5 and 6 of the proposed Schedule 11;
- to add section 4A to the proposed Schedule 10 to provide that in case there is a change in the person who is acting as the chairperson or a member of the Tribunal when a review is in progress, the hearing may continue if there is consent from both parties to the review, and the hearing should not continue but to start anew in the absence of such consent; and to make technical and textual amendments to section 1(2) and section 5(8)(a)(iii) of the Schedule respectively;
- to amend the proposed sections 3(1), (5) and (6) of Schedule 11 to stipulate that the transfer of records from the former authority to IA must be completed on or before the commencement date of the related provisions, and the Privacy Commissioner for Personal Data may, on and after the date on which the data is transferred, exercise in relation to IA any power under the Personal Data (Privacy) Ordinance (Cap. 486);
- to add Part 3A to the proposed Schedule 11 to provide for the treatment of appeals to the Financial Secretary (“FS”) under ICO before the commencement date of the related provisions;
- to amend sections 7(b), 9(a), 9(b)(i), 10(a), 10(b), 11(b), 11(c) and 12(d), the heading of section 13, sections 13(b), 13(c), 14(e), 16(a), 16(b), 16(c), 18, 19(1), 19(2), 26(b), 28(a), 28(b)(i), 29(a), 29(b), 30(b), 30(c) and 31(d), the heading of section 32, sections 32(b), 32(c), 33(e), 35(a), 35(b), 35(c), 38(1), 38(2), 45(b), 47(a), 47(b)(i), 48(a), 48(b), 49(b), 49(c) and 50(d), the heading of section 51, sections 51(b), 51(c), 52(e), 54(a), 54(b), 54(c), 57(1), 57(2), 63(1), 63(2), 65(1), 65(2), 71(1), 71(2), 73(1), 73(2), 80(b), 82(a), 82(b)(i), 83(a), 83(b), 84(b), 84(c) and 85(e), the heading of section 86, sections 86(b), 86(c), 87(f), 89(a), 89(b), 89(c), 92(1), 92(2), 98(1), 98(2), 100(1), 100(2) and 115(1) of the proposed Schedule 11 to clarify that a pre-existing self-regulatory organization (“SRO”) registrant should be deemed to be licensed until the time when the decision of SRO to revoke the registration takes effect, and to replace “on the commencement date” with “before the commencement date” where appropriate;
- to amend sections 9(b)(ii), 15, 17, 28(b)(ii), 34, 36, 47(b)(ii), 53, 55, 82(b)(ii), 88 and 90 of the proposed Schedule 11 to provide for the scenario in which the pre-existing SRO registrant appeals against IAT’s decision to the Court of Appeal;
- to amend section 69 in and add section 69A to the proposed Schedule 11 to specify requirements to be observed by deemed licensed insurance broker companies which have applied to respective SROs for de-registration before the commencement date;
- to merge Part 5 and Part 6 in the proposed Schedule 11 and make corresponding textual amendments consequential to the amendments to sections 107 to 113 of the proposed Schedule 11;
- to make textual amendments to the Chinese and/or English texts of various provisions in the proposed Schedules 9, 10 and 11.

Voting

: To vote on the above amendments together, and then the original clauses or the clauses as amended standing part of the Bill

Third debate	: New clauses proposed by SFST – New clauses 18A, 52A, 52B and 83A, and the new division heading before new clause 166 and new clause 166
<u>New clause 18A</u>	
- to make technical amendments to clarify the definition of “controller” under section 9 of ICO in that “controller” in ICO as amended by the Bill would apply to a company making an application for authorization to carry on insurance business or an authorized insurer except as otherwise provided.	
<u>New clauses 52A and 52B</u>	
- to add clause 52A to provide that IAT would replace FS in handling appeals under the new regime, and to add clause 52B to specify the appeal mechanism in Part XII separately.	
<u>New clause 83A</u>	
- to add section 78(A) to ICO to allow IA to exempt temporarily a person from provisions of Part X in respect of the licensing of insurance intermediaries to avoid breaches of the licensing requirements.	
<u>New division heading before new clause 166 and new clause 166</u>	
- In view of the gazette of the Limited Liability Partnerships (Top-up Insurance) Rules (L.N. 103 of 2015) (“the Rules”) on 29 May 2015, to add the new Division heading 33 and clause 166 to Part 3 to make consequential amendments to the Rules to substitute references to the “Insurance Companies Ordinance” with “Insurance Ordinance” and update other references as appropriate.	
Voting	: To vote on the above added new clauses together
Fourth debate	: Schedules with amendments proposed by the Secretary for Financial Services and the Treasury – Schedules 1 and 2
<u>Schedule 1</u>	
- to amend the Chinese text in item 120.	
<u>Schedule 2</u>	
- to delete item 62.	
Voting	: To vote on the above amendments together, and then the original Schedules or the Schedules as amended standing part of the Bill

The Secretary for Financial Services and the Treasury’s amendments

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