

## Bills Committee on Insurance Companies (Amendment) Bill 2014

### List of follow-up actions arising from the discussion at the meeting on 14 April 2015

#### Costs to be awarded by the Insurance Appeals Tribunal ("IAT") (under clause 84)

- (a) The proposed new section 104 of the Insurance Companies Ordinance (Cap. 41) ("ICO") provides that IAT may award costs to a party to a review but does not specify how such costs are to be paid. In the light of comment by the Legal Adviser to the Bills Committee that section 206(2) of the Securities and Futures Ordinance (Cap. 571) ("SFO"), which is similar to the new section 104 of ICO, provides that "Any costs awarded under this section are a charge on the general revenue.", the Administration is requested to review the new section 104 and consider adopting the provision in section 260(2) of SFO.

#### Appellate mechanism for reviewing IAT's decisions (under clause 84)

- (b) Members note that notwithstanding the provision in the proposed new section 113 of ICO, under the common law a party may appeal to the Court of Final Appeal on a judgment of the Court of Appeal in respect of an IAT's review of a specified decision made by the independent Insurance Authority ("IIA"). The Administration is requested to provide details of the relevant cases concerned.

#### Appointment of members and proceedings of IAT (the proposed new Schedule 10 to ICO added by clause 94)

- (c) *Arrangements for an IAT's review in progress if the chairperson or an ordinary member of the IAT resigns*

The proposed new Schedule 10 to ICO contains provisions relating to appointment of members and procedures of IAT. There are no provisions on the arrangements for a review in progress when the chairperson or an ordinary member of the IAT resigns from office, including the Chief Executive will appoint a new chairperson, the Secretary for Financial Services and the Treasury will appoint a new ordinary member, and a new IAT will be formed to review the relevant specified decision of IIA afresh. The Administration is requested to consider specifying the aforementioned arrangements in the Bill, including whether such arrangements should be set out in the principal provisions or in the new Schedule 10.

- (d) *Discretion of an IAT in determining whether a sitting should be held in private*

Section 5(6) of the proposed new Schedule 10 to ICO provides that an IAT may determine "on its own initiative or on the application of any party to the review ... that in the interests of justice a sitting, or a part of the sitting, must be held in private." Members are concerned that the provision may give an IAT wide discretion to hold a sitting in private, and suggest that the provision should include criteria that the IAT should take into account in making the decision on holding a sitting in private. The Administration is requested to address members' concern.

- (e) *Provisions for the operation of IAT*

The proposed new Part XII of ICO provides for IAT while the proposed new Schedule 10 to ICO contains provisions concerning appointment of members and procedures of an IAT. In response to a member's enquiries, the Administration is requested to explain: (i) the reasons for setting out the procedures of an IAT in the new Schedule 10 instead of in the new Part XII; and (ii) the mechanism for amending the new Schedule 10.