

## **Updates on the Insurance Companies (Amendment) Bill 2014**

### **A. Overall progress**

- Meetings held: 7 meetings held to date, including one with deputations.
- Policy areas covered: Constitution and functions of the independent Insurance Authority (“IIA”), regulatory powers in respect of insurers, the licensing regime for insurance intermediaries, regulation of insurance intermediaries and disciplinary actions, and transitional arrangements for insurance intermediaries.
- Target: To commence clause-by-clause scrutiny in late December 2014 / early January 2015.

### **B. Major issues raised by the Bills Committee**

#### Activities performed by employees of insurers (section 64G added by Clause 71 of the Bill)

- Issue: Employees of insurers might give “regulated advice” when performing their jobs such as underwriting and claims handling.
- Policy stance: We tend to agree that employees of insurers performing underwriting or claims management jobs should not be licensed as long as they are providing regulated advice incidental to their professional activities. However, the about 1,000 direct sales staff employed by insurers should be licensed to ensure a level-playing field with insurance intermediaries.
- Way forward: We are in discussion with the Hong Kong Federation of Insurers (“HKFI”) to see how, under the above principle, the Bill should be amended to cater for insurers’ operational needs.

#### Restrictions in relation to personnel of insurance agencies / broker companies (sections 64J and 64K added by Clause 71 of the Bill)

- Issue: Whether the restrictions in relation to personnel of licensed insurance agencies / licensed insurance broker companies would prevent a person from investing in an insurance agency and an insurance broker company at the same time.

- Policy stance: Sections 64J and 64K seek to maintain the restrictions under section 65(4) – (11) in the existing Insurance Companies Ordinance (“ICO”) (Cap. 41), with necessary modifications. We have no intention to change the scope of the existing provisions. As provided in the Bill, a person can invest in both an insurance agency and an insurance broker company, as long as the person only carries regulated activities at one of the firms, but not both.
- Way forward: Welcome suggestions from the trade on how to refine the wording.

Duty to notify the IIA of change in particulars (section 64P added by Clause 71 of the Bill)

- Issue: The requirement that a licensed insurance intermediary must notify the IIA of any change of particulars within 14 days may be difficult for licensees to comply with.
- Policy stance: For regulatory effectiveness and protection of policy holders, the register of licensees kept by the IIA should be reasonably up-to-date. Furthermore, the time-limit in the Bill was already extended from the originally proposed 7-day period in light of industry comments during the consultation.
- Way forward: We do not see the justification for further extending the time limit, but we are open to views from the Working Group on any practical difficulties to comply with the time limit.

Insurance agents’ relationship with insurers (section 68(2) – (4B) added by Clause 72 of the Bill)

- Issue: Whether there is a change of scope of liability of an insurer for the acts of its appointed insurance agent under the existing Insurance Companies Ordinance (Cap. 41) (“ICO”).
- Policy stance: The new provisions seek to modernize the drafting of the existing section 68(1) to (4) of the ICO. We have no intention to change the existing scope.
- Way forward: We will continue to communicate with HKFI to address its concern.

“Best interest” conduct requirement principle (section 89(a) added by Clause 84 of the Bill)

- Issue: The Bills Committee agreed that the conduct requirement that an insurance intermediary “must act in the best interests of policy holders or potential policy holders” should be set out in the Bill.
- The Bills Committee also suggested that details of this conduct requirement should be set out in the guidelines to be issued by the IIA.
- Policy stance: The approach is in line with our policy stance.
- Way forward: We have invited inputs from member of the Working Group on what constitutes acting in the best interests of policyholders or otherwise. We appeal to members for inputs to facilitate preparation of the relevant guidelines by the IIA.

Disciplinary proceedings and appeal mechanism (New sections added by Clause 84 of the Bill)

- Issue: The industry has various comments on the two aspects.
- Policy stance: The proposals on the IIA’s disciplinary proceedings and the Insurance Appeals Tribunal (“IAT”) are in line with local and overseas practice. There will also be adequate checks and balances, including that the IIA must publish a fining guideline before it can impose disciplinary fines, all insurance intermediaries and insurers will be given a fair opportunity to be heard during the disciplinary process, and the IAT will be chaired by a former judge or a person qualified for appointing as a High Court judge.
- Way forward: We stand ready to further engage the industry with a view to addressing their concerns.

**4 December 2014**