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**Report of the Bills Committee on Inland Revenue
(Amendment) (No. 4) Bill 2018**

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018 ("the Bills Committee").

Background

2. The Government conducted two stages of public consultation exercise on healthcare reform in 2008¹ and 2010² respectively to look for ways to maintain the long-term sustainability of the healthcare system. While the consultation exercise revealed strong public resistance to any supplementary healthcare financing options of a mandatory nature, the public expressed support for the introduction of a voluntary and government-regulated private health insurance scheme to enhance transparency, competition and efficiency of private health insurance for the provision of an alternative to those who are willing and may afford to pay for private healthcare services.

¹ In March 2008, the Government put forth a package of healthcare service reforms and six possible supplementary healthcare financing options in the First Stage Healthcare Reform Consultation Document entitled "Your Health Your Life". The six options for addressing the long-term sustainability of healthcare financing were (a) social health insurance (i.e. mandatory contribution by the workforce); (b) out-of-pocket payments (i.e. increase user fees for public healthcare services); (c) medical savings accounts (i.e. mandatory savings for future use); (d) voluntary private health insurance; (e) mandatory private health insurance; and (f) personal healthcare reserve (i.e. mandatory savings and insurance).

² In October 2010, the Government published the Healthcare Reform Second Stage Public Consultation Document entitled "My Health My Choice" in which a voluntary and government-regulated private health insurance scheme was proposed for public consultation.

3. Subsequently, the Government conducted a four-month public consultation exercise in December 2014 to gauge public views on the Consultation Document on Voluntary Health Insurance Scheme ("the 2014 Consultation Document") which put forth detailed proposals for implementing a Voluntary Health Insurance Scheme ("VHIS") to enhance the accessibility to and quality of individual indemnity hospital insurance and in turn help address the balance of the public-private healthcare sectors³ and enhance the long-term sustainability of the healthcare system as a whole. It was proposed that all individual indemnity hospital insurance products would be required to meet or exceed a proposed set of 12 Minimum Requirements upon the implementation of VHIS which included, among others, guaranteed acceptance with premium loading capped at 200% of standard premium for all ages within the first year of implementation of VHIS, and those aged 40 or below starting from the second year of implementation of VHIS; coverage of pre-existing conditions subject to a standard waiting period and reimbursement arrangement during the waiting period; and portable insurance policy with no re-underwriting when changing insurers.⁴ A High Risk Pool ("HRP"), which is the key enabler of the above Minimum Requirements, was proposed to be set up by legislation to accept policies of which the premium loading is assessed to be 200% or more of the standard premium offered by the insurer. The claims cost arising from the acceptance of high-risk subscribers will be met by their own premiums and Government funding for HRP.⁵ It was further proposed in the 2014 Consultation Document that, as a financial incentive for VHIS, tax reduction would be introduced for premiums paid for individual indemnity hospital insurance policies owned by taxpayers covering themselves and/or their dependants that comply with the Minimum Requirements; and premiums paid for voluntary supplements purchased by individuals on top of their group indemnity hospital insurance policies.

4. In January 2017, the Administration released the Consultation Report on VHIS. According to the Administration, there is broad support for the concept

³ According to the Administration, around 88% of inpatient services (in terms of number of bed days) are provided by public hospitals.

⁴ The other nine Minimum Requirements are: (a) guaranteed renewal without re-underwriting; (b) no "lifetime benefit limit"; (c) coverage of hospitalization and prescribed ambulatory procedures; (d) coverage of prescribed advanced diagnostic imaging tests, subject to a 30% co-payment, and non-surgical cancer treatment up to a prescribed limit; (e) minimum benefit limits; (f) no cost-sharing (deductible or co-existence) by policy holders; (g) budgetary certainty for policy holders through Informed Financial Consent and no-gap or known gap for at least one procedure or test; (h) standardized policy terms and conditions; and (i) transparent information on age-banded premiums through easily accessible platform.

⁵ It was estimated that the total cost to the Government for funding the operation of HRP for a 25-year period from 2016 to 2040 would be about \$4.3 billion (in 2012 constant prices).

and policy objectives of the proposed VHIS. While there is support for most of the Minimum Requirements, there are divergent views on those relating to guaranteed acceptance with premium loading cap which have to be underpinned by an HRP, coverage of known pre-existing conditions and portable insurance policy. Taking into account the policy objectives of VHIS, its extensive impact on the insurance sector and the views collected during the public consultation exercise, the Administration decides that it will first implement a VHIS, which primarily covers individual indemnity hospital insurance plans, without the two Minimum Requirements of guaranteed acceptance with premium loading cap and portable insurance policy through a non-legislative framework in collaboration with the Insurance Authority.⁶ There will be two types of individual indemnity hospital insurance plans⁷ certified by the Secretary for Food and Health ("the Secretary") to be in compliance with VHIS ("Certified Plans"), namely, Standard Plan which meets the minimum compliant product requirements of VHIS in respect of its terms and conditions and the benefit schedule; and Flexi Plan which provides enhancement(s) to any or all of the protections or terms and benefits that the Standard Plan provides.

5. In the 2018-2019 Budget Speech, the Financial Secretary proposed offering an annual tax deduction (subject to a ceiling of qualifying premium amount at \$8,000 per insured person) for people who purchased eligible health insurance products for themselves or their dependants.

6. The Administration published on 1 March 2018 the draft Standard Plan Policy Template⁸ which set out, among others, the scope of protection required of Standard Plan, and the draft Code of Practice for Insurance Companies under the Ambit of VHIS⁹ with which insurance companies registering as a VHIS provider that offers Certified Plan(s) must comply. It is announced that the tax deduction

⁶ Some of the 10 remaining Minimum Requirements have been suitably refined.

⁷ Under VHIS, indemnity hospital insurance plan means an insurance plan with classification of contract of insurance falling within Class 2 (sickness) of Part 3 of Schedule 1 to the Insurance Ordinance (Cap. 41) ("Class 2") which provides for benefits in the nature of indemnity against risk of loss to the insured person attributable to sickness or infirmity that requires hospitalization. An individual policy of an indemnity hospital insurance plan may be issued to an individual as a standalone Class 2 policy or as an additional cover combined with and, hence, forming part of a contract of long-term business (e.g. a medical insurance rider attached to and forming part of a life insurance policy).

⁸ The document was later renamed as VHIS Certified Plan Policy Template. The VHIS Certified Plan Policy Template can be accessed at the Administration's dedicated website for VHIS (https://www.vhis.gov.hk/doc/en/information_centre/e_certified_plan_policy_template.pdf).

⁹ The Code of Practice for Insurance Companies under the Ambit of VHIS can be accessed at the Administration's dedicated website for VHIS (https://www.vhis.gov.hk/doc/en/information_centre/e_cop.pdf).

arrangement will be implemented from the following year of assessment after the passage of the bill which offers the relevant tax deductions.

The Bill

7. The Inland Revenue (Amendment) (No. 4) Bill 2018 ("the Bill") was published in the Gazette on 18 May 2018 and received its First Reading at the Legislative Council ("LegCo") meeting of 23 May 2018. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") to introduce a new concessionary deduction concerning salaries tax and tax under personal assessment that may be allowed for premiums paid under an insurance policy that is in whole or in part issued under a Certified Plan ("VHIS policy"), and to provide for related and transitional matters. The key features of the Bill are set out in paragraphs 5 to 15 of the LegCo Brief issued by the Food and Health Bureau ("FHB") on 16 May 2018 (File Ref: FH CR 1/3822/13).

The Bills Committee

8. At the House Committee meeting on 25 May 2018, Members agreed to form a Bills Committee to study the Bill. Mr Kenneth LEUNG and Mr Holden CHOW have been elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

9. The Bills Committee has held three meetings with the Administration. The Bills Committee has also invited written views from the related organizations and the public. A list of organizations which have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Specified relative

Familial relationships covered in the Bill

10. The proposed section 26K(1) of the Ordinance provides that a deduction in respect of qualifying premiums paid during a year of assessment for an insured person under a VHIS policy is allowable to a taxpayer for the year of assessment if: (a) the qualifying premiums were paid by the taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer) as the policy holder of the

policy; and (b) the insured person, in addition to satisfying the requirement of nexus to Hong Kong as set out in the proposed paragraph (c) is either the taxpayer himself or herself, or a "specified relative" of the taxpayer in the year of assessment. The definition of "specified relative" as provided for in the proposed section 26J of the Ordinance would cover the taxpayer's spouse, and the children, parents, grandparents and siblings of the taxpayer or the taxpayer's spouse. The Bill does not provide a cap on the number of specified relatives in respect of whom a taxpayer may claim tax deductions. The Administration has informed the Bills Committee that it is the policy intent that the types of familial relationships covered by the Bill should be the same as the relationships covered by the existing dependent allowances in the Ordinance.

Spouse

11. The proposed section 26J of the Ordinance defines a "specified relative" to include, among others, the taxpayer's "spouse", and the parents, grandparents and siblings of his or her "spouse". The existing section 2(1) of the Ordinance defines "spouse" as a husband or wife, i.e. a married man or woman whose marriage is recognized by the law of Hong Kong or, whether or not so recognized, was entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so. Separately, paragraph 5 of the *Departmental Interpretation and Practice Notes No. 18 (Revised)* issued by the Commissioner of Inland Revenue ("the Commissioner") in January 2005 ("DIPN18") states that "marriage" in the context of the Ordinance is intended to refer to a heterosexual marriage between a man and a woman and that parties in a same-sex marriage would be incapable of having a "spouse".

12. Insofar as the interpretation of "marriage" and "spouse" referred to in DIPN18 would allow a taxpayer in a heterosexual marriage (but not one in a same-sex marriage entered into outside Hong Kong according to the law of the place where it was entered into) to claim concessionary deductions in respect of qualifying premiums paid by the taxpayer for his or her spouse, or the grandparent, parent, child or sibling of the spouse, under VHIS policies, the Legal Adviser to the Bills Committee has sought elaboration as to whether such differential treatment would be ruled by the court(s) as contravening the equality provisions under Article 25 of the Basic Law ("BL25") and/or Article 22 of the Hong Kong Bill of Rights ("HKBOR 22"). Mr CHAN Chi-chuen has pointed out that according to the judgment in *Secretary for Justice v Yau Yuk Lung Zigo and Another* [FACC 12/2006], the difference in treatment in question will constitute discrimination and infringe the right to equality unless such differential treatment could be constitutionally justified.

13. The Administration has advised that the right to equality is not absolute in the sense that it does not require that all persons should invariably be treated alike. There would not be any unlawful discrimination if the difference in treatment can be justified in accordance with the four-step proportionality test laid down by the Court of Final Appeal in *Hysan Development Co Ltd v Town Planning Board* [2016] 19 HKCFAR 372 ("the four-step proportionality test"). The four-step proportionality test requires that the difference in treatment must (1) pursue a legitimate aim, (2) be rationally connected to that legitimate aim, (3) be no more than is necessary to accomplish that legitimate aim, and (4) ask whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, asking in particular whether pursuit of the societal interest resulted in an unacceptably harsh burden on the individual. The Administration has stated that marriage is an institution which carries with it a special legal and social status and a host of rights and obligations for the married couple. It takes the view that the differential treatment in question satisfies the four-step proportionality test and, hence, is consistent with BL 25 and HKBOR 22 as it follows the prevailing marriage laws of Hong Kong and gives effect only to marital status that is recognized as such under the laws of Hong Kong. In the Administration's view, the differential treatment pursues the legitimate aims of protecting the concept of marriage as understood in Hong Kong, as well as ensuring certainty and administrative workability. It is also rationally connected to, and is no more than is necessary to accomplish, these legitimate aims. Moreover, the Government contends that it is entitled to a wide margin of discretion in relation to the formulation of tax policies which involve socio-economic considerations.

14. Mr CHAN Chi-chuen has enquired how the meaning of "spouse" would be construed if a taxpayer had more than one wife under the law of other places which permits polygamous marriages. The Administration has advised that under the existing section 2(1) of the Ordinance, "marriage" shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and married (結婚) shall be construed accordingly.

Cohabitee

15. Some members including Mr CHAN Chi-chuen and Mr Holden CHOW have suggested that a person who is in a cohabitation relationship with the taxpayer during the year of assessment should be covered under the definition of "specified relative". They consider that to do so could also encourage the uptake of VHIS policies.

16. The Administration has stressed that unlike the allowable deduction of outgoings and expenses wholly, exclusively and necessarily incurred in the production of a taxpayer's assessable income, the proposed allowable deduction in respect of qualifying premiums paid during a year of assessment for an insured person under a VHIS policy is concessionary in nature as an added incentive for members of the public to purchase VHIS policies. The policy intent of the Administration is that the types of familial relationships covered by the Bill should be the same as the relationships covered by the existing dependent allowances in the Ordinance.

Parent and grandparent

17. According to the proposed section 26J(2) of the Ordinance, a taxpayer would only be able to claim a tax deduction in respect of qualifying premiums paid for a parent or grandparent who fulfills the condition of being, at any time during the year of assessment, aged 55 or more; or under the age of 55 but eligible to claim an allowance under the Government's Disability Allowance Scheme ("GDAS"). Dr Helena WONG has sought explanation as to the reason for imposing such condition. She considers that all parents and grandparents (regardless of age) of the taxpayers or of the spouse of the taxpayers who are not in the workforce should be regarded as "specified relatives".

18. The Administration has explained that the above condition concerning the parent or grandparent is the same as the one in the existing dependent parent allowance and dependent grandparent allowance as set out in the existing sections 30(1) and (1A), and 30A(1) and (1A) of the Ordinance respectively. In those sections, an allowance shall be granted in any year of assessment to a person if that parent or grandparent, subject to the other provisions of those sections, at any time in that year was aged 60 or more or under the age of 60 and was eligible to claim an allowance under GDAS; or was aged 55 or more but was under the age of 60, did not attain the age of 60 in that year, and was, throughout that year, not eligible to claim an allowance under GDAS. The rationale for the granting of the dependent parent allowance and dependent grandparent allowance is that the younger generation will inevitably have to undertake a heavier responsibility in caring for their parents or grandparents aged 55 or above, who have less chance of finding a full-time or part-time job.

19. Mr CHUNG Kwok-pan has enquired whether the stepmother of the spouse of the taxpayer, who has registered a marriage with the taxpayer's father-in-law and is, at any time during the year of assessment, aged 55 or more, would satisfy the definition of "parent" under the Bill. The Administration has affirmed that the taxpayer concerned is entitled to claim a deduction in respect of the qualifying premiums paid by either the taxpayer or the taxpayer's spouse or both of them

during a year of assessment for the insured stepmother because under section 2(1) of the Ordinance, "parent or parent of his or her spouse" includes a step parent of the person or his or her spouse.

Sibling

20. Under the proposed section 26J(4) of the Ordinance, "sibling" is defined to include, among others, "an adopted sibling of the person or of the person's spouse" (該人的或其配偶的父母的領養子女). The Legal Adviser to the Bills Committee has drawn to the attention of the Bills Committee that the present drafting of the provision (especially its Chinese text) would appear to result in potentially differential treatment against taxpayers (or the taxpayers' spouses) who are adopted children in that they would only be able to claim deductions for premiums paid under VHIS policies for their parents' adopted children (but not natural children), whereas taxpayers (or the taxpayers' spouses) who are not adopted would be able to claim deductions in respect of premiums paid for their parents' natural as well as adopted children. There is a need to consider whether such differential treatment would be ruled by the court(s) as contravening the equality provisions under BL 25 and/or HKBOR 22, having regard to the four-step proportionality test referred to in paragraph 13 above.

21. The Administration has advised that the proposed definition of "sibling" is modelled on the definition of "brother or sister or brother or sister of the spouse" in the existing section 30B(3)(b) of the Ordinance in relation to the granting of dependent brother or dependent sister allowance. In that section, "brother or sister or brother or sister of the spouse" is defined to include, among others, "an adopted brother or adopted sister of the person or the spouse" (該人或配偶的父母的領養子女). Having taken into account the above observations of the Legal Adviser to the Bills Committee, the Administration will move amendments to clause 8 of the Bill to amend the proposed section 26J(4) of the Ordinance to the effect that the definition of "sibling" will cover both an individual who is adopted by the parents of the taxpayer (or of the taxpayer's spouse) and, if the taxpayer (or the taxpayer's spouse) is adopted, the natural children of the adoptive parents of the taxpayer (or of the taxpayer's spouse). The Administration has further advised that it will review the definition of "brother or sister or brother or sister of the spouse" in the existing provisions of the Ordinance at the earliest opportunity.

Taxpayer who was adopted by a same-sex couple in any place outside Hong Kong

22. Under the proposed section 26I of the Ordinance, "adopted" would be defined as "adopted in any manner recognized by the laws of Hong Kong". Mr CHAN Chi-chuen has enquired whether, in relation to a taxpayer who was adopted by a same-sex couple ("the Parents") in any place outside Hong Kong

according to the law of that place, the Parents; the parents of each of the Parents (i.e. the taxpayer's adoptive grandparents); an individual born of a heterosexual marriage to which one of the Parents was or is a party; and an individual (other than the taxpayer) adopted by one or both of the Parents in any place outside Hong Kong according to the law of that place would qualify as the taxpayer's "specified relative" for the purposes of the proposed section 26J(1) of the Ordinance.

23. The Administration has advised that the definition of "adopted" in the proposed section 26I of the Ordinance is modelled on existing section 27(3) of the Ordinance concerning dependent allowance. In case of adoption of children by a couple in any place outside Hong Kong, sections 17¹⁰ or 20F¹¹ of the Adoption Ordinance (Cap. 290) would apply. Any cases in relation to foreign adoption would be considered in accordance with the above provisions having regard to individual circumstances. It will keep in view the development of relevant case law and will look into the taxation-related issue in relation to a taxpayer who was adopted by a same-sex couple in any place outside Hong Kong according to the law of that place.

The maximum deduction allowable to a taxpayer

24. Under the proposed Schedule 3E to the Ordinance, the maximum deduction allowable to a taxpayer in respect of qualifying premiums paid during a year of assessment for each insured person who is either the taxpayer or a specified relative of the taxpayer in the year of assessment (whether the insured person is insured under one or more than one VHIS policy) would be \$8,000. The majority of members cast doubt as to whether the amount of net saving in tax, which would be at a maximum of \$1,360 per insured person at a marginal tax rate of 17%,

¹⁰ Under section 17(2) of the Adoption Ordinance, an adoption in any place outside Hong Kong (other than an adoption to which the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at the Hague on 29 May 1993 applies ("a Convention adoption")) shall have the same effect as an adoption order validly made in accordance with the Adoption Ordinance, and shall have no other effect, if, *inter alia*,—

- (a) the adoption is legally valid according to the law of that place; and
- (b) in consequence of the adoption, the adoptive parents or any adoptive parent had, or, if the adopted person had been a young child, would have had, immediately following the adoption, according to the law of that place, a right superior to that of any birth parent of the adopted person in respect of the custody of the person.

¹¹ Under section 20F of the Adoption Ordinance, a Convention adoption made in a Contracting State or any other part of the People's Republic of China where the Convention is in force shall, subject to sections 20G and 20H, have the same effect as an adoption order validly made in accordance with this Ordinance in respect of a full adoption (as defined in section 20G(2)), and shall have no other effect. However, under section 20H, the Court may declare that a Convention adoption shall not be recognized in Hong Kong on the ground that the adoption is manifestly contrary to public policy, taking into account the best interests of the infant.

could provide adequate incentive to encourage people to take up VHIS policies so as to alleviate the pressure on the public healthcare system. Mr Holden CHOW has suggested to increase the maximum deduction claimable for those insured persons who are of an older age and need to pay a higher premium due to their higher health risks. Dr KWOK Ka-ki considers that the maximum deduction allowable to a taxpayer should be on a sliding scale in accordance with the age and health conditions of the insured persons. Mr CHUNG Kwok-pan takes the view that qualifying premiums paid under a policy issued under a Flexi Plan should be granted a higher maximum deduction. Dr Pierre CHAN has expressed particular concern about whether young people would be incentivized to purchase VHIS policies as the average monthly income of a fresh local university graduate only stands at about \$15,000.

25. The Administration has stressed that the tax deduction is not meant to be the key or sole incentive for members of the public to purchase VHIS policies. VHIS seeks to improve the quality of individual indemnity hospital insurance products and offers consumers a more comprehensive quality choice of individual indemnity hospital insurance products. Compared with many existing individual indemnity hospital insurance products, VHIS policies are more attractive in a number of ways, such as guaranteed renewal until the insured person turns 100; adjustment of premium during each policy year and upon renewal not to be based on changes in the health conditions of the insured person; no "lifetime benefit limit"; and coverage extended to include unknown pre-existing conditions that have existed prior to the policy issuance date or the policy effective date (whichever is the earlier) and ambulatory procedures including endoscopy. It is envisaged that about 90% of the policy holders of Standard Plan, the average premium of which is projected to be around \$4,800 per policy year, could have their qualifying premiums fully deductible under the current proposal. This apart, the arrangement that there will be no cap on the number of specified relatives for whom tax deductions may be claimed by a taxpayer provides more flexibility.

26. Members have requested the Administration to review, say, two years after the implementation of VHIS, the effectiveness of the introduction of a concessionary deduction for premiums paid in respect of VHIS policies in incentivizing the uptake of such policies, in particular by the higher-risk groups, so as to alleviate pressure on the public healthcare system and enhance the long-term sustainability of the healthcare system as a whole. Ms Alice MAK takes the view that the proposed concessionary deduction would mainly attract policy holders of existing individual indemnity hospital insurance policies to migrate to VHIS policies. A VHIS without the features of guaranteed acceptance and portable insurance policy in the longer term could not improve higher-risk groups' access to individual indemnity hospital insurance policies. The Administration has advised that according to an actuarial study, it is estimated that about 1.5 million people

would purchase or migrate to VHIS policies (with about 70% to 80% being Flexi Plan policies) in the first three years of implementation. The Administration has assured members that it will review the effectiveness of VHIS from time to time after its implementation and re-examine the HRP proposal at a later stage, taking into account, among others, the experience of the actual implementation of VHIS. It will revert to the Panel on Health Services in this regard as and when appropriate.

Qualifying premiums not commensurate with the risk profile

27. Members note that the proposed section 26K(4) of the Ordinance would empower the Commissioner to determine the amount of qualifying premiums that is, in the Commissioner's opinion, commensurate with the risk profile of an insured person, if the Commissioner is of the opinion that the qualifying premiums paid during a year of assessment for the insured person under a VHIS policy are not commensurate with the risk profile of the insured person. The amount so determined would be deemed to be the qualifying premiums paid for the policy. Dr Helena WONG and Mr CHUNG Kwok-pan have enquired about the exercising of the above power by the Commissioner and the role of FHB in this regard. Dr Helena WONG has expressed concern about how an assessment over the level of premium loading, which is correlated to the additional risk assessed for individual insured person, such as reported health conditions, could be made by the Commissioner. Mr Kenneth LEUNG, Dr KWOK Ka-ki and Mr Holden CHOW have enquired about the mechanism to be put in place to guard against the possibility that a VHIS provider would charge unreasonably high premiums for policies issued under Certified Plans.

28. The Administration has advised that the proposed section 26K(4) is an anti-avoidance provision aimed at guarding against any possible abuse of tax deduction by claiming unreasonably high premium for a VHIS policy. Upon implementation of VHIS, the VHIS Office of FHB will make public information on the up-to-date Certified Plans offered by different VHIS providers, which covers, among others, the certification number issued by FHB, the policy terms and conditions, the benefit schedule and the age-banded premium schedule. The VHIS Office of FHB will provide advice to the Inland Revenue Department in considering the possible abuse cases. It should be noted that the taxpayers' right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the court as provided for under the Ordinance are applicable to the proposed concessionary deduction in respect of health insurance premiums.

Features of VHIS policies

29. Some members including Dr KWOK Ka-ki, Mr CHUNG Kwok-pan and Dr Pierre CHAN have expressed concern that there will be no regulation of the level of expense loading of the Certified Plans (i.e. the amount of insurer expenses, including commissions and broker fees, profit margins, expenses and other overhead expenses, as a percentage of the amount of premium). According to a research conducted by the Research Office of the LegCo Secretariat, administration cost took up as much as 37% of the total spending in privately purchased health insurance schemes in Hong Kong in 2014-2015.¹² These members are of the view that the implementation of VHIS could not avoid oligopoly in the individual indemnity hospital insurance market. A ceiling should be imposed on the level of expense loading of the Certified Plans, or at the very least, the Standard Plans under VHIS.

30. The Administration has stressed that VHIS is a voluntary scheme. In accordance with the free market principle, it has no intention to regulate the level of the administration cost of the Certified Plans which should be determined by market force. It is considered that VHIS would bring about enhanced transparency and product comparability, which in turn is expected to foster competition amongst the insurance companies in the market and help contain expense loading. Making reference to the online Fee Comparative Platform of the Mandatory Provident Fund Schemes Authority which sets out the Fund Expense Ratio of various funds as well as the average Fund Expense Ratio of different fund types, Mr Kenneth LEUNG has suggested that information on expense loading of the Certified Plans offered by different VHIS providers should be made public, say, through a dedicated VHIS website, so as to facilitate consumers in making informed choices when purchasing VHIS policies. The Administration has agreed to consider the suggestion. Members have taken note of the remarks made by Mr CHAN Kin-por, a non-Bills Committee member, that according to statistics of the insurance sector, the claim ratio in recent years stood at around 70% for the whole private health insurance market. The some 30% expense loading covered, among others, commissions for insurance agents and administration expenses of the insurers, which accounted for 15% to 25% and 10% to 15% of the amount of the premiums collected respectively.

31. Members note that under the benefit schedule which is applicable to all Standard Plan policies and represents the minimum compliance requirements for all Flexi Plan policies, the benefit limits for prescribed non-surgical cancer

¹² The Research Brief entitled "Health Insurance for Individuals in Hong Kong" can be accessed at the LegCo's website (<http://www.legco.gov.hk/research-publications/english/1718rb03-health-insurance-for-individuals-in-hong-kong-20180703-e.pdf>).

treatments (which only include radiotherapy, chemotherapy, targeted therapy, immunotherapy and hormonal therapy) and psychiatric treatments (as a result of confinement in a psychiatric hospital or psychiatric ward of a hospital in Hong Kong on the recommendation by a specialist) are \$80,000 and \$30,000 per policy year respectively. Dr KWOK Ka-ki and Dr Pierre CHAN have expressed concern that the above benefit limits are far from adequate to meet the needs of those insured persons requiring such services. Dr Pierre CHAN is of the view that the Administration should put in place a mechanism to regularly review the benefit limits of the items listed in the benefit schedule. Dr KWOK Ka-ki goes further to suggest that the Administration should provide additional subsidy for people who need cancer treatments. In addition, as a means to reduce unnecessary hospital admission and taking into particular account that private inpatient psychiatric service is still at its developmental stage in Hong Kong, the coverage of VHIS policy should be extended to include specialist outpatient consultations.

32. The Administration has advised that the benefit schedule is drawn up with a view to striking a proper balance between consumer protection and premium affordability. A higher standard premium would have the effect of discouraging potential consumers from taking out VHIS policies, especially those healthier individuals. This will go against the objective of VHIS to encourage and facilitate the public to take out individual indemnity hospital insurance and thereby use private healthcare services when needed. In the Administration's view, it is prudent to set the above annual benefit limits for the Standard Plan products at \$80,000 and \$30,000 as a starting point. It should be noted that under VHIS, the arrangement of Flexi Plans has allowed flexibility for VHIS providers to offer products of higher benefit limits. Consumers who wish to have enhanced protection could choose to purchase Flexi Plan policies. Separately, since the suggestion of providing premium subsidy for patients that need cancer treatments to use private healthcare services also involve the use of public money to help high-risk individuals, it may be examined together with the HRP proposal at a later stage.

33. Dr KWOK Ka-ki remains concerned over the coverage of VHIS policy and the level of the administration cost of the Certified Plans. He has indicated his intention to propose two sets of amendments to the definition of "VHIS policy" under the proposed section 26I(1) of the Ordinance to (a) specify that the coverage of the VHIS policy is to include not more than five specialist outpatient visits per year; and (b) require that no less than 80% of the qualifying premiums of VHIS policies should be used for direct funding of healthcare cost. Dr KWOK Ka-ki has explained that the intent of the latter amendment is to limit the miscellaneous costs, including the administration cost, to not more than 20% of the qualifying premiums. Mr WONG Ting-kwong, Mr KWOK Wai-keung and Mr Holden CHOW have expressed concern about the admissibility of the

proposed amendments under the Rules of Procedure as they may fall outside the scope of the Bill.

34. The Administration objects to Dr KWOK Ka-ki's proposed amendments. It has drawn to the attention of the Bills Committee that any amendments to the Bill have to be relevant to the subject matter of the Bill and to the subject matter of the clause to which it relates as required under Rule 57(4)(a) of the Rules of Procedure. The Administration is of the view that the proposed amendments, which would have the effect of changing the nature of implementation of the VHIS from a non-legislative approach to legislative approach, do not fall within the scope of the Bill and run contrary to the policy intent of VHIS. The above apart, the proposed amendments would create restriction to the flexibility of the voluntary scheme. The Administration has further advised that in its view, the inclusion in the benefit schedule of Standard Plan of, among others, one pre-confinement or day case procedure outpatient visit, and three follow-up outpatient visits after the patient is discharged from the hospital or completion of day case procedure has achieved an appropriate balance between premium affordability and consumer protection of the Standard Plan products. It also has no plan to regulate the level of the administration cost of the VHIS providers under the free market principle.

Consequential amendments proposed by the Administration to the Bill

35. Members note that the Administration will propose amendments, as consequential amendments upon the passage of the Inland Revenue (Amendment) Bill 2018 by LegCo on 16 May 2018 and the Inland Revenue (Amendment) (No. 6) Bill 2017 by LegCo on 4 July 2018, to amend (a) the existing sections 63CA and 63E of the Ordinance to cover the concessionary deduction proposed to be provided for by the Bill under the proposed section 26K of the Ordinance; and (b) the proposed amended sections 80 and 82A of the Ordinance in respect of penalty and additional tax in lieu of prosecution for a failure to comply with the proposed section 26M(3)(a) of the Ordinance (i.e. failure to notify the Commissioner in writing of a refund of qualifying premiums under a VHIS policy within three months after the date of refund).

Commencement

36. Members note that according to clause 1(2) of the Bill, the Bill, if passed, would come into operation on 1 April 2019.

Amendments to the Bill

37. The Bills Committee does not object to the amendments to be moved by the Administration as mentioned in paragraphs 21 and 35 above.

38. The Bills Committee will not propose any amendments to the Bill.

Follow-up actions by the Administration

39. The Administration has made the following undertakings:

- (a) in relation to the Ordinance,
 - (i) to review the definition of "brother or sister or brother or sister of the spouse" in the existing provisions of the Ordinance at the earliest opportunity (paragraph 21 refers); and
 - (ii) to keep in view the development of relevant case law and to look into the taxation-related issue in relation to a taxpayer who is adopted by a same-sex couple in any place outside Hong Kong according to the law of that place (paragraph 23 refers); and
- (b) in relation to VHIS,
 - (i) to revert, as and when appropriate, to the Panel on Health Services on its review of the effectiveness of VHIS after its implementation and the progress in re-examining the HRP proposal (paragraph 26 refers); and
 - (ii) to consider the suggestion of making public information on expense loading of the Certified Plans offered by different VHIS providers (paragraph 30 refers).

Resumption of Second Reading debate on the Bill

40. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill, subject to the moving of the amendments to the Bill by the Administration as mentioned in paragraphs 21 and 35 above. The Administration has informed the Bills Committee of its intention to resume the Second Reading debate on the Bill at the Council meeting of 24 October 2018.

Consultation with the House Committee

41. The Bills Committee reported its deliberations to the House Committee on 5 October 2018.

Council Business Division 2
Legislative Council Secretariat
16 October 2018

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018

Membership list*

Chairman	Hon Kenneth LEUNG
Deputy Chairman	Hon Holden CHOW Ho-ding
Members	Hon WONG Ting-kwong, GBS, JP Hon Starry LEE Wai-king, SBS, JP Hon CHAN Chi-chuen Hon Alice MAK Mei-kuen, BBS, JP Dr Hon KWOK Ka-ki Hon KWOK Wai-keung, JP Dr Hon Helena WONG Pik-wan Hon CHUNG Kwok-pan Dr Hon Pierre CHAN

(Total : 11 members)

Clerk Ms Maisie LAM

Legal Adviser Mr Bonny LOO

* Changes in membership are shown in Annex to Appendix I.

Annex to Appendix I

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018

Changes in membership

Member	Relevant date
Hon Charles Peter MOK, JP	Up to 10 July 2018

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018

Organizations which have provided written submissions to the Bills Committee

1. Business and Professionals Federation of Hong Kong
2. Civic Party
3. Hong Kong Patients' Voices
4. Liberal Party
5. The Hong Kong Medical Association