

Bills Committee on Insurance Companies (Amendment) Bill 2014

**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meetings on
10 April and 14 April 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meetings on 10 April 2015 and 14 April 2015.

Conduct requirements for licensed insurance intermediaries

2. We will respond to issues related to conduct requirements in a separate paper.

Insurance Appeals Tribunal ("IAT")

Costs to be awarded by IAT

3. It is inappropriate to compare section 260(2) of the Securities and Futures Ordinance ("SFO") (Cap. 571) (costs awarded by the Market Misconduct Tribunal ("MMT")) with new section 104(2) added by Clause 84 of the Bill (costs awarded by IAT). IAT is an independent quasi-judicial body established to review specified decisions made by the independent Insurance Authority ("IA") on application by an affected person. New section 104(2) provides that costs awarded by IAT are to be paid by a party to the review that IAT considers appropriate, i.e. IA or the applicant of the review. It is similar to comparable provisions in relation to the operation of other quasi-judicial tribunals (such as the Securities and Futures Appeals Tribunal and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal¹).

4. The MMT's function is not to review the decisions of the Securities and Futures Commission ("SFC"). It has jurisdiction to hear and determine any question or issue arising out of or in connection with the proceedings initiated by SFC if it considers that market misconduct

¹ References are made to section 223 of the SFO and section 65 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO") (Cap. 615) respectively.

under Part XIII of the SFO or a breach of a disclosure requirement under Part XIVA of the SFO has or may have taken place.

Appellate mechanism for reviewing IAT's decisions

5. New section 113 added by Clause 84 of the Bill does not mention that the determination of the Court of Appeal in relation to an appeal (under new section 111) is final. A party may seek leave to appeal to the Court of Final Appeal against a judgment of the Court of Appeal. In *A Solicitor v. The Law Society of Hong Kong and SJ* (FACV 7/2003), one of the issues is whether the finality provision in section 13(1) of the Legal Practitioners Ordinance (Cap. 159) (which was later repealed in 2005)² would be unconstitutional and invalid. The Court of Final Appeal held in that case that the total ban imposed by the finality provision cannot be said to be reasonably proportionate to any legitimate purpose and concluded that the finality provision is unconstitutional and invalid.

Appointment of members and proceedings of IAT

Arrangements for an IAT's review in progress if the chairperson or an ordinary member of IAT resigns

6. In case there is a change in the person who is acting as chairperson or a member of IAT when a review is in progress, the hearing may continue if there is consent from both parties to the review, and the hearing should begin anew in the absence of such consent. We will propose Committee Stage Amendments to clearly stipulate the above arrangement.

Discretion of IAT in determining whether a sitting should be held in private

7. As provided in section 5(5) of new Schedule 10 (added by Clause 94), our policy intent is that every sitting of IAT should be held in public. According to section 5(6), IAT's decision to hold a sitting or part of a sitting in private should be in the interests of justice (rendered as “公正” in Chinese). This requirement is in line with the decision of other tribunals on whether a sitting should be held in private³. In

² Before it was amended in 2005, section 13(1) of the Legal Practitioners Ordinance (Cap. 159) provided that an appeal shall lie to the Court of Appeal against any order of the Solicitors Disciplinary Tribunal. It was further provided that the decision of the Court of Appeal on any such appeal shall be final (the “finality provision”).

³ For example, the Securities and Futures Appeals Tribunal and the Anti-Money Laundering

making the decision that a sitting (or part of a sitting) should be held in private, we envisage that IAT will consider whether it is in the interests of procedural fairness and impartiality to parties of the review, etc.

Provisions for the operation of IAT

8. New Part XII (sections 94 to 115 added by Clause 84 of the Bill) provides for the establishment and powers of IAT, while details of appointments and proceedings of IAT are set out in new Schedule 10 added by Clause 94 of the Bill. This presentation is similar to other legislation including the SFO. We consider this presentation appropriate. Any amendment to new Part XII or new Schedule 10 must be made by introducing an amendment bill subject to the Legislative Council's scrutiny and enactment.

Drafting issues

Chinese rendition of the term "insurer"

9. We note Members' suggestion that the Chinese rendition of the term "insurer" may be amended from "保險人" to "保險公司". As this proposal will involve voluminous amendments to the existing Insurance Companies Ordinance ("ICO") (Cap. 41), we will consider amending the term in future legislative exercises.

Chinese rendition of certain accounting-relating terms

10. The Chinese renditions of accounting-relating terms such as "profit and loss account" (損益帳), "income and expenditure account" (收支帳) and "balance sheet" (資產負債表) in the Bill are in line with those in the existing ICO. They can also be found in other Ordinances such as the Banking Ordinance (Cap.155), the Companies Ordinance (Cap.622) and the Professional Accountants Ordinance (Cap.50). Meanwhile, we are not aware of a Chinese version of accounting standards issued by the Hong Kong Institute of Certified Public Accountants. We therefore consider it appropriate to maintain these Chinese renditions in the Bill.

Financial Services and the Treasury Bureau May 2015

and Counter-Terrorist Financing (Financial Institutions) Review Tribunal. Please see section 20 of Schedule 8 of the SFO and section 6 of Schedule 4 of the AMLO.