

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

### The Administration's Response to Questions Raised by the Assistant Legal Adviser

#### Purpose

This paper sets out the Administration's response to questions raised by the Assistant Legal Adviser ("ALA") of the Bills Committee in her letter dated 5 May 2015 (vide LC Paper No.: CB(1)824/14-15(06)).

Clause 71 – section 64ZK(2)(a)

Clause 73 – section 68(2)

*The proposed new section 64ZK(2)(a) refers to "... by 1 licensed insurance broker company ..." and the proposed amended section 68(2) refers to "... by 1 authorized insurer as an agent...". However, it is noted that "1" is represented by the word "one" in many other provisions in the Bill such as the proposed new sections 64U(5)(b) and 64W(3)(b). Please clarify the inconsistency in this regard.*

2. The word "one" is more appropriate when the number is used as a pronoun with expressions such as "more/less than", "or more", "at least". For example, in new section 64U(5)(b) added by Clause 71 of the Bill, we use "appointed as an agent by **at least one** authorized insurer". However, the figure "1" is appropriate when used as a determiner expressing a number or when followed by a unit of measurement, currency or mathematical symbol. For example, in new section 64ZK(2)(a), we use "appointed by **1** licensed insurance broker company".

Clause 84 – section 96(1) and section 2(1) of Schedule 10

*The proposed new section 96(1) provides "Except as otherwise provided in Schedule 10...". However, section 2(1) of the proposed new Schedule 10 provides "Subject to section 96...". Please clarify the legislative intent of the proposed new section 96(1) and section 2(1) of the proposed new Schedule 10. Further, please confirm which of these two provisions prevail should any conflict or inconsistency arise.*

3. New section 96(1) provides for the **composition** of the Tribunal. New section 96(1)(a) provides that except as otherwise provided in Schedule 10, the Tribunal consists of a chairperson and 2 other members. The underlined

phrase is necessary because there are exceptions under new Schedule 10. As provided in section 8 of new Schedule 10, in some cases, the chairperson may determine a review as the sole member of the Tribunal. Section 2(1) of new Schedule 10 provides for the **appointment** of the panel. Section 2(1) of new Schedule 10 provides that the Chief Executive must appoint persons to a panel comprising the number of members that the Chief Executive considers appropriate. The provision is subject to new section 96 added by Clause 84 of the Bill because section 96(1) sets out the requirements on the number of members that the Tribunal must include.

Clause 86 – section 1(6) of Schedule 1B

*Section 1(6) of the proposed new Schedule 1B provides that “A designation under subsection (5) ceases to have effect when the earliest of the following events occurs —*

- (a) the designation is revoked by the Financial Secretary;*
- (b) if the designation is made in the circumstances mentioned in subsection (4)(a) — an appointment is made under subsection (1);*
- (c) if the designation is made in the circumstances mentioned in subsection (4)(b) — the deputy chairperson appointed under subsection (1) is able to act as chairperson.”*

*Please explain the effect and meaning of a long dash “—” appearing in section 1(6)(b) and (c) mentioned above.*

*Further, it is noted that the long dash “—” is also used in many other provisions of the Bill, for example, the proposed new sections 5H(2)(a) and (b), 13A(12)(a) and (b), 41K(3)(a) and (b), 41N(a) and (b), 64O(2)(a) and (b), 64ZG(5)(a) and (b), 64ZH(b) and section 105(2)(a) to (g) of the proposed new Schedule 11. Please confirm that the effect and meaning of the long dash “—” used in these other provisions are the same as that in section 1(6)(b) and (c) mentioned above.*

4. The use of em-dashes is an optional alternative to set off parenthetical or conditional phrases. Em-dashes could also create an emphatic effect visually. The use of em-dashes in section 1(6)(b) and (c) of new Schedule 1B is to set off the conditional phrases. The use of em-dashes in the provisions referred to in ALA’s letter is also to set off either parenthetical or conditional phrases.

Clause 94 – section 5(8) of Schedule 10

***Section 5(8) of the proposed new Schedule 10 provides that “The parties to a review must, at any sitting of the Tribunal relating to the review, be entitled to be heard – (a) in person, or - ...(iii) ... the sole proprietor; and (b) through a counsel or solicitor or, with the leave of the Tribunal, through any other person.” Should the word “and” above be replaced with the word “or” ?***

5. We agree with ALA’s suggestion and will amend section 5(8) of new Schedule 10 by repealing “and” and substituting “or”.

Clause 94 – section 7(1) of Schedule 10

***Section 7(1) of the proposed new Schedule 10 provides that “... the Tribunal or chairperson may make any order which it or the chairperson is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if the conditions set out in subsection (2) are met.”. Please provide justification for stating “whether or not the requirements otherwise applicable to the making of the order have been complied with” in this provision. What “requirements” are contemplated to be likely not being complied with ?***

6. Section 7(1) of new Schedule 10 provides flexibility for the Insurance Appeals Tribunal (“IAT”) to make any order with the consent of both parties to the review, whether or not the requirements otherwise applicable to the making of the order have been complied with. Section 108 is an example of such “requirements”. If an applicant applies for a stay of execution of the specified decision, new section 108(3) imposes a requirement that IAT must conduct a hearing to determine the application. If, however, the conditions set out in section 7(2) of new Schedule 10 are met<sup>1</sup>, IAT may grant a stay of execution without a hearing. Another example would be the requirement imposed under new section 105(1)(b) that IAT must give reasons for any cost order made under section 104. If, however, the conditions set out in section 7(2) of new Schedule 10 are met<sup>1</sup>, IAT may make a cost order without giving reasons. There might also be other requirements set out in the rules to be made by the Chief Justice under section 115.

Clause 94 – section 3(1) of Schedule 11

***The Chinese rendition of section 3(1) of the proposed new Schedule 11***

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<sup>1</sup> The conditions are that the parties to the review request and agree to the making of the order and that they consent to all of the terms of the order.

*provides that “凡有紀錄由前監督保管，而保監局認為需要該等紀錄，以根據本條例執行該局的職能，則前監督須在實施日期當日，將該等紀錄移交保監局，或於該日期後在切實可行範圍內，盡快如此移交。”*

*Would it be more succinct to provide “...，則前監督須在實施日期當日，或於該日期後在切實可行範圍內，盡快將該等紀錄移交保監局。”，by reference to section 22(1) of the Communications Authority Ordinance (Cap. 616) ?*

7. We will move a Committee Stage Amendment to amend the provision (see paragraph 8 below).

Clause 94 – section 3(6) of Schedule 11

*Section 3(6) of the proposed new Schedule 11 provides that “The Privacy Commissioner for Personal Data may, on and after the date on which the transfer is completed, exercise in relation to the Authority any power under the Personal Data (Privacy) Ordinance (Cap. 486) that the Commissioner could have, immediately before that date, exercise in relation to the former authority for a breach or alleged breach by the former authority of a requirement under that Ordinance.” Please clarify at what point of time is the transfer considered to be completed.*

8. Section 3(1) of new Schedule 11 requires that all relevant records in the Insurance Authority’s (“IA”) custody must be transferred to the independent Insurance Authority (“IIA”) on the commencement date (i.e. the repeal of section 4(1) (on the appointment of IA) under the existing Insurance Companies Ordinance (Cap. 41)) or as soon as practicable after that date. Section 3(6) of new Schedule 11 further provides that the Privacy Commissioner for Personal Data may, on and after “the date on which the transfer is completed”, exercise in relation to IIA any power under the Personal Data (Privacy) Ordinance (“PDPO”) (Cap. 486) which would have been applicable to IA before. We will amend section 3(1) to provide that the transfer of records must be completed on or before the commencement date, and amend section 3(6) to provide that the Privacy Commissioner for Personal Data may, on and after “the date on which the data is transferred”, exercise in relation to IIA any power under the PDPO.

Clause 94 – section 10 of Schedule 11

*Section 10 of the proposed new Schedule 11 refers to a situation where a*

*person applies for a stay of execution of the decision of revocation after the decision takes effect and the application is granted. Please clarify whether the person would be regarded as not having been granted a licence under the proposed new section 64U during the period from the date on which the decision of revocation takes effect to the date of application of the stay of execution of the decision and to the date on which such application is granted.*

9. The person would be regarded as not having been granted a licence under the new section 64U during the period from the date on which the decision of revocation takes effect to the date on which the application of stay of execution is granted.

Clause 94 – Divisions 6 and 8 of Schedule 11

*Both Divisions 6 and 8 of the proposed new Schedule 11 refer to “Chief Executives Registered with Approved Broker Bodies”. Please explain the difference between the two.*

10. Under the Self-regulatory Organisations (“SROs”) regime, a Responsible Officer (“RO”) or Chief Executives (“CE”) does not need to be separately registered as Technical Representative (“TR”). However, under the new licensing regime, such person will need to be licensed as a TR and approved as an RO at the same time. Divisions 6 and 8 provide for the transitional arrangements for a CE formerly registered with an SRO to the capacity as a licensed TR(broker) and approved RO respectively.

Clause 94 – section 106(4) and (5) of Schedule 11

*By reference to section 105(3)(b) of the proposed new Schedule 11, please consider simplifying the drafting by combining section 106(4) and (5).*

11. We do not consider it appropriate from the drafting perspective to combine the 2 subsections. If the 2 subsections are to be combined, the provision will contain too many information and will not be easily comprehensible.

**Financial Services and the Treasury Bureau  
May 2015**