

立法會

Legislative Council

LC Paper No. LS106/19-20

Further Report by Legal Service Division Report on Insurance (Amendment) Bill 2020

Members may recall from LC Paper No. LS94/19-20 dated 10 June 2020 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of the Bill.

2. As Members may recall, the main purpose of the Bill is to amend the Insurance Ordinance (Cap. 41) to add a new class of insurance business, namely, special purpose business, under Cap. 41 for the purpose of acquiring insurance risk from another insurer or reinsurer under a reinsurance or risk transfer contract and then issuing insurance linked securities ("ILS") to institutional investors to collateralize the risk acquired, and to provide for a new regulatory regime for ILS business. LSD has sought clarifications from the Financial Services and the Treasury Bureau ("FSTB") on certain legal and drafting aspects of the Bill. LSD's enquiries and FSTB's response (at Appendices I and II respectively) are summarized below.

Regulation of the issuance of ILS

3. In response to LSD's enquiry on whether ILS issued by special purpose insurers under the Bill could fall within the meaning of "securities" or "structures product" under the Securities and Futures Ordinance (Cap. 571) and would therefore be subject to regulation by the Securities and Futures Commission ("SFC") under Cap. 571, FSTB has explained that, generally speaking, depending on the nature, product structure and the terms and conditions of individual ILS products, ILS products which fall within the definition of "securities" under Cap. 571 would be subject to SFC's regulation. The Bill does not intend or have the effect to exclude ILS products from the regulatory regime under Cap. 571 if such products would fall within the relevant definitions under Cap. 571.

Approval of key persons in control functions of certain authorized insurers

4. LSD has sought clarification from FSTB on why the existing power of the Insurance Authority ("IA") under section 13AE of Cap. 41 to approve key persons in control functions of certain authorized insurers would not apply to a special purpose insurer. FSTB has explained that a special purpose insurer is only authorized under the Bill to carry on special purpose business but not any other class of insurance business. According to FSTB, the operation of a special purpose insurer would be simpler than that of an

insurer authorized to carry on long term and/or general insurance business. As such, a special purpose insurer would only be required under the proposed new section 8A(2)(b) to appoint an administrator instead of appointing key persons in all control functions in relation to other classes of insurance business. FSTB considers that the proposed requirement on the appointment of an administrator is appropriate and sufficient for the purpose of the business operation of a special purpose insurer.

IA may make rules for special purpose business

5. In response to LSD's enquiry on why it would be necessary to empower IA, by the proposed new section 129A of Cap. 41, to prescribe offences for contravention of rules in relation to special purpose business while no similar power to prescribe offences is given to IA under the existing section 129 of Cap. 41 in relation to other classes of insurance business, FSTB has explained that given the nature of the underlying risk of investing in ILS and the potential loss of investment upon the occurrence of a predefined trigger event, ILS are not considered to be financial products suitable for ordinary retail investors. To provide deterrent effect for the protection of ordinary retail investors, FSTB considers it necessary to empower IA to prescribe offences for contravention of rules on sale restrictions of ILS made under the proposed section 129A of Cap. 41. This, according to FSTB, is consistent with the practice relating to business conduct of intermediaries under section 168(4) of Cap. 571.

6. FSTB also confirmed that IA will publish a draft of the proposed rules to be made under the proposed new section 129A of Cap. 41 for consultation with the public and industry stakeholders. FSTB will also consult the relevant Panel of the Legislative Council ("LegCo") on the proposed requirements on the sale of ILS before tabling the proposed rules made under the proposed new section 129A of Cap. 41 at LegCo for negative vetting.

7. Subject to Members' views on the above matters, no difficulties have been identified in relation to the legal and drafting aspects of the Bill.

Encls.

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