

Updates on the Insurance Companies (Amendment) Bill 2014

A. Overall progress

- **Meetings held:** After 24 meetings, the Bills Committee has completed the scrutiny of the Bill and the proposed Committee Stage Amendments (“CSAs”) on 5 June 2015. We have briefed Members of the Working Group of the major CSAs (Annex). The latest version of the full set of CSAs can be found on the website of the Legislative Council (“LegCo”) (<http://www.legco.gov.hk/yr14-15/english/hc/papers/hc20150619cb1-1004-e.pdf>).

B. Next step

- **Timetable:**

19 June 2015	Consideration of the report of the Bills Committee by the House Committee of LegCo
8 July 2105	Resumption of Second Reading debate and Third Reading of the Bill
End 2015	Target for setting up the Provisional Insurance Authority
- **Publicity:** It is necessary to continue engaging practitioners to keep them updated of the final version of the Bill and the timetable of IIA. We suggest leveraging on the normal communication channels of the Hong Kong Federation of Insurers and the three Self-Regulatory Organisations. We welcome Members’ views on the engagement strategy.

19 June 2015

**Insurance Companies (Amendment) Bill 2014
Major Proposed Committee Stage Amendments**

<p>Control functions of insurers (Clause 25, section 13AE)</p>	<p>In line with requirements under the Insurance Core Principles promulgated by the International Association of Insurance Supervisors, to stipulate that the types of control function of an authorized insurer cover risk management, financial control, compliance, internal audit and actuary, in addition to intermediary management function as originally proposed.</p>
<p>Opportunity of being heard (Clause 55, section 41Q) (Clause 84, section 81)</p>	<p>To clarify that “an opportunity of being heard”, which is given to a person before the independent Insurance Authority (“IIA”) makes disciplinary decisions, is an opportunity to “make written or oral representations”.</p>
<p>Restrictions on personnel of insurance intermediaries (Clause 71, sections 64J and 64K)</p>	<p>Insurance agents act on behalf of insurance companies whereas insurance brokers act on behalf of policyholders or potential policyholders. A conflict of interest will arise if a person acts as an insurance agent and an insurance broker concurrently. There are existing restrictions under the law on personnel of insurance agencies and insurance broker companies so as to prevent possible conflict of interest.</p> <p>We have retained the existing restrictions in the Bill with necessary updates by providing that personnel of an insurance agency or insurance broker company cannot “<u>deal with any matter</u> that related to a regulated activity” of another insurance agency or insurance broker company as appropriate. Accepting the industry’s view</p>

	<p>that the wording might cast the net too wide and avoiding over-regulation, we will move CSAs to amend that the restrictions would apply to a person who “<u>manages or controls any matter</u> relating to a regulated activity” of another insurance agency or insurance broker company.</p>
<p>An insurer’s relationship with its agent (Clause 73, section 68)</p>	<p>To make it clear that an insurer is not liable for the act of an insurance agent if (i) the act is not within the scope of the insurance agent’s authority; and (ii) that the insurance agent has disclosed that fact to the client before the client relied on the act. This notwithstanding, the court can take into account other factors as appropriate in determining whether an insurer is liable.</p>
<p>Non-compliance with the “best interests requirement” (Clause 84, section 91A)</p>	<p>To clarify that a failure to comply with a statutory conduct requirement (i.e. including the “best interests requirement”) will not by itself render any person liable to any judiciary proceedings.</p>
<p>Insurance Appeals Tribunal (“IAT”) (Clause 84, section 100)</p>	<p>To allow written submissions to the IAT. This will provide potential appellants with an alternative which may involve lower legal costs.</p>

<p>Exemption of employees of insurers from licensing requirements (Clause 84, section 121)</p>	<p>To exempt employees of reinsurers and captive insurers, and employees of insurers who carry on regulated activities incidental to the performance of technical functions of underwriting and claims management from the licensing regime for insurance intermediaries.</p>
<p>Use of lay prosecutors by IIA (Clause 84, section 124)</p>	<p>The Bill provides that IIA may use lay prosecutors for prosecuting minor offences in its own name. Accepting the Bills Committee's suggestion that prosecution work should be carried out by qualified lawyers, we will move CSAs to remove the provision on using lay prosecutors.</p>