

Updates on the Insurance Companies (Amendment) Bill 2014

A. Overall progress

- Meetings held: 11 meetings held to date, including one for receiving deputations. Clause-by-clause examination commenced in December 2014.
- Policy areas covered during clause-by-clause examination: Constitution and functions of the independent Insurance Authority (“IIA”), enhancement of existing regulatory powers and new regulatory powers in respect of insurers.
- Target: To complete scrutiny of the Bill by July 2015 and set up the Provisional Insurance Authority by the end of 2015.

B. Major issues discussed by the Bills Committee during clause-by-clause examination of the Bill

Industry representation on IIA (section 4AA added by Clause 11 of the Bill)

- Issue: Members’ views were diverse. Some Members suggested that at least 25% of IIA’s members should have knowledge of and experience in the insurance industry. The idea was met with strong opposition by other Members who even suggested putting a cap on the number of IIA members who were from the industry (e.g. no more than two or 25%).
- Response: In line with international practices, IIA should be independent of the Government and industry. The proposal in the Bill (i.e. at least two IIA members with industry knowledge and experience) has already taken into account views from the industry.

Industry Advisory Committees (“IACs”) (section 4C added by Clause 13 of the Bill)

- Issue: Member asked how to ensure important issues put up by IAC members would be included in the agenda of the IACs.

- Response: Meeting agenda of the IACs were approved by the chairmen. IACs were advisors, not supervisors, of the IIA. It was not appropriate to require IIA to be answerable to the IACs in whatever manner.

Determination of key persons in control functions of authorized insurers (section 13AE added by Clause 25 of the Bill)

- Issue: The Bill empowers the Financial Secretary (“FS”) to specify a function to be a “control function” by notice in the Gazette. Members were concerned about the Legislative Council (“LegCo”)’s power to amend or repeal the notice.
- Response: The notice which specifies any new control function will be subsidiary legislation subject to negative vetting by LegCo. Cap. 1 empowers LegCo to amend or repeal the notice.

IIA budget and remuneration of its staff

- Issue: Members were concerned about the possible burgeoning staff size of IIA and the remuneration packages given to IIA executives.
- Response: There would be adequate checks and balances such as scrutiny of IIA’s budget by LegCo before FS’s approval.

C. Progress on other major issues reported at the last Working Group (“WG”) meeting

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.
- Progress: We had a meeting with the Hong Kong Federation of Insurers (“HKFI”) in December 2014. We agree with HKFI’s suggestion that insurance company employees not acting as intermediaries are not required to be licensed if they are just giving regulated advice wholly incidental to their professional practice. But sales staff employed by insurers should be licensed. We have just received HKFI’s proposed amendments to reflect the aforesaid suggestion and are studying them in consultation with the Department of Justice (“DoJ”).

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.
- Progress: At the meeting with HKFI held in December 2014, both sides exchanged views on the issue. We have just received HKFI's proposed amendments to clarify sections 64J and 64K. We are studying them in consultation with DoJ.

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

- Issue: HKFI considers that under the revised section 68, an insurer would have to be responsible for the acts of its appointed insurance agent even the relevant policy holder knows that the agent's acts are outside the latter's authority.
- Progress: At the meeting with HKFI held in December 2014, both sides exchanged views on the legal effect of the provisions. We have just received further information from HKFI and will consult DoJ on whether amendments are necessary.

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

- Issue: The Bills Committee agreed in principle 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 IIA.
- Way forward: We expect that the Bills Committee will have further in-depth discussion when the clause-by-clause examination proceeds to section 89(a). We have invited inputs from members of the WG on what constitutes acting in the best interests of policyholders or otherwise. We appeal to WG members for inputs to facilitate preparation of the relevant guidelines by 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.
- Way forward: To have a better understanding of the existing disciplinary proceedings of the self-regulatory organisations (“SROs”), the three SROs have been invited to explain their existing practices at the WG meeting. We expect that the Bills Committee will have further in-depth discussion when the clause-by-clause examination proceeds to the relevant sections.

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.
- Way forward: We received a written proposal from the Hong Kong Confederation of Insurance Brokers (“CIB”) on 29 January 2015. We will consider CIB’s proposal in consultation with DoJ.

30 January 2015