

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

**Transitional Arrangements for Insurance Intermediaries  
(New Schedule 11)**

## **INTRODUCTION**

This paper sets out the policy objectives behind the key provisions in Parts 4 to 9<sup>1</sup> of the new Schedule 11 to the Insurance Companies Ordinance (Cap. 41) (“ICO”) to be added by Clause 94 of the Insurance Companies (Amendment) Bill 2014 (“the Bill”). The provisions provide for the transitional arrangements for (a) insurance intermediaries from the current self-regulatory regime to the statutory licensing regime administered by the independent Insurance Authority (“IA”); and (b) handling of complaints, disciplinary proceedings, and appeals not completed by the relevant self-regulatory organizations (“SROs”) upon the commencement of the licensing regime.

## **BACKGROUND**

2. Under the current self-regulatory regime, over 80,000 insurance intermediaries are registered with one of the three SROs, namely, the Insurance Agents Registration Board (“IARB”) established under the Hong Kong Federation of Insurers (“HKFI”), the Hong Kong Confederation of Insurance Brokers (“CIB”), and the Professional Insurance Brokers Association (“PIBA”). The SROs perform a supervisory role on registered insurance intermediaries. As provided by new provisions under Parts X and XI of the ICO to be added by Clauses 71 and 84 of the Bill, the IA will assume all licensing and regulatory functions over insurance intermediaries under the new regime. We explained the new statutory licensing regime for and conduct regulation of insurance intermediaries in the papers titled “Licensing Regime for Insurance Intermediaries (Amendments to Part X and Other Relevant

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<sup>1</sup> Parts 2 and 3 of the new Schedule 11 on the transitional arrangements from the Insurance Authority to the IA will be discussed in a separate paper.

New Provisions)” and “Regulation of Insurance Intermediaries and Disciplinary Actions (New Part XI)” respectively. They have been discussed in previous Bills Committee meetings.

## **POLICY OBJECTIVES AND MAJOR PROVISIONS**

3. In working out the detailed arrangements for handling transitional matters, we have taken into account the following major considerations –

- (a) protecting policy holders’ interests by safeguarding their right to seek redress in respect of a pre-IIA event despite a change in the regulatory regime for insurance intermediaries;
- (b) ensuring fair and reasonable treatment to the insurance intermediaries concerned;
- (c) maintaining integrity of the regulatory system;
- (d) minimizing any inconvenience to the public and pre-existing insurance intermediaries; and
- (e) having regard to the operational efficiency of the IIA and the proportionality of administrative efforts required to handle such transitional matters.

We have also made reference to the transitional arrangements adopted by the UK Financial Ombudsman Service for handling complaints which remained unresolved before its commencement and complaints lodged with it about an event that had occurred before its commencement, and the arrangements adopted by the Securities and Futures Commission in handling applications for securities licences submitted before the operation of the revamped Securities and Futures Ordinance in 2003.

4. To ensure a smooth transition to the new regulatory regime, we propose to add Parts 4 to 9 of new Schedule 11 to provide for the following –

- (a) pre-existing insurance intermediaries validly registered with the SROs will be regarded as licensed insurance intermediaries for a transitional period of three years (“transitional period”) upon the date of commencement of the statutory licensing regime (“commencement date”)<sup>2</sup>;
- (b) pre-IIA complaints, investigations and appeal cases which remain unresolved upon the commencement date will be followed up by the IIA or the Insurance Appeals Tribunal (“IAT”) as appropriate, with reference to, as far as practicable, the pre-IIA rules which would have applied had the matter been dealt with by the relevant SRO; and
- (c) to facilitate the implementation of the above policies, provisions are proposed to require the SROs to provide the IIA with relevant records and assistance.

**(a) Savings and transitional arrangements for insurance intermediaries**

*Licence*

5. Sections 5 to 77 (Part 4) of new Schedule 11 provide for savings and transitional arrangements for different types of insurance intermediaries registered with the SROs (hereinafter referred as “SRO registrants”). The applicable transitional provisions for each type of SRO registrants are listed out as follows –

<b>Type of SRO registrant</b>	<b>SRO</b>	<b>Type of licence regarded to be granted by the IIA</b>	<b>Relevant transitional provisions under new Schedule 11</b>
Insurance agency	IARB	Licensed insurance agency	Sections 5 to 23

<sup>2</sup> During the transitional period, these pre-existing insurance intermediaries which are regarded as licensees need to continue to satisfy the licensing requirements. However, they do not need to re-sit relevant qualification examinations.

Individual agent	IARB	Licensed individual insurance agent	Sections 24 to 42
Technical representative (“TR”)	IARB	Licensed TR(agent)	Sections 43 to 61
Responsible officer	IARB	Licensed TR (agent)	Sections 43 to 61
Authorized insurance broker	CIB / PIBA	Licensed insurance broker company	Sections 62 to 69
TR	CIB / PIBA	Licensed TR(broker)	Sections 70 to 77
Chief executive	CIB / PIBA	Licensed TR(broker)	Sections 70 to 77

6. Details of the transitional arrangements, for each type of SRO registrants, under different scenarios are set out in **Annex**. In particular –

- (a) an SRO registrant registered with his respective SRO immediately before the commencement date is to be regarded as having been granted a relevant licence under the new licensing regime by the IIA from the commencement date until the expiry of the transitional period;
- (b) in the event that the registration of an SRO registrant is revoked by the SRO but the revocation decision only takes effect after the commencement date, if an appeal is not lodged, the SRO registrant is to be regarded as having been granted a licence by the IIA from the commencement date until the revocation decision takes effect;
- (c) in the event that the registration of an SRO registrant is revoked by the SRO before the commencement date and the SRO registrant lodges an appeal which involves a stay of the SRO’s revocation decision<sup>3</sup>,–

<sup>3</sup> Under the existing SRO regime, an IARB’s decision takes effect 14 days after the date on which the decision is made. An affected person may lodge an appeal to the Appeals Tribunal within 28 days. On appeal, the affected person may apply for a stay of execution of the decision. If the stay application is granted, the decision will not take effect until the appeal is disposed of. A

- (i) if the SRO's decision is confirmed by the IAT on appeal, the SRO registrant is to be regarded as having been granted a licence by the IIA from the commencement date until the IAT's determination takes effect<sup>4</sup>;
- (ii) if the SRO's decision is reversed by the IAT on appeal, the SRO registrant is to be regarded as having been granted a licence by the IIA from the commencement date until the expiry of the transitional period;
- (d) in the event that a person's application for registration with IARB is rejected before the commencement date and the person lodges an appeal which is only heard after the commencement date, if the SRO's decision is reversed by the IAT, the person is to be regarded as having been granted a licence by the IIA from the date of the IAT's determination until the expiry of the transitional period.

*Responsible Officer ("RO")*

7. Sections 78 to 104 of new Schedule 11 provide that –

- (a) an RO registered with IARB; or
- (b) a chief executive registered with CIB or PIBA,

is to be regarded as having been granted an approval as an RO of the licensed insurance agency or licensed insurance broker company to which he/she is appointed respectively, from the commencement date until the expiry of the transitional period. Transitional arrangements for cases involving revocation of an RO's registration by SROs and appeal against

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CIB's/PIBA's decision takes effect 20 business days (for CIB) / 28 days (for PIBA) after the date on which the disciplinary notice is served. An affected person may lodge appeal to CIB/PIBA before the decision takes effect. On appeal, there will be an automatic stay of the decision. Arrangements under different scenarios have been provided for in Part 4 of new Schedule 11. The principles set out in paragraph 6(c)(i) and (ii) apply where an application for stay of execution of IARB's decision is granted or an appeal against CIB/PIBA's decision is made before the revocation decision takes effect.

<sup>4</sup> The parties may appeal to the Court of Appeal against the IAT's determination.

the revocation decision are similar to examples under paragraph 6 above.

*Revocation, suspension and licensing conditions*

8. Section 105 of new Schedule 11 provides that the IIA may revoke or suspend a licence or approval regarded as granted during the transitional period if it has reasonable ground to believe that the person concerned has provided wrong, false or misleading information to the relevant SRO for application for registration; or has not complied with any registration condition imposed by the relevant SRO. Section 106 of new Schedule 11 provides that the IIA may impose conditions on a licence or approval regarded as granted, or amend such conditions during the transitional period. Before the IIA has made any decision pursuant to these two sections, the person concerned will be given an opportunity to make representation, and any decision made by the IIA can be appealed to the IAT.

**(b) Detailed transitional arrangements for complaints and disciplinary cases**

*Complaints, investigations and appeal cases*

9. Part 5 of new Schedule 11 provides that a complaint, in relation to an SRO registrant, –

- (a) which has been lodged with an SRO but has not been disposed of on the commencement date; or
- (b) which concerns an act or omission in relation to an SRO registrant that occurred before the commencement date but has only been lodged on or after the commencement date,

should be handled by the IIA with reference to the rules which would have applied had the matter been dealt with by the SRO (“applicable rules”)<sup>5</sup>. The IIA may direct that an investigation be conducted, dismiss

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<sup>5</sup> Sections 123 and 124 of new Schedule 11 require the HKFI, CIB and PIBA to provide a complete set of rules in relation to the respective SRO registrants (i.e. the “applicable rules” in paragraph 9 above). The IIA is required under section 125 of new Schedule 11 to publish the rules in the Gazette and make them available to the public on the internet. Section 126 of new Schedule 11

the complaint, or take any other action permitted under the applicable rules.

10. Part 6 of new Schedule 11 provides that investigations, in relation to SRO registrants, being conducted by SROs but not yet completed on the commencement date, should be taken up by the IIA. Any disciplinary actions to be taken by the IIA pursuant to such investigations should be limited to those that could have been made by the SROs under the applicable rules.

11. Part 7 of new Schedule 11 provides that an appeal which has been lodged but not yet determined before the commencement date or an appeal against a decision in relation to an event occurred before the commencement date, should be handled by the IAT with reference to the applicable rules.

#### *Effect of disciplinary sanctions imposed by SROs*

12. Part 8 of new Schedule 11 provides that if an SRO has imposed a disciplinary sanction on an SRO registrant (e.g. to suspend the registration for a specified period) before the commencement date, the sanction should continue to take effect until expiry of the period specified by the SRO. However, if an SRO has imposed a fine on an SRO registrant before the commencement date, it may recover any unpaid part of the fine as a civil debt on or after the commencement date.

#### **(c) Records and assistance required from SROs**

13. Sections 120 and 121 under Part 9 of new Schedule 11 provide that SROs must provide the IIA with records and assistance that the latter requires for –

- (a) compiling a complete and accurate register of licensed insurance intermediaries;
- (b) considering whether a person should be granted a licence or

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provides that, if a SRO fails to comply with requirements under section 123 or 124, the Court of First Instance may, on application by the IIA, order the SRO to comply with such requirements.

approval or regarded as having been granted a licence or approval; and

- (c) compiling a complete and accurate record of complaints, appeals and disciplinary sanctions in relation to the SRO registrants.

Section 122 provides that the IIA must ensure that there are proper procedures and systems to safeguard against unauthorized access or use of such records.

14. Sections 123 and 124 under Part 9 of new Schedule 11 require the HKFI, CIB and PIBA to provide a complete set of rules in relation to the respective SRO registrants. For the sake of transparency, section 125 requires the IIA to publish these rules in the Gazette and make them available for inspection free of charge on the Internet.

**Financial Services and the Treasury Bureau**  
**November 2014**



## Transitional arrangements relating to IARB registrants

### Deeming of licensee

#### Background:

4 types of registration with IARB – insurance agency, individual agent, TR of insurance agency & RO of insurance agency.

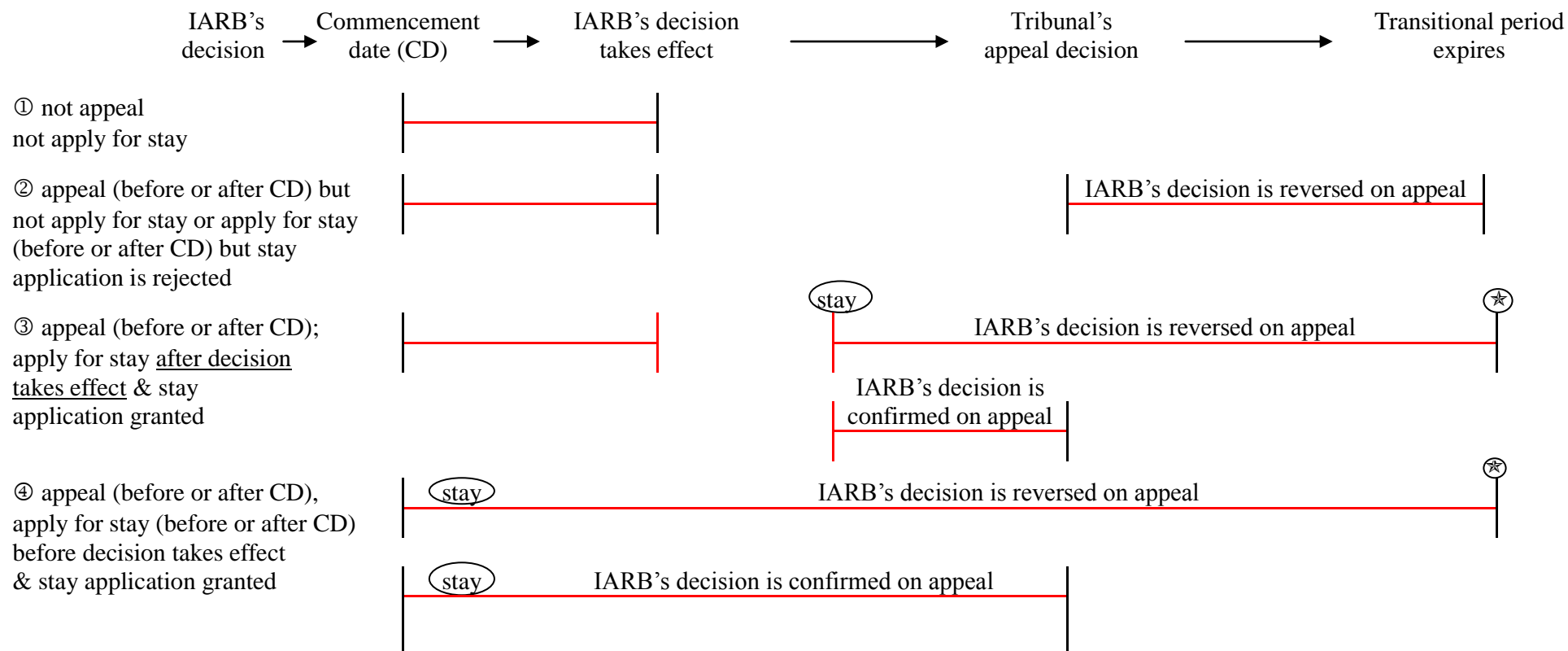
- IARB’s decision on disciplinary action takes effect 14 days after the date on which the notice of decision is served.
- Affected person may appeal within 28 days after the date on which the notice of decision is served.
- When making an appeal, affected person may apply for a stay of execution of IARB’s decision. Stay application may also be made any time after filing the appeal.
- If stay application is granted, IARB’s decision will take effect when the decision is confirmed on appeal or the appeal is withdrawn.

#### Normal situation:

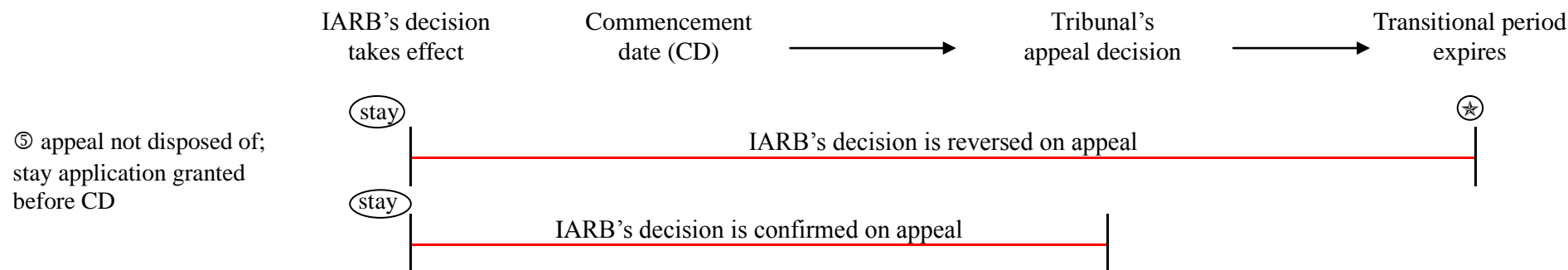


## Before commencement date, IARB made a decision that the registration be revoked:

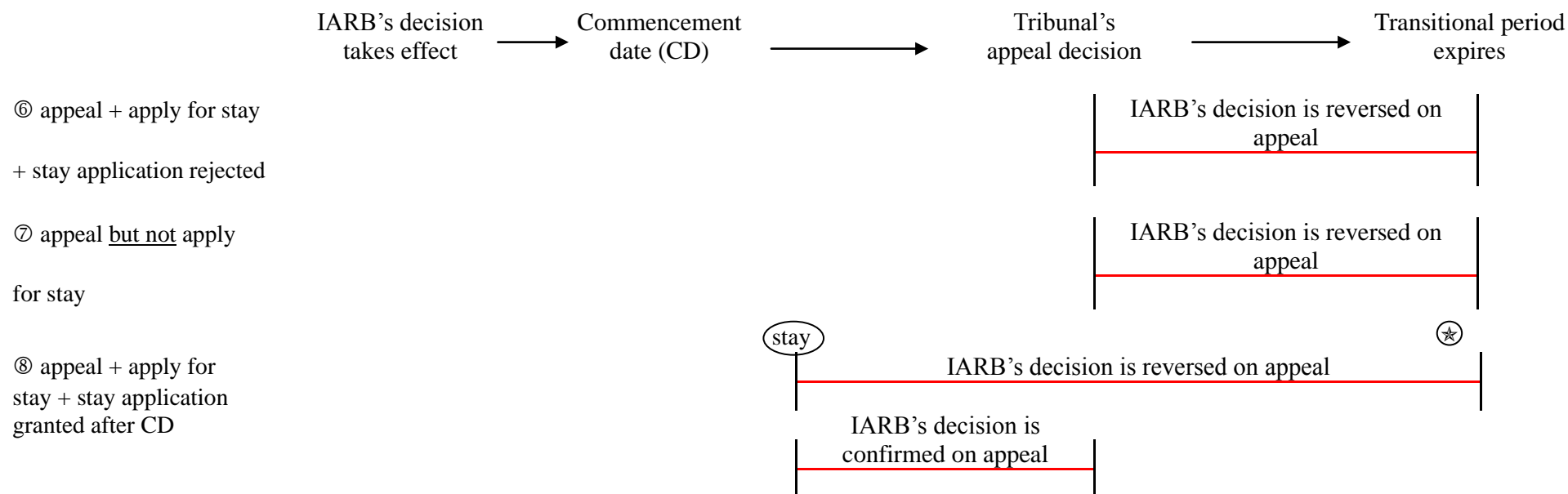
### Scenario 1 – On commencement date, decision not yet taken effect



## Scenario 2 – On commencement date, stay application already granted but appeal not yet disposed of



## Scenario 3 – On commencement date, decision already taken effect. Before or after the commencement date, an appeal filed but not yet disposed of on commencement date



**Note:** for ③, ④, ⑤ & ⑧ – if appeal not yet disposed of on the date on which transitional period expires, regarded as licensed until that date.

## Transitional arrangements relating to CIB/PIBA registrants

### Deeming of licensee

#### Background

3 types of registration with approved broker bodies (i.e. CIB and PIBA) – member, TR & chief executive.

- CIB and PIBA's decision on disciplinary action takes effect 20 business days and 28 days respectively after the date on which the disciplinary notice is served.
- Affected person may appeal within 20 business days / 28 days (as the case may be) after the date of the disciplinary notice is served.
- If the concerned member / TR / chief executive lodges an appeal, the decision will take effect when the Appeals Committee upholds the decision or the appeal is withdrawn.

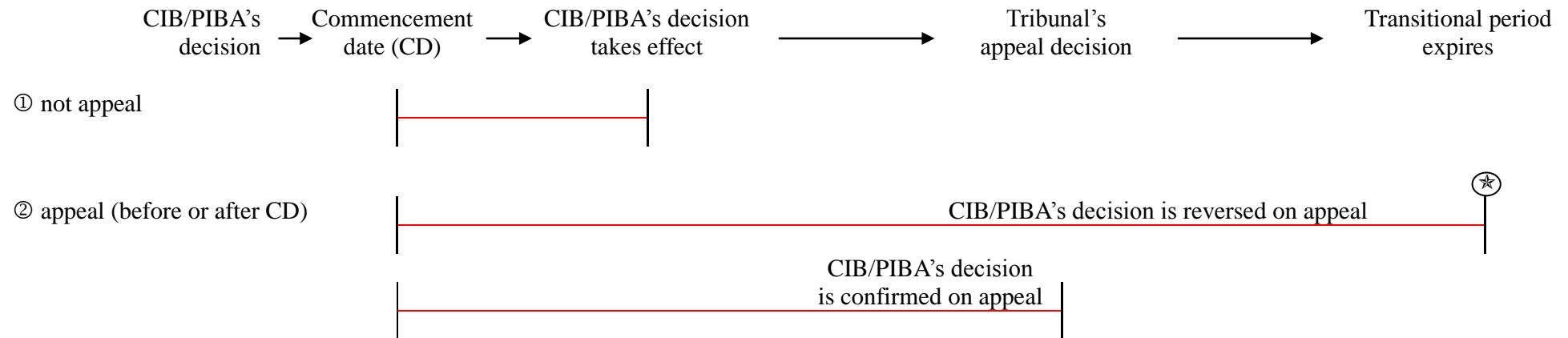
\_\_\_\_\_ deemed licence period

#### Normal situation:



**Before commencement date, CIB/PIBA made a decision that the registration be revoked:**

On commencement date, decision not yet taken effect



**Note:** for ② – if appeal not yet disposed of on the date on which transitional period expires, regarded as licensed until that date.