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**Report of the Bills Committee on Insurance Companies
(Amendment) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Insurance Companies (Amendment) Bill 2014 ("the Bills Committee").

Background

2. Under existing sections 4(1) and 4A(1)¹ of the Insurance Companies Ordinance (Cap. 41) ("ICO"), the Chief Executive ("CE") appoints a public officer to be the Insurance Authority ("IA") to carry out the principal function to regulate and supervise the insurance industry for the promotion of the general stability of the industry and protection of interest of existing and potential policy holders. IA, viz. the Commissioner of Insurance, is supported by the Office of the Commissioner of Insurance ("OCI") which is a government department.

3. The two major aspects of the regulatory functions of an insurance regulator are prudential regulation of insurers to ensure their financial soundness, and conduct regulation of insurance intermediaries to ensure the sale and after-sale administration of insurance policies are conducted honestly, fairly and professionally. Currently, IA regulates insurers through examination of their financial statements and business returns, and also by on-site inspections. IA can impose intervention measures on insurers but it does not have explicit powers on matters such as entering into the premises of insurers for conducting inspection, undertaking investigation and issuing reprimands.

¹ The terms "section", "Part" and "Schedule" used in this report refer to section, Part, or Schedule of/to ICO or the proposed amended ICO (which is to be renamed as the "Insurance Ordinance").

4. On conduct regulation, insurance intermediaries² in Hong Kong are currently regulated by three Self-Regulatory Organizations ("SROs")³. While IA has certain powers over the SROs, such as instructing them to issue and amend codes of practices and requiring them to produce information, she does not regulate the intermediaries direct. The SROs handle complaints against individual intermediaries, conduct investigations and impose disciplinary sanctions as appropriate.

5. The Government conducted a stakeholder consultation on the proposal of establishing an independent IA ("IIA") in 2003 and commissioned related consultancy studies in 2007 and 2009. Following a public consultation on the framework of establishing IIA in 2010, the Government published the detailed proposals in 2011 for further industry engagement. The Government consulted the public on the key legislative proposals from October 2012 to January 2013 and announced the consultation conclusions in June 2013.

6. According to the Administration, the policy objectives of setting up IIA are to modernize the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policy holders and potential policy holders, comply with the requirement of the International Association of Insurance Supervisors ("IAIS") that insurance regulators should be financially and operationally independent of the government and industry, and set up an independent regulatory regime for insurance intermediaries to replace the existing self-regulatory system administered by the three SROs.

The Bill

7. The Administration published the Insurance Companies (Amendment) Bill 2014 ("the Bill") in the Gazette on 25 April 2014 which received its First Reading at the Legislative Council ("LegCo") meeting of 30 April 2014. The main provisions in the Bill are as follows:

- (a) Clauses 9 to 15 – to add a new Part IA to provide for the establishment and functions of, and accounting and financial arrangements for, IIA;

² Under ICO, insurance intermediaries cover insurance agents and insurance brokers. An insurance agent can either be an agency (a corporate) or an individual appointed by an insurer to advise on or arrange contracts of insurance as an agent of the insurer. An insurance broker is a company which carries on the business of negotiating or arranging contracts of insurance as the agent of the policy holder or potential policy holder.

³ The three SROs are the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association. Insurance agents and brokers are required to register with and supervised by the three SROs.

- (b) Clauses 16 to 54 – to amend the existing Parts II, III, IV and V to enhance the regulation of authorized insurers to promote good corporate governance;
- (c) Clause 55 – to add a new Part VA to provide for inspection, investigation, and disciplinary powers of IIA in respect of authorized insurers;
- (d) Clauses 64 to 69 – to amend the existing Part VIIIA to provide that members and employees of IIA must observe secrecy provisions and empower IIA to disclose information on matters relating to licensed insurance intermediaries to overseas regulatory authorities;
- (e) Clauses 71 to 83 – to amend the existing Part X to put in place a licensing system of insurance intermediaries, and provide for inspection and investigation powers of IIA in respect of licensed insurance intermediaries;
- (f) Clause 84 – to add new Parts XI to XIV for the following purposes:
 - (i) new Part XI enables IIA to take disciplinary actions against licensed insurance intermediaries and their responsible officers ("ROs"), and sets out the conduct requirements on insurance intermediaries;
 - (ii) new Part XII provides for establishment of the Insurance Appeals Tribunal ("IAT") to review certain decisions made by IIA;
 - (iii) new Part XIII provides for miscellaneous provisions; and
 - (iv) new Part XIV and new Schedule 11 provide for the necessary savings, transitional and supplemental provisions;
- (g) Clause 86 – to add new Schedules 1A, 1B, 1C and 1D⁴;
- (h) Clauses 87 – 93 – to make miscellaneous amendments to the existing Schedules 1 to 8;

⁴ The proposed new Schedule 1A sets out the acts that are regarded as regulated activities and the matters that are regarded as material decisions and regulated advice. The proposed new Schedule 1B sets out the constitution and proceedings of IIA. The proposed new Schedule 1C sets out the constitution and proceedings of industry advisory committees. The proposed new Schedule 1D sets out the functions of IIA that are non-delegable.

- (i) Clause 94 – to add new Schedules 9, 10 and 11⁵; and
- (j) Clauses 95 to 165 – to provide for related and consequential amendments to several Ordinances.

The Bills Committee

8. At the House Committee meeting on 2 May 2014, members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon WONG Ting-kwong, the Bills Committee has held 24 meetings to study the Bill with the Administration, including one meeting to receive views from deputations. The Bills Committee has also received a total of 58 written submissions. The list of deputations which have provided views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

9. The Bills Committee supports the Bill in general. The major deliberations of the Bills Committee are summarized in the ensuing part of this report. To facilitate members' scrutiny of the Bill, the Administration has divided the Bill into eight parts and provided papers to explain the major provisions and policy proposals in each part. The relevant papers with their hyperlinks are listed in **Appendix III**. The main subjects deliberated by the Bills Committee are set out below :

- (a) Establishment and constitution of IIA (paragraphs 10 - 29);
- (b) Enhancement of existing regulatory powers in respect of insurers (paragraphs 30 - 38);
- (c) Inspection and investigatory powers of IIA in respect of insurers and insurance intermediaries (paragraphs 39 - 55);
- (d) Licensing Regime for insurance intermediaries (paragraphs 56 - 79);
- (e) Conduct requirements on insurance intermediaries (paragraphs 80 - 90);

⁵ The proposed new Schedule 9 sets out the specified decisions of which an affected person may apply to IAT for a review. The proposed new schedule 10 provides for the procedural matters concerning IAT,

- (f) Disciplinary Powers of IIA over insurers and insurance intermediaries (paragraphs 91 - 102);
- (g) IAT (paragraphs 103 - 111);
- (h) Transitional arrangements for insurance intermediaries (paragraphs 112 - 114) and
- (i) Transition and miscellaneous matters (paragraphs 115 - 132).

Establishment and constitution of the independent Insurance Authority

Composition of the independent Insurance Authority

10. The proposed new sections 4AAA and 4AA provide for the establishment and composition of IIA. IIA will be a body corporate and comprise a chairperson who is a non-executive director, a Chief Executive Officer ("CEO") who is an executive director, and not less than six other directors. All directors are appointed by CE, and the number of non-executive directors must exceed the number of executive directors in order to ensure effective oversight of executive decisions. As specified in the proposed new section 4AA(3), of the non-executive directors⁶, at least two should have knowledge of and experience in the insurance industry and the other members should have knowledge in actuarial science, accountancy, law, consumer affairs, or other suitable professional or occupational experience.

11. In order for IIA to be truly independent and impartial in regulating the insurance industry and to protect policy holders' interests, the Bills Committee supports that the majority of IIA's members should be lay persons. However, members of the Bills Committee have expressed different views on the suggestion from the insurance industry that there should be a statutory minimum proportion of IIA members (e.g. 25%) coming from the insurance industry. Some members of the Bills Committee including Hon CHAN Kin-por and Hon YIU Si-wing are of the view that the industry's suggestion will ensure IIA have sufficient number of members conversant with the operation of the industry. Besides, as the Bill has not specified the maximum number of members of IIA, the suggestion can address the industry's concern about a decrease in the representation of the insurance industry in IIA when the number of non-executive directors increases. Some other members of the Bills Committee including Hon SIN Chung-kai and Dr Fernando CHEUNG have reservation about the suggestion on the grounds that it would undermine the independence of IIA as a regulator of the insurance industry. They further consider that there should be a statutory cap on the proportion of industry

⁶ Non-executive directors of IIA are referred to as members of IIA in the ensuing part of this report.

members sitting on IIA. Hon KWOK Wai-keung opines that IIA members should include frontline practitioners of the industry. The Bills Committee has urged the Administration to ensure the composition of IIA would consist of a balanced representation of interests.

12. The Administration has explained that according to the Insurance Core Principles ("ICP") promulgated by IAIS, an insurance regulator should be independent of the industry and the government. Members of IIA should have expertise relevant to the regulatory functions of IIA and it is unnecessary to set a maximum number of members of IIA so as to maintain flexibility in appointing the most suitable persons to IIA to perform its statutory functions. As regards the composition of IIA members, the proposed new section 4AA(2) and (3) provide that IIA should comprise pre-dominantly non-executive directors, including persons with knowledge of and experience in the insurance industry, as well as persons from relevant professional fields. It was the Administration's original proposal that IIA should have at least one but not more than two non-executive directors with knowledge of and experience in the insurance industry. During previous public consultations, the industry pointed out that having more industry practitioners would enable IIA to carry out its functions more effectively, especially in formulating and deciding new regulatory requirements, while there were calls from other respondents for measures to maintain IIA's impartiality and independence. To strike a balance, the Administration has subsequently refined the proposal and included the proposed new section 4AA(3)(a) that IIA should have at least two non-executive directors with industry knowledge and experience. This proposal has struck a reasonable balance between tapping industry expertise and ensuring IIA's impartiality as well as maintaining flexibility in appointing the appropriate mix of talents to IIA. Furthermore, the Administration is not aware of statutory requirements of appointing persons with industry knowledge and experience to the governing bodies of financial services regulators in other jurisdictions. On the contrary, in the United Kingdom ("UK"), Australia and Singapore, there are provisions preventing representatives of regulatees from sitting on these bodies.

Disclosure of interests by members of the independent Insurance Authority

13. With regard to the mechanism to avoid possible conflict of interests of IIA members, the Bills Committee notes that section 5 of the proposed new Schedule 1B requires a member of IIA to make a disclosure if the member has any pecuniary interest in relation to a matter considered or is to be considered at a meeting of IIA. The Bills Committee considers that the disclosure requirement should not be limited to pecuniary interests only and has requested the Administration to review the disclosure requirement with reference to other statutory bodies. Taking into account the fact that the disclosure requirements of statutory bodies, such as the Airport Authority, Financial Reporting Council ("FRC") and West Kowloon Cultural District Authority, is not confined to

pecuniary interests, the Administration agrees to move a Committee Stage amendment ("CSA") to amend section 5 of the proposed new Schedule 1B to require disclosure of interests, whether pecuniary or non-pecuniary, that appear to raise a conflict with the proper performance of the member's duties in IIA.

Functions and powers of the independent Insurance Authority

14. The proposed amended section 4A specifies the functions of IIA. The Bills Committee notes that besides the principal functions of an insurance regulator, new statutory functions of IIA have been added, including facilitating "sustainable market development of the insurance industry" and promoting "the competitiveness of the insurance industry in the global insurance market", and assisting "the Financial Secretary ("FS") in maintaining the financial stability of Hong Kong" (the proposed new section 4A(2)(ec) and (2)(ee)).

Functions to promote the development of the insurance industry and maintain the financial stability of Hong Kong

15. The Bills Committee supports in general the new statutory functions vested with IIA. Members have enquired about the rationale for IIA to take on the new functions to promote the development of the insurance industry and assist FS in maintaining the financial stability of Hong Kong given IIA's role as a regulator independent of the industry and Government.

16. The Administration has responded that it would be in the public interest to promote the development of the insurance industry as stable and healthy development of the industry will in turn help strengthen public confidence in the industry. IIA would collaborate with the industry in facilitating market development, including maintaining liaison among local and overseas regulators on regulatory issues. The relevant ICPs promulgated by IAIS have highlighted the role of an independent insurance regulator in monitoring systemic risks at the macro-level and management of preconditions for effective supervision of the insurance industry, including collaborating with the Government and other regulators in responding to cross-sectoral systemic risk situations and implementing crisis management measures during a crisis. At present, IA already participates in the deliberations of the Financial Stability Committee and the Council of Financial Regulators with a view to assisting FS in maintaining the financial stability of Hong Kong. IIA shall also perform this function in future as a regulator independent of the Government. It is envisaged that IIA would implement relevant measures on its own initiatives or act according to FS's instruction in collaboration with other financial regulators.

Power to accept gifts

17. The proposed new section 4B(2)(e) provides that IIA may accept gifts. The Bills Committee has expressed concern about possible abuse of the

provision by members and employees of IIA and requested the Administration to consider specifying in the provision that the acceptance of gifts is subject to the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201) ("PBO").

18. The Administration has explained that similar provisions are present in the governing legislation of other statutory bodies. As one of the checks and balances, the Bill has already included a consequential amendment to add IIA to Schedule 1 to PBO to specify IIA as a "public body" for the purposes of PBO. With this amendment, any member or employee of IIA will be regarded as a "public servant" for the purposes of PBO which prohibits him from soliciting or accepting any advantage relating to his work in IIA. Furthermore, persons doing business with IIA are subject to sections 4, 5, and 8 of PBO, which make bribery and corrupt dealings in connection with members and employees of IIA under various circumstances an offence. The Administration has also taken on board the Bills Committee's views that IIA should formulate corruption prevention guidelines for its members and employees in consultation with the Independent Commission Against Corruption.

Industry Advisory Committees

19. To help further IIA's work, the proposed new section 4C provides that IIA should establish at least two Industry Advisory Committees ("IACs"), one for long term business and the other for general business, to advise it on industry-related issues and policies. IIA may establish additional IACs on any matters regarding the performance of its functions after consulting FS. IIA can also establish consultative committees on topical issues to engage the industry (the proposed new section 4D). The constitution and proceedings of IACs are provided in the proposed new Schedule 1C. Members of an IAC will include the chairperson and CEO of IIA, not more than two executive directors of IIA, and eight to 12 other members appointed by FS after consultation with IIA who are persons with knowledge of or experience in the insurance industry, the conduct of regulated activities and consumer affairs.

20. Some members of the Bills Committee have suggested that IACs should include a minimum number of members from specific insurance sectors or representing specific industry bodies, and IIA should be statutorily required to consult the relevant IACs on all material matters or important issues relating to specified areas of the industry.

21. The Administration has advised that there is no statutory cap on the number of IAC members coming from the insurance industry. Specifying a minimum number of members in this respect would compromise the flexibility in appointing the most suitable persons to IACs. IIA may establish additional IACs and other committees if necessary. Such committees will comprise

members from the insurance industry as appropriate. Given that the function of IACs is to advise IIA on industry-related issues and policies and that their composition makes them effective regular communication platforms between the highest echelon of IIA and stakeholders, it is in IIA's own interest to consult IACs on material matters affecting the industry in order to solicit their views and achieve regulatory efficiency and effectiveness. Hence, it will not be necessary to impose a statutory requirement on IIA to consult IACs on material or important matters. To facilitate the operation of the two IACs, the Administration believes that IIA would work out their terms of reference, and members of IACs could suggest agenda items for discussion at meetings for consideration by the chairpersons. While section 3 of the proposed new Schedule 1C requires each IAC to meet at least once every three months, IAC may convene more meetings if necessary.

Accounting and financial arrangements of the independent Insurance Authority

22. The proposed new sections 5A to 5G set out the accounting and financial arrangements of IIA. The main provisions include requirements for IIA to prepare and submit its annual corporate plans (including the estimates of income and expenditure) to FS for approval and submit annual reports to FS; FS to table IIA's estimates, annual reports and audited financial statements to LegCo; the Government to pay IIA out of the general revenue the monies appropriated by LegCo. As a check and balance, the Director of Audit may conduct value for money audit on IIA.

23. The Bills Committee notes that according to the recommendations of the consultancy commissioned by OCI in 2009 to study the financing mechanism of IIA, the long-term target is to have about 70% of the expenditure of IIA met by levy and the remaining 30% by various licence and user fees. In respect of the levy, IIA will impose a levy of 0.1% on insurance premiums for all insurance policies (capped at \$100 for life policies and \$5,000 for non-life policies), which will be implemented in an incremental approach⁷, and exempt premiums of reinsurance contracts from the levy. As regards licence and user fees, they will be payable by all insurers and intermediaries. The licence fee for the former comprises a flat licence fee plus a variable fee calculated on the basis of their individual liabilities. To help meet part of IIA's expenses in the initial five years before it achieves the target levels of fees and levy, the current proposal is for the Government to provide a lump sum of \$500 million to IIA on its inception.

⁷ IIA's target level of levy in the first five years after its establishment will be in accordance with the following schedule –

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Market levy as a % on insurance premiums	0.04%	0.05%	0.06%	0.07%	0.085%	0.1%

24. The Bills Committee notes that some deputations have reservation about imposing levies on policy holders which may increase the price of insurance products. The Administration has explained that as one of the main objectives of IIA is to protect policy holders through, among other things, putting in place a statutory licensing system for insurance intermediaries, it is justified to collect a levy from policy holders.

Estimates of the independent Insurance Authority

25. Some deputations have suggested putting in place a mechanism to regulate the size of IIA to prevent its over-expansion. Noting that IIA is empowered under the proposed new section 4E to appoint its staff and consultants, and determine their remuneration and terms and conditions, the Bills Committee has stressed the need to ensure that IIA would properly discharge these functions and suggested specifying clearly in the provision that IIA must decide on the above matters according to its "actual needs" and in a "reasonable manner".

26. The Administration has responded that according to the consultancy commissioned in 2009, IIA would have an establishment of about 250 staff members at its inception. The proposed new section 5B requires IIA's annual estimates, which include estimated staff costs and professional service fees, to be approved by FS and the approved estimates must be tabled before LegCo. These should provide an effective check and balance. It is necessary to provide IIA with operational flexibility to employ and engage suitable talents and determine the appropriate level of remuneration having regard to the actual circumstances and prevailing market situations so as to cope with regulatory challenges effectively and respond swiftly to market changes. This is in line with the practice of other financial regulators, such as the Securities and Futures Commission ("SFC") and Mandatory Provident Fund Schemes Authority ("MPFA"), which engage consultants, agents and advisors from time to time to provide professional services to assist them in performing regulatory functions.

27. To enhance transparency of the preparation of IIA's annual estimates, the Administration has taken on board the Bills Committee's suggestion to adopt the existing arrangement agreed between the Administration and LegCo for SFC's budgetary process for IIA. Under the arrangement, the Administration will brief the LegCo Panel on Financial Affairs ("FA Panel") on the main features of IIA's proposed budget prior to seeking approval by FS. The Bills Committee further considers that with a view to enhancing financial prudence and discipline of IIA, part of the proposed start up funds from the Government to IIA should be provided in the form of a loan. The Administration takes note of the view and has undertaken to consult FA Panel before seeking funding approval from the Finance Committee.

Levy adjustment

28. All fees and levies of IIA are to be stipulated in regulations and orders to be made by CE (the proposed new sections 126 and 132) which are subsidiary legislation subject to LegCo's scrutiny. The proposed new section 133 provides for the mechanism for reduction of IIA's levies. The policy intent is that when the reserves of IIA are more than twice its estimated operating expenses for the financial year (after deducting depreciations and all provisions) and that IIA has no outstanding borrowing, IIA has to consult FS with a view to recommending to CE in Council that the rate or amount of a levy be reduced.

29. The Bills Committee considers that the concept of "net reserves of IIA" for considering the need of levy reduction should be expressly stipulated in the provision, in particular to prevent the situation where IIA may raise debt unnecessarily in order to avoid triggering the mechanism for levy reduction. The Administration has pointed out that the current wording of the provision has clearly reflected the concept of "net reserves". Furthermore, IIA can only borrow money with the approval of FS (the proposed new section 4B), and IIA is required to submit its estimates to FS for approval and the approved estimates will be tabled at LegCo (the proposed new section 5B), there would be sufficient safeguards against IIA making unnecessary borrowings simply to avoid triggering the mechanism for the reduction of levies.

Enhancement of existing regulatory powers in respect of insurers

30. The proposed new sections 13A, 13AC, 13AE and 13AF prohibit an authorized insurer from appointing a controller, a director and a key person in control functions of the insurer without IIA's approval; empower IIA to approve such appointments on fit and proper grounds; impose conditions where appropriate on the approval; and revoke the approval if the appointees concerned are not, or no longer fit and proper. These provisions aim to enhance corporate governance of authorized insurers. Better corporate governance of authorized insurers will benefit policy holders. The proposed new section 13AG prescribes the procedural requirements in relation to IIA's exercising of the above powers, including giving the concerned insurer or individual an opportunity to make representations before IIA makes the final decision.

Fit and proper criteria for determining controllers, directors and key persons in control functions

31. The Bills Committee has enquired about the criteria IIA will adopt for determining whether an appointee of an insurer is fit and proper. The Administration has explained that the factors which IIA must have regard to are set out in the proposed new section 14A(1). In simple terms, a fit and proper

person means one who is financially sound, competent, honest, reputable and reliable. On the industry's concern that the proposed new section 14A(2) provides that "IIA may have regard to any other matters that are considered relevant in making the determination" of fitness and propriety may give IIA wide discretion, the Administration has pointed out that while the proposed new section 14A(1) has set out the most important factors to be considered by IIA, it will be necessary to allow IIA to take into account other factors on a case-by-case basis. The Administration envisages that IIA will promulgate a code or guideline on "fitness and propriety" to elaborate on the details to enable the industry to better understand the factors and criteria to be considered by IIA.

New control functions

32. The term "control functions" in the proposed new section 13AE covers the intermediary management control function⁸. To provide flexibility to update the regulatory regime in light of future developments, FS can specify other control functions by notice published in the Gazette⁹. Upon further consultation with the industry and taking into account ICP 8, the Bills Committee notes that Administration will move CSAs to the proposed new section 13AE to prescribe more control functions, including risk management, compliance, financial control, actuarial matters and internal audit. The CSAs will also clarify that in addition to the person who performs a control function, a key person in control function includes an individual responsible for the performance of a control function.

Alignment of penalties for authorized insurers and their appointees

33. Authorized insurers which contravene requirements under the proposed new sections 13A, 13AC and 13AE, and individuals who contravene requirements under the proposed new sections 13AB and 13AD¹⁰ commit an offence. Noting that an individual found guilty for the offence will be liable to a fine and an additional fine for each day of continued offence but an authorized insurer found guilty would only be liable to a fine but not a daily fine, the Bills Committee has requested the Administration to examine the need

⁸ The intermediary management control function includes –
 (a) administering and monitoring the compliance with statutory requirements by licensed insurance agencies and licensed individual insurance agents appointed by an authorized insurer; and
 (b) ensuring the compliance with prescribed conduct requirements by the licensed insurance intermediaries that refer insurance business to that insurer (the proposed new section 13AE(12)(a)).

⁹ The notice, which is subsidiary legislation, will be subject to negative vetting by LegCo. The proposed new section 134 further provides that before issuing the notice, FS must publish a draft for inviting public representations.

¹⁰ These two sections prohibit, among other things, an individual to act as a controller or director of an authorized insurer without the approval of IIA.

of aligning the penalties. The Administration has explained that the proposed penalty levels under these sections follow those provided under the existing ICO. After reviewing the relevant provisions under the existing ICO, the Administration considers that the daily fine for a continuing offence should be applicable to both an insurer and the relevant individual. The Administration agrees to introduce CSAs to amend the proposed new sections 13A(11), 13AC(11) and 13AE(11) to the effect that an insurer would also be liable to a daily fine for a continuing offence under these sections.

Disclosure of conditions attached to approvals on appointees of authorized insurers

34. The Bills Committee has requested the Administration to consider including in the Bill provisions requiring IIA to disclose any approval conditions for the appointment of controllers, directors or key persons in control functions, taking into account the need to strike a proper balance between enhancing transparency, avoiding negative impacts on the insurers and individuals concerned and protecting sensitive commercial information. The Administration considers it unnecessary to include explicit provisions to govern such disclosure. IIA may consider disclosing these approval conditions in an appropriate manner after taking into account the proposed amended section 53A which imposes a duty on the personnel of IIA to preserve secrecy of any matters coming to their knowledge in the performance of their statutory functions.

Approval of actuaries appointed by authorized insurers

35. Amendments to section 15 require that the appointment of an actuary by an authorized insurer incorporated in Hong Kong which carries on long term business be subject to prior approval of IIA. IIA would also have the authority to revoke the appointment if the appointed actuary is not, or is no longer, fit and proper. The proposed new section 15AA provides that IIA may impose, amend or revoke approval conditions.

36. The Bills Committee notes that there are no provisions stipulating the procedural requirements and corresponding offences in relation to the appointment of actuaries. After consideration, the Administration agrees to move CSAs to amend section 15 and add the proposed new sections 15AB and 15AC to set out the procedural requirements, including that IIA may reject an application of appointment or impose or amend conditions on an approval of appointment and that the affected party may make representations to IIA, and provide the necessary offences. The amendments are similar to the proposed new sections 13AG and 13AH. For overseas incorporated insurer which carries on long term business in Hong Kong, the existing section 15B requires the insurer to notify IIA of any changes to the appointment of an actuary. However, there is no explicit power for IIA to object to the appointment. The

Administration will introduce CSAs to amend section 15B to empower IIA to object to the appointment of an actuary by an overseas incorporated insurer which carries on long term business.

Accounts of authorized insurers

37. Amendments to sections 22 and 23 require that an authorized insurer should maintain separate accounts for each class of its long term business, and that assets representing a fund maintained by the insurer in respect of its long term business should be applicable only for the purposes of that part of business to which the fund relates.

38. The Bills Committee notes that the industry is concerned that the amendments may have an impact on insurers' investment activities in relation to the assets concerned. The Administration has explained that the proposal is to ensure proper segregation of assets and liabilities of individual classes of business, thereby avoiding inter-class subsidy in case of winding up of an authorized long term insurer. The amendments in question will not have any substantial impact on the authorized long term insurers in Hong Kong as the majority of them are already keeping separate funds for individual classes of insurance business despite the current requirements under section 22 are only applicable to Classes G and H (there are altogether 9 statutory classes from A to I) of long term business.

Inspection and investigatory powers of the independent Insurance Authority in respect of insurers and insurance intermediaries

39. For more effective regulation of authorized insurers and licensed insurance intermediaries for better protection of the interests of policy holders, the Bill seeks to add new Part VA and amend the existing Part X to provide IIA with express powers to conduct inspection, initiate investigation, and impose a range of disciplinary sanctions on insurers and licensed insurance intermediaries. These new powers are similar to those vested with other financial services regulators under the Securities and Futures Ordinance (Cap. 571) ("SFO"), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"). The major provisions are as follows:

- (a) an inspector appointed by IIA may enter the insurer's/intermediary's business premises, inspect and make copies of their business records, and make enquiries (the proposed new sections 41B and 64ZZF);
- (b) an investigator appointed by IIA may initiate investigation when IIA, among other things, has reasonable cause to believe that a

provision of ICO may have been contravened, has reason to enquire if a person is or was guilty of misconduct or not fit and proper (the proposed new sections 41D and 64ZZH);

- (c) an investigator may require a person to produce a record or document and answer questions (the proposed new sections 41D(5) and 64ZZH(6));
- (d) an inspector or investigator may require a person to, by a statutory declaration, verify his answer or explanation to inquiries (the proposed new sections 41C and 41E, 64ZZG and 64ZZI);
- (e) an inspector or investigator may apply to the Court of First Instance for an inquiry into a person's failure to comply with a requirement imposed by the inspector or investigator (the proposed new sections 41F and 64ZZK); and
- (f) a magistrate may issue a warrant authorizing a person to enter premises and to search for, seize and remove a record or document, etc. (the proposed new sections 41K and 64ZZP).

40. Failure to comply with the requirement imposed by IIA's inspector or investigator is an offence and subject to penalties upon conviction (the proposed new sections 41G and 64ZZL). The proposed new sections 41I and 64ZZN provide that a person commits an offence if the person destroys, falsifies, conceals or otherwise disposes of a record or document required by an inspector or investigator with an intent to conceal matters capable of being disclosed.

Inspectors and investigators appointed by the independent Insurance Authority

41. The Bills Committee has enquired about the scope of persons to be appointed by IIA as inspectors or investigators under the proposed new sections 41B, 41D, 64ZZF and 64ZZH, as well as the qualification requirements on such persons, the parties responsible for the inspection and investigation costs incurred, and whether FS is empowered to request IIA to conduct an investigation as provided under Part XV of SFO.

42. The Administration has advised that the proposed new sections 41B(6) and 64ZZF(6) provide that IIA may in writing appoint "a person, or a person belonging to a class of persons" to conduct routine inspections. This would include employees of IIA and other persons whom IIA considers appropriate. Specifically, the expression "a person belonging to a class of persons" facilitates IIA to give blanket appointment to its employees in a certain division or team, or to appoint other persons (e.g. people of a certain division in an audit

firm) as inspectors. The same expression is used in section 9(12) of AMLO. The proposed new sections 41D(1) and 64ZZH(1) provide that IIA may in writing direct one or more of its employees, or, with the consent of FS, appoint "one or more other persons" to investigate specific cases. The intent of this phrase is to allow IIA, with the consent of FS, to appoint outside experts to assist in the investigation work. Similar arrangements are in place under section 182 of SFO and section 11 of AMLO.

43. On the responsibility for bearing the costs of inspection and investigation, the Administration has pointed out that IIA will absorb the cost of inspection which is its routine duty. In general, inspection work will be carried out by IIA's employees. IIA may also appoint other qualified persons as inspectors where appropriate. The proposed new sections 41D(2) and 64ZZH(3) provide that the costs and expenses incurred by an investigator, other than an employee of IIA, may be paid out of moneys provided by LegCo. The policy objective of this provision is to allow IIA to seek LegCo's approval for funding support for engaging outside experts in the investigation of complex cases when necessary.

44. As regards FS's power to initiate investigations, the Administration advises that given IIA's status as an independent market regulator, the Bill does not contain any provision which empowers FS to request IIA to conduct an investigation. Neither are there provisions under AMLO, the Banking Ordinance (Cap. 155), MPFSO or the Financial Reporting Council Ordinance (Cap. 588) empowering FS to do so. However, as one of IIA's statutory functions is to assist FS in maintaining Hong Kong's financial stability by taking appropriate measures in relation to the insurance industry (the proposed new section 4A(2)(ee)), it is envisaged that IIA will work closely with the Government in this respect. The Administration further points out that the provisions on investigation in relation to authorized insurers and licensed insurance intermediaries under the Bill (the proposed new sections 41D and 64ZZH) are drafted with reference to the investigation powers of SFC under section 182 of SFO. Sections 356 and 357 (under Part XV) of SFO empower FS to appoint inspectors to investigate into issues in relation to the disclosure of ownership of or interests in listed corporations the context of which are very different from the context of investigating a licensee of the regulator. These powers are not relevant to and not comparable with the scope of the provisions on conduct-related investigation.

Retention requirements of business records

45. The Bills Committee has requested the Administration to review the definition of "business record" in the new section 41A to address some members' concern about the wide scope of the definition, possibly creating a compliance burden on insurers.

46. The Administration has responded that the provision defines "business record" in relation to an insurer as a record or document relating to (a) the business conducted by the insurer; or (b) a transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer. Given that the insurance industry involves a wide variety of businesses, the scope of the definition has to be sufficiently broad to cover various types of records and documents to enable IIA to carry out inspection and investigation effectively. In formulating the definition, reference has been made to legislation in relation to other financial regulators, including section 180(1) of SFO and section 34ZR(9) of MPFSO.

47. With a view to facilitating IIA in the exercise of inspection and investigatory powers, some members of the Bills Committee consider that the Bill should stipulate the requirements for authorized insurers and licensed insurance intermediaries to retain business records, including the retention period and format of the records and sanctions for non-compliance.

48. The Administration has responded that insurers are already subject to statutory record-retention requirements in the existing ICO and other legislation¹¹ for six or seven years as appropriate. Under the Bill, section 16 will be amended to the effect that IIA may, by written notice, require an insurer to provide specified books of account within a specified period. Failure to comply with any of these requirements constitutes an offence. Besides, the existing section 26(1)(b)(i) stipulates that failure to comply with any provision of ICO is a ground for IA to take interventionary actions against the insurer concerned. The proposed new section 41P further stipulates that contravention of any provision of the proposed amended ICO constitutes misconduct and IIA may take disciplinary actions, e.g. revocation or suspension of authorization, against the insurer concerned.

49. The Bills Committee considers that IIA should devise measures to assist the insurance industry in complying with the record keeping requirements. The Administration has advised that OCI has been issuing guidance notes to set out in details the types of records that need to be retained. For instance, the Guidance Note on Underwriting Class C Business requires insurers that carry on Class C business to retain all the policy documents, audio records of post-sale calls, confirmation letters and email/SMS alerts for seven years from the date on which the policy expires or terminates. It is envisaged that IIA will issue guidelines on the keeping of relevant business documents by insurers and insurance intermediaries.

¹¹ Examples include existing section 16 of ICO, section 377 of the Companies Ordinance (Cap. 622), section 51C of the Inland Revenue Ordinance (Cap. 112), section 20 of Part 3 of Schedule 2 to AMLO.

Order to pay costs of investigation

50. The proposed new sections 41J and 64ZZO provide that the court may order insurers or insurance intermediaries convicted of a criminal offence to pay for the costs of investigation and IIA may recover the costs as a civil debt. To address the industry's concern about potential huge investigation costs, the Bills Committee has requested the Administration to consider limiting the recovery of costs to extremely serious and complex cases of misconduct.

51. The Administration points out that the objective of the provisions is to allow IIA to recover the costs incurred in the investigation of criminal cases, especially those complicated cases that may require the assistance of outside experts (e.g. forensic auditors). Substantiated cases of misconduct would result in IIA's disciplinary actions in the case of which the proposed new sections 41J and 64ZZO would not apply. Furthermore, a court order is required for the recovery of investigation costs under the proposed new sections 41J and 64ZZO, and it is believed that the court will determine the reasonableness of recovering the investigation cost from the convicted.

Safeguards for inspection and investigatory powers of the independent Insurance Authority

52. The Bills Committee has studied safeguards, such as the right for persons to remain silent, provided in the Bill for protecting the rights of persons subject to the inspection or investigatory powers by IIA. Members of the Bills Committee have also enquired about the purposes of the proposed new sections 41C and 41E, as well as 64ZZG and 64ZZI which empower IIA's inspectors or investigators to require persons to make statutory declaration to verify their answers and explanations to inquiries.

53. The Administration has explained that during the inspection or investigation process, while a person may not be able to give answer to inquiries because the information concerned is not within his knowledge, he may also use the same reason as an excuse to hinder or delay the process. It is therefore necessary to allow the regulator to require a person to verify that reason and fact by a statutory declaration in such circumstances. There are provisions in the Bill (the proposed new sections 41H and 64ZZM) providing that responses or statements made by a person for the purpose of an inspection or investigation shall not be admissible in evidence against that person in criminal proceedings, except for the prosecution of criminal offences relating to perjury or offences in relation to inspections and investigations specified in the proposed new sections 41G and 64ZZL.

Frontline regulation of banks' insurance intermediary activities

54. The proposed new section 4G(1) provides that IIA may, subject to the approval of CE in Council, delegate its powers of inspection and investigation to the Monetary Authority (i.e. Hong Kong Monetary Authority ("HKMA")) to facilitate the latter in the regulation of banks insurance intermediary activities. The Bills Committee supports the proposal in general for benefits of achieving regulatory synergy between the two regulators and minimizing regulatory overlap given the integrated wealth management services offered by banks and HKMA's role as the primary and lead regulator of banks. Members of the Bills Committee have enquired about the arrangements envisaged under the proposal and how it would ensure consistency in the exercise of the inspection and investigatory powers by the two bodies.

55. The Administration has explained that CE in Council may impose conditions on the approval of delegation and withdraw the approval after consultation with IIA and HKMA, and IIA may revoke the delegation after consultation with HKMA. Moreover, a delegation does not prevent IIA from concurrently performing the delegated powers. The Administration assures the Bills Committee that even if the delegation of powers is approved, IIA will remain the sole authority to grant licences, set regulatory standards and exercise power to impose disciplinary sanctions in relation to all insurance intermediaries. The Bills Committee notes that to ensure regulatory consistency and enhance efficiency, IIA and HKMA will establish various collaborative arrangements including the signing of a Memorandum of Understanding ("MoU") on regulatory cooperation, reciprocal staff secondment, regular liaison meetings, etc.

Licensing Regime for insurance intermediaries

Regulated activities

56. The Bill seeks to amend Part X to replace the existing self-regulatory regime for insurance intermediaries by the proposed statutory licensing regime administered by IIA. Under the proposed new section 64G, a person must not carry on or hold out to carry on a regulated activity in the course of the person's¹² business or employment, or for reward, unless the person is licensed by IIA; and contravention of the licensing requirement will be a criminal offence. The meaning of "regulated activity" (the proposed new section 3A and new Schedule 1A) covers activities in relation to negotiating or arranging a contract of insurance, inviting or inducing a person to enter into a contract of insurance, giving advice on insurance, and sale and after-sale services relevant to insurance policies.

¹² Under the Interpretation and General Clauses Ordinance (Cap. 1), a "person" includes any body of persons, corporate or unincorporate.

57. Some members of the Bills Committee are concerned about the broad scope of "regulated activity". They note that while the proposed new section 121(2) provides for exemptions from licensing under certain circumstances, such as a person who discharges clerical or administrative duties on behalf of an authorized insurer/a licensed insurance intermediary, it is unclear whether employees of insurers who may give regulated advice when performing their jobs such as underwriting and claims handling are required to be licensed.

58. The Administration has explained that to ensure a level playing field and prevent possible circumvention, the proposed regulatory regime is activity-based, i.e. persons who engage in "regulated activities", whether they are individual agents, technical representatives of agencies or broker companies, or employees of insurers/insurance intermediaries, should be subject to the same licensing and conduct requirements. Nonetheless, the Administration agrees to the principle that those persons who give regulated advice wholly incidental to the performance of their technical functions do not need to be licensed, whereas direct sales staff of insurers should be licensed. Having considered members' views, the Administration will propose CSAs to add new section 121(2A) and (2B) to provide that an employee of an authorized insurer does not need to be licensed if he carries on a "regulated activity" that only involves the discharge of underwriting or claims handling duties for an insurer. Furthermore, the CSAs will exempt employees of authorized captive insurance companies¹³ and authorized reinsurance companies from the licensing regime because they do not distribute insurance products to the general public.

59. As regards whether referrals made among insurers or insurance intermediaries will fall under the scope of "regulated activity", the Administration has clarified that in general, mere referral activities will not be covered. IIA will develop guidelines on referral activities. It is noted that the SROs have also provided relevant guidelines.

Types of licence, application and renewal

60. IIA can issue the following five types of insurance intermediary licences –

¹³ Captive insurance companies are insurance companies established by a parent group or groups with the specific objective of covering the risks to which the parent is exposed.

	Licensed insurance agent	Licensed insurance broker
Licence to Business Entities	1. Licensed insurance agency	2. Licensed insurance broker company
Licence to Individuals	3. Licensed individual insurance agent 5. Licensed technical representative ("TR") (agent)	4. Licensed TR (broker)

The categorization of licences mirrors the existing categories of registration under the self-regulatory regime. This is to ensure a smooth transition to the new regime by avoiding possible confusion caused by re-categorization of licences. The IIA may review the categorization of licences after the three year transitional period in the light of market developments. The Administration also informs the Bills Committee that licence fees for insurance intermediaries would be waived in the first five years after the establishment of IIA. Staff members of banks who engaged in insurance intermediary activities of the banks are required to be licensed.

61. The proposed new sections 64U to 64ZD provide that an eligible person can apply for a licence and that IIA must not grant a licence unless it is satisfied that the applicant is fit and proper. The proposed new section 64ZZA sets out the factors for considering whether a person is fit and proper which include the person's qualifications, integrity, financial status and compliance history. The proposed new section 64ZG provides that IIA may impose conditions on granting a licence. A person can only hold or apply for one type of licence which is valid for three years. The proposed new sections 64ZV to 64ZY provide for renewal of licences. The proposed new section 64ZZB sets out the procedural requirements on IIA for rejecting an application or imposing or amending conditions, including giving the applicant an opportunity to make representations.

Responsible Officers of business entity licensees

62. The proposed new sections 64ZE and 64ZF require a business entity licensee to appoint one or more individuals as ROs who are responsible for the conduct of the entity's insurance intermediary business in Hong Kong, and seek IIA's approval for the appointment. IIA must not grant an approval unless it is satisfied that the individual is a licensed TR and fit and proper to discharge the responsibilities of an RO (the proposed new section 64ZZA). The proposed new sections 64ZG and 64ZZB are also applicable to IIA's approval in relation to ROs.

Determination of whether an applicant is fit and proper

63. The Bills Committee notes that the insurance industry has suggested setting out in the proposed new section 64ZZA all factors IIA would consider for determining whether a person is "fit and proper", and including a time bar on the bankruptcy and criminal records of an individual applicant that IIA will take into consideration. Moreover, as IIA has to consider past disciplinary actions against the person by HKMA, SFC, MPFA, and other regulatory bodies performing similar functions as IIA when determining fitness and propriety of applicants, the Bills Committee has enquired how IIA would obtain the disciplinary records from the authorities, and whether the authorities have different retention periods for their disciplinary actions.

64. The Administration has pointed out that the proposed new section 64ZZA already sets out the factors that IIA must consider in determining fitness and propriety. The existing Guidance Note on "Fit and Proper" Criteria under ICO sets out that, in considering whether a person is fit and proper, IA will take into account all relevant factors, including the financial status. It is envisaged that IIA will promulgate codes or guidelines to elaborate on the details. As regards the disciplinary records on an applicant kept by other regulators, it is believed that IIA will require the applicant to declare in the application form whether he has been disciplined by other local and overseas financial regulators. Depending on the circumstances, IIA may contact the relevant regulators to obtain further information. In determining whether a person is fit and proper to be a licensed insurance intermediary, IIA will have regard to a totality of matters under the proposed new section 64ZZA(1)(a) to (g). The Administration further informs the Bills Committee that HKMA, SFC and MPFA do not have a limit on the retention period of the disciplinary record of their respective regulatees.

Register of licensed insurance intermediaries

65. IIA is required to maintain a register of licensed insurance intermediaries for free inspection by the public, and the licensees will be obliged to provide updated particulars to IIA. The proposed new section 64O sets out the items to be included in the register. The proposed new sections 64P to 64R and 64T provide for the duties of licensees to report to IIA changes to their particulars and appointments, and cessation of business.

66. In respect of the proposed new section 64P which requires licensed insurance intermediaries to notify IIA of changes to their particulars within 14 days, the Bills Committee has requested the Administration to consider relaxing the requirement in order to facilitate compliance by insurance intermediaries.

67. The Administration has responded that as the particulars of licensed insurance intermediaries in the register kept by IIA should be reasonably

up-to-date for inspection by the public and effective regulation, changes should be reported to IIA within a short timeframe. The time-limit proposed in the Bill is an extension of the original proposal of seven days after considering industry feedback received during the consultation exercises. It is envisaged that IIA will develop relevant forms to facilitate intermediaries to report changes in particulars. Having regard to the views from the trade, the Administration agrees to introduce CSAs to the proposed new section 64P to remove fax numbers from the items of particulars as the information is considered non-essential.

68. The proposed new section 64Q requires an authorized insurer, a licensed insurance agency, and a licensed insurance broker company to notify IIA at least one month before their intended appointment of a licensed insurance agency, a licensed individual insurance agent, a licensed technical representative (agent), or a licensed technical representative (broker), as appropriate. The period would allow IIA to verify if the intended appointees are fit and proper persons. Some members of the Bills Committee have reflected the industry's request for the Administration to shorten the notification period and consider including a timeframe for IIA to complete the vetting process and inform the parties concerned of the results.

69. The Administration has pointed out that it will be inappropriate to set a timeframe in the legislation on the processing time for each type of appointments. Currently, the relevant performance pledges for the three SROs range from three to 10 business days as the amount of work involved is different. It is envisaged that IIA will set out performance pledges in this regard in its guideline. Moreover, in response to suggestions from the trade, the Administration will move CSAs to the proposed new section 64Q to shorten the timeframe of notification to IIA to 14 days to relieve possible compliance burden on insurance intermediaries.

Validity period of licences

70. The Bills Committee notes that under the proposed new sections 64V, 64X, 64Z, 64ZB and 64ZD, IIA can grant intermediary licences with a validity period of over three years. Members have raised concern that the provisions may provide IIA with wide discretion in determining the period of licences.

71. The Administration has responded that under the self-regulatory regime, insurance agents are required to renew their registration every three years, while there is no specified validity period for insurance brokers¹⁴. In the light of a suggestion from respondents received during the public consultation that both insurance agents and insurance brokers should be subject

¹⁴ The registration of insurance brokers is subject to on-going compliance with relevant requirements.

to the same renewal interval under the new regime, the Bill has hence provided that the validity period of intermediary licences should normally be three years. The Administration informs the Bills Committee that there is also no validity period specified under SFO for intermediary licences granted by SFC.

Restriction on personnel of licensed insurance intermediaries

72. Insurance agents act on behalf of insurance companies whereas insurance brokers act on behalf of policy holders or potential policy holders. A conflict of interest will arise if a person acts as an insurance agent and an insurance broker concurrently. At present, section 65:

- (a) stipulates that a person shall not act as an insurance agent and an insurance broker concurrently;
- (b) provides that IA may set the maximum number of insurers for which an insurance agent may act at any one time (currently, the maximum number of insurers that an insurance agent may act for at the same time is four); and
- (c) imposes restrictions on personnel of insurance agencies and insurance broker companies so as to prevent circumvention of (a) and (b) above. For example, if a person is a director of an insurance agency and gives advice to policy holders or potential policy holders on insurance matters, the person may be a director of another insurance agency or insurance broker company only if he will not advise policy holders or potential policy holders on insurance matters for the other agency or company.

73. The Bill intends to retain the restrictions in the existing section 65 (the proposed new sections 64I to 64K) and make necessary updates in wordings by replacing "giving advice" with "deal with any matter that relates to a regulated activity" because under the new licensing regime for insurance intermediaries, giving advice on insurance matters in the course of business or employment is a regulated activity.

74. The Bills Committee has enquired how IIA would enforce the restrictions in the proposed new sections 64J and 64K, as directors of an insurance agency or a broker company are required to participate in the decision making process in relation to the conduct of regulated activities of the entity concerned. On the other hand, while some members of the Bills Committee agree that conflict of interests may arise without the prohibition in the proposed new sections 64J and 64K, other members opine that the provisions should avoid over-regulation and convey the industry's concern that the changes in the wordings may unnecessarily widen the scope of the

restrictions and could hinder normal investment activities. The Bills Committee has requested the Administration to review the relevant provisions taking into account the industry's concerns and similar restrictions or practices in other jurisdictions.

75. The Administration has advised that there are regulatory requirements in the UK and Singapore to ensure that common directorships in insurance intermediaries should not give rise to conflict of interests. As far as enforceability of the proposed new sections 64J and 64K is concerned, the Administration considers that IIA can examine the relevant internal control procedures and board minutes of licensed insurance agencies and licensed insurance broker companies with common directors. To facilitate compliance by licensees, IIA will elaborate on the requirements under the two sections in codes and guidelines with illustrative examples. With a view to addressing the industry's concerns, the Administration agrees to move CSAs to the two sections to provide that the restrictions on personnel apply to a person who "manages or controls any matter relating to a regulated activity" of another insurance intermediary entity.

Insurance agents' relationship with insurers

76. The existing section 68 stipulates the legal relationship between an insurer and its appointed insurance agent, and the former's liability for the acts of the latter. Specifically, the existing section 68(2) provides that an insurer is not able to exclude or limit its liability for the actions of its appointed insurance agent in the dealings for the issue of a contract of insurance and insurance business relating to the contract. The Bills Committee is aware of the industry's concern that the proposed new section 68(1) to (4C) may have changed the existing scope of liability of an insurer for the acts of its appointed insurance agent.

77. The Administration has advised that the Bill seeks to modernize the drafting of the existing section 68(1) to (4) without changing the existing scope of liability between an insurer and its appointed insurance agent. However, the Administration notes the industry's views that the proposed amended section 68 would override the common law position¹⁵, and that an insurer would not have to be responsible for the acts of its appointed insurance agent if the relevant policy holder knows that the insurance agent's acts are outside the latter's authority. After considering the industry's views, the Administration has proposed to model on the relevant provisions under the Corporations Act 2001 of Australia ("CA of A 2001") and move CSAs to add new section 68(4BA) to make it clear that an insurer is not liable for the act of an insurance agent if (a) the act is not within the scope of the insurance agent's authority; and (b) that the insurance agent has disclosed that fact to the client before the client

¹⁵ Thanakharn Kasikorn Thai Chamkat v Akai Holdings Ltd (2010) 13 HKCFAR 479.

relied on the act¹⁶. The Administration has stressed that the general rule that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute will continue to apply, i.e. the onus of proof will lie with the insurer.

78. Some members, including Hon James TO and Hon SIN Chung-kai, have expressed concern that the proposed CSAs (the proposed new section 68(4BA)) may have the effect of reducing the level of protection for policy holders and allowing an insurer to evade from its responsibility for ensuring its appointed insurance agents would act prudently and comply with the necessary requirements in their dealings with policy holders.

79. The Administration has reiterated that the proposed amended section 68 stipulates that an authorized insurer is not able to exclude or limit its liability for the actions of its appointed insurance agent in the dealings for the issue of a contract of insurance and insurance business relating to the contract. The proposed new section 68(4BA) seeks to make it clear that an authorized insurer is not liable for the acts of an appointed insurance agent if, and only if, the conditions are met. The exclusion of liability added by the CSAs, which reflect developments in the law of agency, will only apply in exceptional circumstances. They will not in any way affect the level of policy holder protection, nor will they reduce the authorized insurer's obligations in respect of internal control and agent management. Having regard to members' views that there should be provisions to enable the court to take into account other factors relevant in the circumstances in determining the liability of the insurer for the acts of its appointed agent under section 68, the Administration will move CSAs to add new proposed section 68(4BB) to this effect. With inclusion of new section 68(4BB), the Administration considers that the existing section 68(6), which sets out certain matters that the court has to take into account in assessing the liability for claims, might become redundant. The Administration will move a CSA to delete section 68(6).

Conduct requirements on insurance intermediaries

80. Division 4 of new Part XI relates to conduct requirements for insurance intermediaries. The proposed new section 89 sets out the broad principles of conduct requirements for insurance intermediaries (**Appendix IV**). The conduct requirements for licensed insurance agencies and broker companies and their ROs are provided in the proposed new sections 90 and 91. IIA will make rules requiring intermediaries to comply with the practices and standards relating to the conduct requirements and may issue codes or guidelines for giving intermediaries guidance to facilitate their compliance with

¹⁶ For the sake of clarity, the proposed CSAs will include new section 68(4BA)(c), which provides that the clarity and prominence of the disclosure was what a person would reasonably require for deciding whether to enter into any dealing referred to in the proposed new section 68(1)(b).

the conduct requirements¹⁷ (the proposed new sections 92 and 93). IIA will be vested with the power to investigate into cases of alleged misconduct of licensed insurance intermediaries. For substantiated cases, IIA may impose on the licensee concerned a range of disciplinary sanctions proportionate to the nature and severity of the misconduct.

81. The Bills Committee supports imposing conduct requirements on licensed insurance intermediaries to enhance protection of the interests of policy holders. Members consider that given insurance intermediaries' interface between consumers and insurers, they have a key role in building and justifying public trust and confidence in the insurance industry. The conduct requirements will promote the adoption of good conduct of business practices by intermediaries. Fair and credible regulation of the conduct of intermediaries will enhance public confidence in insurance which will in turn be conducive to the sustainable development of the insurance industry. Members of the Bills Committee agree that IIA should set out the standards and practices expected of insurance intermediaries in codes and guidelines, and provide examples to facilitate compliance by insurance intermediaries.

"Best interests requirement" on licensed insurance intermediaries

82. One of the general principles of conduct requirements in the proposed new section 89 is that an insurance intermediary must "act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity" (the proposed new section 89(a)) ("the best interests requirement"). The Bills Committee notes that while authorized insurers and insurance agents do not have objection to setting out the "best interests requirement" in the non-statutory code of conduct, they are concerned that making the requirement statutory without qualifications may create a new statutory cause of action, rendering them susceptible to legal actions by clients. Insurance agents are also concerned that having the same "best interests requirement" for insurance brokers and insurance agents could create difficulties for them as insurance agents need to act in the interests of their appointing insurers, and that they do not have access to products offered by other insurers.

83. The Bills Committee notes that an insurance agent acts on behalf of an authorized insurer in selling insurance products and hence needs to act in the interests of his appointing insurer. As the "best interest requirement" requires an insurance agent to accord priority to a policy holder's interest in carrying out regulated activities, he should prioritize his client's interest over the interest of his appointing insurer in case there is any conflict. The industry opines that

¹⁷ Rules made by IIA are subsidiary legislation subject to negative vetting of LegCo. The proposed new section 130 requires IIA to make available drafts for public consultation before the finalized rules are submitted to LegCo. Codes or guidelines issued by IIA are non-statutory.

this will create difficulties for insurance agents. On the other hand, an insurance broker acts on behalf of its clients (i.e. it acts as an agent of the clients). It is obliged to act in the best interests of its clients because it owes a fiduciary duty to its clients under agency law. Insurance brokers therefore do not dispute the "best interests requirement".

84. The Bills Committee has urged the Administration to address the concerns expressed by insurance agents making reference to legislation and practices of other jurisdictions in handling the "best interests requirement" on insurance intermediaries. In particular, members of the Bills Committee have requested the Administration to examine whether insurance brokers and insurance agents are subject to the same or different "best interests requirement" and whether the requirement is provided in statute or guidelines/code promulgated by the overseas regulators concerned.

85. The Administration has explained that it has made reference to the relevant ICPs of IAIS and the conduct requirements of other financial regimes in Hong Kong in formulating the principles of conduct requirements in the Bill. Different jurisdictions specify conduct requirements, including the "best interests requirement", by different means. For instance, in Singapore, the "best interests requirement" is a key element in the licensing regime for insurance intermediaries, and it is stated in the statute that the regulatory body may revoke the licence of an insurance intermediary if it considers the latter not able to act in the best interests of its client. In Australia, it is also stated in the statute that an insurance intermediary must act in the best interests of the client. The legislation also stipulates the actions to be taken for different types of products/services to meet this requirement. However, in the UK, it is stated in the non-statutory regulatory handbook of the Financial Conduct Authority that an insurance intermediary must act in accordance with the best interests of its client. The Administration has advised that the principle of "acting in the best interests of clients" is not a new concept to the insurance industry. It has been included as one of the general principles of conduct requirements in the regulatory regime for MPF intermediaries since November 2012 (most of the MPF intermediaries are insurance intermediaries). The principle is also embedded in the existing guideline on replacement of life insurance policy issued by the Hong Kong Federation of Insurers in 2010. It is envisaged that IIA will issue a code of conduct similar to the guidelines on conduct requirements for MPF intermediaries issued by MPFA.

86. Regarding the concern about the "best interests requirement" creating a new statutory cause of action, the Administration has stressed that the consequence of breaching the conduct requirements is that disciplinary sanctions may be imposed by IIA and there is no intention to introduce a new statutory cause of action. Nevertheless, the Administration has taken on board the industry's suggestion of adding provisions to clarify that a breach of the conduct requirements would not on its own render any insurance intermediary

or insurance company liable to judicial proceedings, and will move CSAs to add the proposed new section 91A to this effect. The proposed new section 91A provides that a breach of a conduct requirement specified in the proposed new section 89, 90 or 91 would not on its own render any person liable to any judicial proceedings. For the avoidance of doubt, the CSAs will make clear that the proposed new section 91A is not intended to affect a person's any other rights under the common law, or have any implications on whether a breach of provisions, other than the proposed new sections 89, 90 and 91 in the amended ICO, may give rise to a cause of action.

87. On the concern about the different roles of insurance agents and brokers, the Administration has stressed that the introduction of the "best interests requirement" will not change the difference between insurance agents and insurance brokers as two distinct categories of insurance intermediaries. The very fundamental difference that an insurance agent acts on behalf of his appointing authorized insurer whereas an insurance broker acts on behalf of his client will remain. The Administration expects that in drawing up the code of conduct to further elaborate on what constitutes "best interests", IIA will take into account the different roles of insurance agents and brokers. The proposed new section 93(7) stipulates that the code of conduct will be admissible in evidence in any proceedings under the amended ICO before a court, and that "if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision". The Administration considers that this will address the concern of the trade that the "best interests requirement" for insurance agents should be different from those for insurance brokers.

88. The Bills Committee considers that the current arrangement of grouping both insurance agents and insurance brokers under a "best interests requirement" in the proposed new section 89(a), and leaving their different roles to be taken into account when IIA draws up the code of conduct, may not be the most desirable. Nonetheless, this approach is legally tenable and has been worked out in consultation with the industry.

Rules on the conduct requirements

89. The proposed new section 92(1) states that IIA may make rules requiring licensed insurance intermediaries to comply with specified practices and standards relating to the conduct of the intermediaries in carrying on regulated activities while the proposed new 92(2) sets out examples of areas on which IIA may make rules on, without limiting IIA's general power to make rules. The proposed new section 92(2)(f) relates to insurance intermediaries' disclosure to its client on commission or advantage receivable for the sale of the insurance products concerned. The Bills Committee notes that the current commission disclosure requirement only covers Investment Linked Assurance

Scheme products and has enquired whether the rules to be made pursuant to section 92(2)(f) would cover all types of insurance products. The Administration has explained that the provisions aim to allow IIA to maintain the flexibility with respect to remuneration disclosure. At present, there is no intention to introduce any change to the current commission disclosure requirement.

90. The proposed new section 92(2)(k) relates to receipt of property and services among insurance intermediaries in making referral business. The Bills Committee notes the industry's views that the provision should not prohibit referral business. Having considered the views, the Administration agrees to move a CSA to amend the wordings of the provision to clarify that IIA may specify the circumstances and conditions under which a licensed insurance intermediary may receive any property or services from another licensed insurance intermediary in consideration for referral of business.

Disciplinary Powers of the independent Insurance Authority over insurers and insurance intermediaries

91. The disciplinary powers of IIA over insurers and insurance intermediaries are contained in the new Parts VA and XI respectively. The proposed new section 41P provides that IIA may exercise disciplinary powers on an authorized insurer if the insurer is or was guilty of misconduct¹⁸ (as defined in the proposed new section 41P(5)), or when a person is or was not fit and proper to hold the position of a director or controller of the insurer. The proposed new section 80(1) provides that IIA may impose disciplinary sanctions on a person if the person is or was, when being a regulated person, guilty of misconduct¹⁸ (as defined in the proposed new section 79(1)) or not a fit and proper person. A "regulated person" includes a licensed insurance intermediary, an RO of a licensed insurance agency or licensed insurance broker company, or a person concerned in the management of the regulated activities carried on by a licensed insurance agency or licensed insurance broker company. The disciplinary powers of IIA include revocation or suspension of the authorization of an authorized insurer or the licence of a regulated person, reprimanding the insurer or the regulated person publicly or privately, or ordering the insurer or the regulated person to pay a pecuniary penalty (the proposed new sections 41P(2) and 80(4)).

¹⁸ Examples of "misconduct" are a contravention of a provision of the proposed amended ICO, and an act or omission relating to the carrying on of insurance business/any regulated activity which, in IIA's opinion, is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest. In respect of licensed insurance intermediaries, IIA must not form an opinion that an act or omission is or is likely to be prejudicial to the interests of policy holders or potential holders or the public interest unless it has had regard to applicable provisions set out in any code of conduct or guideline.

Checks and balances for the disciplinary powers of the Independent Insurance Authority

92. The Bills Committee has stressed that IIA's exercise of disciplinary powers must be subject to adequate checks and balances so as to ensure fairness, consistency and transparency, and there should be a mechanism to ensure separation of the investigatory and disciplinary powers of IIA. The Bills Committee has studied the provisions in the Bill and other measures to ensure fairness of IIA's disciplinary processes.

93. The Administration has explained the following safeguards:

- (a) the procedural requirements such as giving the party concerned the opportunity of being heard before IIA exercises any disciplinary power, informing the party concerned of IIA's disciplinary decision in writing (including the reasons concerned, the time when the decision is to take effect, and details of the decision) (the proposed new sections 41Q and 81);
- (b) public disclosure of IIA's disciplinary decisions (the proposed new sections 41P(3) and 80(5));
- (c) IIA must not exercise the power to impose a pecuniary penalty unless it has published a relevant guideline and IIA has had regard to the guideline (the proposed new sections 41R and 82);
- (d) IIA's disciplinary decisions will be appealable to IAT; and
- (e) establishment of an independent Process Review Panel ("PRP").

Opportunity of being heard

94. To ensure the independence of IIA's disciplinary process, the Administration assures the Bills Committee that IIA would put in place arrangements to ensure that its investigative staff will not be involved in the disciplinary process and determination of disciplinary sanctions. The arrangement would be in line with international and local practices of establishing the "Chinese wall" within a regulator. The Administration further clarifies that when providing the persons with an opportunity of being heard during IIA's disciplinary process, the persons concerned will be entitled to legal representation. While disciplinary hearings will not be open to the public, disciplinary decisions made by IIA can be reviewed by IAT the sittings of which would be held in public. As regards the industry's request that a defendant should be given an express right to oral hearing and cross-examination during IIA's disciplinary proceedings, the Administration agrees to propose CSAs to add new sections 41Q(4) and 81(5) to clarify that a

reference to "an opportunity of being heard" is a reference to an opportunity to make written or oral representations. IIA will consider whether it is appropriate to conduct oral hearing and allow cross-examination on a case-by-case basis. The Administration envisages that IIA will elaborate on the details of its disciplinary proceedings, including the procedures of conducting hearing of representations, in its guidelines.

Disclosure of disciplinary decisions

95. The Bills Committee notes that the industry has expressed concern about when IIA will disclose the disciplinary decisions as inappropriate disclosure may jeopardize the reputation of the insurers and insurance intermediaries concerned. The industry has suggested that the Bill should set out the criteria for IIA to make a disciplinary decision public, and the decision should not be published until the appeal process has been completed. The Bills Committee agrees that IIA needs to strike a balance between maintaining transparency of its decisions and preventing adverse impact of undue disclosure of disciplinary decisions on the insurer or insurance intermediaries.

96. The Administration has advised that the Bill provides that after IIA has exercised its power to impose disciplinary sanctions against a party, IIA may disclose to the public details of the relevant decision including the reason and any material facts relating to the case (the proposed new sections 41P(3) and 80(5)). This would be a useful tool for maintaining transparency of IIA's decisions and for the market and the public to monitor the work of IIA to ensure its decisions are made with consistency and sound justification. IIA would consider factors such as possible impact on the insurance market and interests of policy holders concerned in determining the disclosure. The Bills Committee agrees that IIA should prepare guidelines on disclosure of disciplinary decisions to set out the details.

Expert Panel and Process Review Panel

97. In order to check against possible abuse of the disciplinary power by IIA, some members of the Bills Committee have suggested setting up a statutory disciplinary committee comprising members from the industry to review IIA's disciplinary decisions before the decisions are appealed to IAT, or establishing a statutory expert panel comprising members from the industry from which IIA must seek views during the disciplinary process. These members consider that the first suggestion will address the industry's concern about the potential huge legal costs which may be involved in the IAT proceedings, and the latter suggestion will enable IIA to tap experience and expertise accumulated by the SROs in handling disciplinary cases, which in turn may help ensure the reasonableness of IIA's disciplinary decisions.

98. Concerning the suggestion of setting up a statutory committee to review IIA's disciplinary cases, the Administration has pointed out that as IIA is already an independent regulator, there is no sound justification for setting up another independent body to ensure that there is no conflict of interest involved when IIA exercises its disciplinary powers. This would fetter the disciplinary power of IIA and compromise the integrity of the regulatory regime. Moreover, the Administration is not aware of any direct involvement of the industry in the disciplinary process of financial regulators in overseas jurisdictions such as Australia, Singapore and the UK. The proposed committee may unnecessarily prolong the whole disciplinary or appeal process, and may on the contrary, increase rather than save the legal cost. On the transfer of the experience and expertise accumulated by the SROs in handling disciplinary cases, the Administration considers that this can be achieved by appointing people with relevant expertise to the panel of ordinary members of IAT for reviewing appeal cases.

99. Regarding the proposal to establish an expert panel, the Administration agrees that since the insurance industry is diverse with a variety of products and many streams of business, the expert panel can assist IIA in making disciplinary decisions by making available external expertise and advice from industry practitioners expeditiously as and when necessary. As regards when IIA should consult the expert panel before making a disciplinary decision, the Administration has pointed out that when a disciplinary case involves a highly specialized stream of insurance business or a sophisticated product where IIA considers that external expert advice is necessary to fill any knowledge gap to ensure that all relevant factors have been taken into consideration before making a fair and reasonable disciplinary decision, IIA may consult members of the panel. However, IIA should remain the authority to make disciplinary decisions independently. The Administration agrees to reflect the proposal of establishing the expert panel for follow-up by IIA.

100. On the establishment of a PRP, the Administration has advised that it would be an independent panel established to review and advise IIA on the adequacy of its internal procedures and operational decisions to ensure that its regulatory powers are exercised in a fair and consistent manner. Some members of the Bills Committee have suggested that to enhance the status of PRP in monitoring the work of IIA, there should be specific provisions in the Bill for the establishment of PRP. The Administration has responded that the proposal to establish a non-statutory PRP for IIA is consistent with the existing arrangement for other financial market regulators in Hong Kong, such as SFC and FRC. The members of the PRP for IIA would include industry practitioners and relevant professionals. There is no need to include specific provisions in the Bill for establishing the PRP for IIA as it would be set up by CE in accordance with the relevant provisions in the Interpretation and General Clauses Ordinance (Cap. 1).

Guidelines for pecuniary penalties

101. The disciplinary sanctions to be imposed by IIA on authorized insurers and licensed insurance intermediaries include a pecuniary penalty (the proposed new sections 41P(2)(e) and 80(4)(e)), i.e. a fine not exceeding the amount which is the greater of \$10 million, or three times the amount of the profit gained or loss avoided by the person as a result of the misconduct. Some members of the Bills Committee are of the view that the proposed level of fine is too high, and may put individual insurance intermediaries into financial jeopardy. They have requested the Administration to consider suggestions from the industry, including setting a lower maximum level for individuals, or different penalty levels for insurance intermediaries and insurers; and specifying the guiding principles for determining the fine in the Bill.

102. The Administration has advised that in view of the wide spectrum of insurance intermediaries (some of which are banks and international brokerage firms), the maximum fine level must have adequate regulatory effect. To provide for checks and balances, the proposed new sections 41R and 82 already require IIA to publish guidelines of fining before exercising its power to impose a disciplinary fine, and to have regard to the guidelines when imposing a fine. The guideline will set out the factors of consideration that IIA will be taking into account when determining the quantum of a disciplinary fine. It is envisaged that IIA would make reference to similar guidelines on fining currently adopted in other financial regulatory regimes when drawing up its own guidelines, and would consult the industry when formulating the guidelines. The Bills Committee notes that the factors of consideration for determining the quantum of a pecuniary penalty under the relevant guidelines on fining issued by OCI pursuant to AMLO and by SFC pursuant to SFO include the followings:

- (a) the disciplinary fine should not have the likely effect of putting the regulatee in financial jeopardy;
- (b) the nature, seriousness and impact of the contravention;
- (c) the conduct of the regulatee after the contravention (e.g. whether the regulatee attempted to conceal the contravention); and
- (d) the previous disciplinary record and compliance history of the regulatee.

Insurance Appeals Tribunal

Establishment and members of the Insurance Appeals Tribunal

103. At present, appeals against certain decisions of IA are made to FS. Such decisions include refusal of authorization or objection to the appointment of controllers of insurers, de-registration of insurance agents or withdrawal of authorization of insurance brokers. The proposed new Part XII modernizes the appellate mechanism under the new regulatory regime by setting up the independent IAT. Provisions in the new Part XII provide for the establishment and powers of IAT, and details of the appointment of members and proceedings of IAT are set out in the proposed new Schedule 10. The appellate mechanism is modelled on the appeal systems established for reviewing the decisions of other financial market regulators.

104. The proposed new section 95 establishes IAT as an independent quasi-judicial body. IAT has jurisdiction to review specified decisions listed in the proposed new Schedule 9 (**Appendix V**), as well as to hear and determine a question or issue arising out of or in connection with a review by IAT. To allow flexibility for IAT to handle more than one case at a time, CE may establish additional tribunals for any reviews if appropriate. The proposed new section 96 and sections 2 to 4 of the proposed new Schedule 10 provide for the composition of IAT. The IAT's chairperson, who is a former judge or a person qualified for appointing as a High Court judge, shall be appointed by CE. An IAT will comprise the chairperson and two members.

105. The Bills Committee considers that given IAT's jurisdiction to review the decisions of IIA, it is necessary to ensure that IAT should have members with knowledge of insurance industry or relevant aspects of insurance sectors. The Administration has advised that a panel of members will be appointed by CE. For the purpose of determining each review, the Secretary of Financial Services and the Treasury ("SFST") will, on the recommendation of the chairperson of IAT, appoint two panel members as ordinary members to form the IAT with the chairperson for a review (section 4 of the proposed new Schedule 10). There is no legal restriction on the background of the IAT members, who would be chosen from persons with relevant expertise, including insurance practitioners.

Procedures of the Insurance Appeals Tribunal

106. The flowchart illustrating the appeal mechanism of IAT is at **Appendix VI**. The proposed new section 108(2) enables an applicant for a review to apply to IAT for a stay of execution of the specified decision in relation to the application at any time before the review. The proposed new section 114 provides for the time at which a specified decision takes effect. IAT may confirm, vary or set aside IIA's decisions. The determination of IAT

is subject to appeal to the Court of Appeal on a question of law, a question of fact, or a question of mixed law and fact. A party to a review may appeal to the Court of Final Appeal against a judgment of the Court of Appeal.

107. Section 5 of the proposed new Schedule 10 provides that each sitting of IAT must be held in public but IAT may determine on its own initiative or on the application of any party to the review to hold a sitting or part of it in private. Members of the Bill Committee are concerned that the provision may give IAT wide discretion in holding a sitting in private, and have suggested setting out the criteria IAT would take into account in making a decision in this respect. The Administration has advised that normally IAT has to hold sittings in public as a measure to enhance transparency in the administration of justice. Section 5(6) of the proposed new Schedule 10 already provides that IAT will hold sittings in private only if it is "in the interests of justice" (rendered as "公正" in Chinese) to do so. The Administration believes that IAT will consider whether it is in the interests of procedural fairness and impartiality to the parties to the review, etc. in making the decision.

108. The Bills Committee notes that there are no provisions in the proposed new Schedule 10 to deal with the situation when the chairperson or an ordinary member of IAT resigns from office during a review. The Administration has advised that in such circumstances, a new chairperson or a new ordinary member will be approved by CE or SFST, as the case may be, to form a new IAT afresh to conduct the review. Having considered members' views that the Bill should specify the aforementioned arrangements, the Administration agrees to move CSAs to add section 4A to the proposed new Schedule 10 to stipulate that in case there is a change in the 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.

Costs of appeal

109. The proposed new section 104 empowers IAT to, by order, award costs to the parties to a review. IAT will have discretion to determine whether to award costs and the sum awarded. Some members of the Bills Committee share the industry's concern about the potential huge legal costs involved in IAT proceedings, creating financial burden on appellants, in particular individual insurance intermediaries and those with limited resources. These members have urged the Administration to address the industry's concern by deleting the provision on cost order, limiting the award of cost to only severe cases, or introducing a cost cap for appellants or fixed costs for straight-forward and uncomplicated appeal cases.

110. The Administration has explained that the rationale behind the arrangement for IAT to award costs to parties to a review is to discourage abuse of the appeal process to delay a disciplinary action or making unreasonable claims. The same arrangement is adopted by the Securities and Futures Appeals Tribunal and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal. As regards the factors that IAT would consider in awarding costs to parties, as provided in the proposed new section 104(3), the award of costs and the taxation of any costs awarded will be subject to Order 62 of the Rules of the High Court (sub. leg. A of Cap. 4). Order 62 rule 5 of the Rules of the High Court stipulates that when the Court exercises discretion to award costs, the Court must, to such extent as may be appropriate in the circumstances, take into account the conduct of all the parties. The conduct of the parties includes: (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; (b) the manner in which a party has pursued or defended his case or a particular allegation or issue; (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and (d) conduct before, as well as during, the proceedings. The Administration further assures the Bills Committee that section 6 of the proposed new Schedule 10 provides that preliminary conferences could be held by the IAT Chairman for the purposes of assisting and expediting the conduct of the review. Subject to the consent of the IAT Chairman, parties to the appeal may discuss the parameters for awarding costs with the IAT at a preliminary conference.

111. In order to save time and reduce potential legal costs for the parties concerned, the Bills Committee has requested the Administration to consider the industry's suggestion of allowing IAT to review IIA's decisions based on written representations. The Administration agrees that this would provide potential appellants with an alternative which may involve lower legal costs and will move CSAs to add new section 100(1A) so that with the consent of both parties to the review, IAT may determine the review on the basis of written submissions only.

Transitional arrangements for insurance intermediaries

112. Parts 4 to 9 of the proposed new Schedule 11 provide for the transitional arrangements for insurance intermediaries from the current self-regulatory regime to the statutory licensing regime administered by IIA. The major provisions provided for the following:

- (a) pre-existing insurance intermediaries validly registered with 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")¹⁹ (Part 4 of the proposed new Schedule 11);

- (b) pre-IIA complaints, investigations and appeal cases which remain unresolved upon the commencement date will be followed up by IIA or 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 (Parts 5 to 8 of the proposed new Schedule 11); and
- (c) to facilitate the implementation of the above policies, provisions are proposed to require the SROs to provide IIA with relevant records and assistance (mainly sections 120 - 125 of Part 9 of the proposed new Schedule 11).

113. The details of the transitional arrangements for (a) and (b) above are summarized in **Appendix VII**. There are provisions in new Schedule 11 to provide powers for IIA to revoke or suspend, and impose or amend conditions of a deemed licence or approval during the transitional period. The person concerned will be given an opportunity to make representation before IIA makes such decisions, and IIA's decisions can be appealed to IAT. As regards (c) above, the provisions are to ensure that the SROs will provide IIA with records for the latter to compile the register of licensed insurance intermediaries, and a record of complaints, appeals and disciplinary sanctions in relation to SRO registrants, and to determine the granting of licences. There are provisions for safeguarding against unauthorized access or use of the records, and requiring the SROs to provide a complete set of rules in relation to the respective SRO registrants.

114. The Bills Committee notes that the industry has made enquiries and suggestions on the various transitional arrangements. Members have urged the Administration to continue discussion with the industry to work out the detailed arrangements to ensure a smooth transition to the new regime. The Administration has advised that it has set up a Working Group on Transition to IIA the membership of which includes the three SROs and representatives of insurance intermediaries. The Working Group has held seven meetings to deal with detailed transitional arrangements, and the outcome of deliberation is posted onto the website of the Financial Services and the Treasury Bureau. The Bills Committee notes that the Administration will introduce CSAs to the proposed new section 41P to clarify that IIA cannot impose disciplinary sanctions on insurers retrospectively, and CSAs to the proposed new Schedule 11 to provide for the treatment of unsettled appeals to FS under ICO before the

¹⁹ 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.

commencement date, as well as to make various technical amendments.

Transition and miscellaneous matters

Transition from the Office of the Commission of Insurance to the independent Insurance Authority

115. The Bills Committee has examined the arrangements for the transition from OCI and SROs to IIA. The Administration has explained that upon enactment of the Bill, the proposed amended ICO will be implemented in three stages with the tentative timeline as follows:

<u>Stage One:</u> Establishment of the Provisional Insurance Authority ("PIA")	Within 3 months after enactment day
<u>Stage Two:</u> IIA to take over OCI	6 to 12 months after PIA's establishment
<u>Stage Three:</u> IIA to commence the licensing and regulatory regime for insurance intermediaries	12 to 20 months after PIA's establishment

IIA will be renamed as PIA immediately after its establishment (the proposed new section 4AAA). PIA will be given certain administrative powers to undertake essential preparatory work, such as recruiting key personnel, leasing office premises and procuring office and IT equipment, etc., for the new insurance regulator to take over the work of OCI. In the second stage, PIA will be renamed as "the Insurance Authority", the official name of IIA in the proposed amended ICO. IIA will take up the existing duties of OCI such as those on the prudential and conduct regulation of insurers and anti-money laundering regulation. In the interim, the self-regulatory system for insurance intermediaries will continue, allowing time for IIA to prepare the necessary tools for regulating insurance intermediaries in consultation with the industry and the general public. These may include preparing subsidiary legislation and code of conduct for insurance intermediaries, guidelines for imposing financial penalty, etc. The third stage will commence after these regulatory tools are in place for IIA to take over the regulation of insurance intermediaries from the three existing SROs.

116. Parts 2 and 3 of the proposed new Schedule 11 provide for the savings provisions and transitional arrangements to ensure a smooth institutional migration from OCI (i.e. IA under the existing ICO) to IIA. The provisions in Part 2 of the proposed new Schedule 11 are to ensure the continuity of OCI's regulatory activities and decisions (including legal actions, applications and appeals) after the establishment of IIA. Part 3 of the proposed new Schedule 11 provides for the proper transfer of records from the

existing OCI to IIA.

117. The Bills Committee has stressed the importance for OCI and IIA to conduct the record transfer process in a prudent manner to ensure protection of the relevant records in hardcopy or electronic form, and to put in place measures to protect secrecy of the personal data contained therein. Some members consider that there should be clear provisions on when the transfer process would be regarded as completed so that IIA's legal obligations for the transferred records under the Personal Data (Privacy) Ordinance ("PDPO") (Cap. 486) would officially commence.

118. The Administration has advised that section 3(1) of the proposed new Schedule 11 requires that all relevant records in OCI's custody must be transferred to IIA on the commencement date (i.e. the repeal of section 4(1) (on the appointment of IA) under the existing ICO) or as soon as practicable after that date. The term "record" under the proposed new Schedule 11 covers information stored in hardcopy or electronic form. IIA has to ensure that there are proper procedures and systems to safeguard against unauthorized access to record, PDPO will continue to apply as if the personal data contained in the records were received by IIA, and IIA must ensure that the data is used, disclosed and retained for the purpose for which the data was to be used at the time of the collection (section 3(3) to (5) of the proposed new Schedule 11). Section 3(6) of the proposed 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 PDPO which would have been applicable to OCI before. Having considered members' views on the completion date for the data transfer process, the Administration agrees to move CSAs to amend section 3(1) of the proposed new Schedule 11 to provide that the transfer of records must be completed on or before the commencement date, and amend section 3(6) of the Schedule 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 PDPO.

119. The Bills Committee has emphasized the need to make proper arrangements for existing employees of OCI and to retain the valuable experience for ensuring a smooth transition to the new regulatory regime. The Administration has advised that the dissolution of OCI would follow government's established policies for abolition of offices. Existing staff members of OCI could apply for jobs in IIA and it is believed that they would have edges in applications due to their regulatory experience in OCI.

Miscellaneous matters

120. The existing ICO contains provisions for : (a) IA to make regulations, rules, codes and guidelines, and to serve notices; (b) offences and related

matters; and (c) preservation of confidential information and immunity. The proposed amendments in the Bill aim to update and modernize the relevant provisions as appropriate to enable IIA to perform its functions effectively under the new regulatory regime.

Rules made by the independent Insurance Authority

121. The proposed new section 127 empowers IIA to make rules to provide for specified matters (e.g. the qualifications, examination and training requirements for licensed insurance intermediaries, the maintenance of registers maintained by IIA), and other rules (after consulting FS) that are necessary for the performance of any of its functions. These rules are subsidiary legislation subject to the negative vetting procedures of LegCo. The mechanism enables IIA to set out the detailed regulatory requirements and provides it with flexibility to respond to changing market practices and global conditions. The proposed new section 130 requires IIA to publish a draft of the proposed rules for public consultation. This ensures that IIA would take into account the views of the stakeholders in making the rules.

Codes and guidelines promulgated by the independent Insurance Authority

122. The proposed new section 131 empowers IIA to publish non-statutory codes or guidelines for matters in relation to the functions of IIA and the operation of a provision of the proposed amended ICO. The purpose is to provide the industry with practical guidance to facilitate compliance with the regulatory requirements. The proposed new section 131(4) and (5) provides that failure of a person to comply with the provisions set out in a code or guideline will not by itself render the person liable to any judicial or other proceedings. However, such codes or guidelines are admissible in evidence in any proceedings under the proposed amended ICO before a court.

123. Some members have expressed concern about the purposes and operation of the provisions, in particular, whether the provisions would have the effect of shifting the burden of proof from the prosecution to the defendant. As non-compliance with IIA's codes and guidelines will be an evidence for the court in considering an offence or contravention of requirement under the proposed amended ICO, members have asked whether this will imply that the defendant has to prove he has not breached the relevant codes and guidelines.

124. The Administration has explained that non-compliance with non-statutory codes or guidelines will not by itself render a person liable to any judicial or other proceedings e.g. disciplinary proceedings instituted by IIA. However, under the proposed new section 131(5), if a provision in the code or guideline appears to the court to be relevant to a question arising in any proceedings under the proposed amended ICO (e.g. whether a licensee has complied with a statutory requirement), the court must take into account any

compliance or non-compliance of the provision in the codes or guidelines. The general rule that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute remains unaltered and the operation of the provisions would not have the effect of shifting the burden of proof from the prosecution to the defendant.

Offences committed by bodies corporate

125. The proposed new section 122 makes the necessary updates to the existing section 57 which provides that if a body corporate or a partner of a partnership commits an offence and it is proved that the offence was committed with the consent or attributable to any neglect on the part of the body corporate's controller, director or manager, or any other partner of the partnership etc., the individual concerned also commits the offence. Some members of the Bills Committee are concerned that the provisions are too stringent and may create an undue burden on the senior management of insurers and insurance intermediaries, and would increase compliance costs of the industry. In particular, these members note that the senior management of insurers or licensed insurance intermediary companies (such as controllers, key persons in control functions or ROs) is already subject to certain requirements under the Bill such as "fit and proper" requirement and the duties to maintain proper internal controls. On the other hand, some members have stressed the need for the Bill to have sufficient deterrent effect against breaches of statutory requirements and misconduct of insurers and insurance intermediaries so as to uphold the integrity of the new regulatory regime.

126. The Administration has advised that the proposed new section 122 is similar to relevant provisions in a number of newly enacted Ordinances including section 44 of MPFSO. The consequence of breaches to "fit and proper" requirement and the duties to maintain proper internal controls is disciplinary sanctions by IIA whereas the proposed new section 122 is about circumstances under which a body corporate's controller, director or manager or any partner of a partnership should not be allowed to hide behind the corporate veil and escape his criminal liability for offences committed by a body corporate or a partner of a partnership as a result of his consent, connivance, negligence or omission.

127. Some members of the Bills Committee remained concerned about the excessively broad scope of the proposed new section 122 and adoption of the expression "neglect or omission" in the provisions. The Administration has pointed out that the expression "neglect or omission" is commonly used in recently enacted legislation. "Omission" generally means a failure to take action, where a person has a duty to initiate positive action. Nonetheless, the Administration agrees that the existing wording in the proposed new section 122(3)(b) defining the individual who could be liable in the proposed new section 122 may be too wide. The scope covers a controller of the body

corporate; a director, manager, company secretary or other person concerned in the management of the body corporate (officer) or an individual purporting to act as the officer or as agent of the body corporate. As such, the Administration will move CSAs to amend the proposed new section 122 so that an individual who could be liable for an offence committed by a body corporate would include "a controller, director, key person in control functions, or responsible officer". All these individuals have statutory duties under the Bill.

Preservation of confidential information and immunity

128. The proposed amended section 53A requires members, employees, agents, consultants or advisors of IIA to preserve secrecy with regard to all matters that come to their knowledge in the performance of their statutory functions. There are exceptions for the disclosure of information to IAT, and express provisions to empower IIA to impose appropriate conditions on the disclosures. Amendments to section 53B allow IIA to disclose information on the affairs of insurers and insurance intermediaries to an overseas regulatory authority. The proposed new section 116 aims to update the existing immunity provision in section 55A. It sets out that a person (e.g. an employee of IIA) is not civilly liable for an act done or omitted to be done by the person²⁰ in good faith in performing or purportedly performing a function under the proposed amended ICO.

129. On the proposed amended section 53B, in order to ensure preservation of confidential information and reciprocity of information exchange with overseas regulators, some members of the Bills Committee have suggested that IIA should only disclose information to overseas regulators which have entered into bilateral or multilateral information exchange agreements with IIA.

130. The Administration has pointed out that the existing safeguards for the disclosure, such as the disclosure has to be in line with the interests of existing and potential policy holders or the public, the recipient regulator is subject to adequate secrecy provisions in its own jurisdiction, and the disclosure should not cover any information relating to the affairs of an individual policy holder, remain unchanged. The purpose of the proposed amended section 53B(1) is to provide IIA with a discretionary power to disclose information to its counterparts of other jurisdictions under specified conditions rather than imposing an obligation on it to disclose information upon request. Thus, it is unnecessary to set out in the legislation that IIA should only disclose information to foreign counterparts which have entered into

²⁰ The immunity, however, does not apply to the following persons –

- (a) an appointed auditor of the IIA or of a licensed insurance broker company (under new section 5E and amended section 72); and
- (b) an appointed auditor or an appointed actuary of an authorized insurer (under amended section 15).

bilateral or multilateral agreements with IIA. Moreover, it is the established international practice that insurance regulators share or exchange information with foreign counterparts under bilateral MoUs or the Multilateral MoU under IAIS which set out the procedural and confidentiality requirements, etc. on the contracting parties. IA has entered into such bilateral or multilateral MoUs with 45 parties and IIA is expected to adopt the same approach.

Chinese rendition of the term "insurer"

131. The Bills Committee notes that the Chinese rendition of the term "insurer" in ICO is "保險人". Given that the term refer to "公司" (a company), members are concerned that the Chinese rendition may cause confusion to readers, and has requested the Administration to consider changing the Chinese rendition to "保險公司". The Administration takes note of members' views, but suggests not to make the changes in this legislative exercise because changing the term "保險人" to "保險公司" will involve voluminous amendments to the existing ICO and could cause delay to the passage of the Bill. The Administration however undertakes to consider the proposal in future legislative exercises. The Bills Committee welcomes the Administration's undertaking.

Related and consequential amendments

132. Clauses 95 to 165 of the Bill set out the related and consequential amendments to other Ordinances to replace references to the "Insurance Companies Ordinance" with "Insurance Ordinance"²¹, remove references to the "Insurance Authority" as a public officer, and update references to insurance intermediaries in light of amendments in relation to the new statutory licensing regime. In addition, clause 104 adds IIA and any of its wholly-owned subsidiary to the list of public bodies under Schedule 1 to PBO, and clause 113 adds IIA to list of organizations over which the Ombudsman Ordinance (Cap. 397) has jurisdiction. Clauses 116 to 121 update the relevant definitions and statutory procedures under MPFSO in relation to MPF intermediaries which are also insurance intermediaries regulated by IIA.

Committee Stage amendments to be moved by the Administration

133. Apart from the CSAs outlined in various paragraphs above, the Administration has proposed to move CSAs on certain technical and textual matters. The major ones are as follows :

²¹ The "Insurance Companies Ordinance" will be renamed as the " Insurance Ordinance" under clause 4 of the Bill.

- (a) amendments in relation to the definition of "controller" (various sections and clauses);
- (b) amendments to clarify that the inspector "must, if so requested", produce a copy of the appointment to the person for inspection as soon as practicable (the proposed new sections 41B(8) and 64ZZF(8), clauses 55 and 71);
- (c) amendments to clarify that for the purpose of inspection in relation to insurance intermediaries, business premises does not include any domestic premises (the proposed new section 64ZZF(10), clause 71);
- (d) amendments to specify that licensed insurance broker companies should submit their audited financial statements within 6 months after the relevant financial year end (the proposed new section 73(1), clause 78);
- (e) amendments to allow IIA to exempt temporarily a person from provisions of Part X (i.e. in relation to the licensing of insurance intermediaries) to avoid technical breaches of the licensing requirement (the proposed new section 78A, new clause 83A);
- (f) amendment to remove the provisions that IIA may use lay prosecutors for prosecuting minor offences in its own name (the proposed new section 124(3), clause 84);
- (g) amendment to specify that the levy would be payable by policy holders and to further elaborate on the powers of CE in Council in specifying the levy (the proposed new section 132(1) and (2), clause 84);
- (h) amendment to provide for the treatment of appeals to FS under ICO before the commencement date as follows –
 - (i) cases which have been made to FS but have not been disposed of before the commencement date should be handled by IAT after the commencement date; and
 - (ii) regarding a decision of IA before the commencement date, if the applicant lodges an appeal on or after the commencement date, such appeal should be made to IAT (sections 3A, 3B, 3C 3D of the proposed new Schedule11, clauses 94)

- (i) amendments to –
 - (i) clarify that a pre-existing SRO registrant should be deemed to be licensed until the "time" when the decision of SRO's to revoke the registration takes effect; and
 - (ii) replace "on the commencement date" with "before the commencement date" where appropriate (various sections in the proposed new Schedule 11, clause 94); and
- (j) amendments to provide for the scenario in which the pre-existing SRO registrant appeals against IAT's decision to the Court of Appeal.
(various sections in the proposed new Schedule 11, clause 94)

134. The Bills Committee has examined all the proposed CSAs from the Administration and raised no objection. The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate

135. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the LegCo meeting of 8 July 2015.

Consultation with the House Committee

136. The Bills Committee reported its deliberations to the House Committee on 19 June 2015.

Bills Committee on Insurance Companies (Amendment) Bill 2014

Membership list

Chairman Hon WONG Ting-kwong, SBS, JP

Deputy Chairman Hon CHAN Kin-por, BBS, JP

Members Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon YIU Si-wing, BBS
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP

(Total : 18 members)

Clerk Ms Connie SZETO

Legal Adviser Miss Winnie LO

Bills Committee on Insurance Companies (Amendment) Bill 2014

**List of organizations/individuals from which the Bills Committee
has received views**

1. AIA Group Limited
2. Consumer Council
3. The DTC Association
4. Employees' Compensation Insurance Residual Scheme Bureau
5. Employees Compensation Insurer Insolvency Bureau
6. General Agents and Managers Association of Hong Kong Limited
7. General Insurance Council of The Hong Kong Federation of Insurers
8. The Hong Kong Association of Banks
9. Hong Kong Chamber of Insurance Intermediaries
10. Hong Kong Chinese Civil Servants' Association
11. The Hong Kong Confederation of Insurance Brokers
12. The Hong Kong Federation of Insurers
13. The Hong Kong General Insurance Agents Association Ltd
14. Hong Kong Insurance Intermediaries Association
15. Hong Kong Insurance Law Association Limited
16. Hong Kong Insurance Practitioners General Union
17. IIA Concern Group
18. Independent Commission Against Corruption
19. Independent Financial Advisors Association
20. Insurance Agents Registration Board
21. Insurance Claims Complaints Bureau
22. Insurance & Finance Practitioners Solidarity Sector
23. Insurance and Financial Practitioners Alliance
24. Insurance Industry Regulatory and Development Concern Group
25. Insurance Institute of Hong Kong
26. Kwai Chung South Resident Association
27. The Law Society of Hong Kong
28. Life Insurance Council of The Hong Kong Federation of Insurers
29. The Life Underwriters Association of Hong Kong Limited
30. Life Underwriters & Sales Executives Board (HK) Ltd
31. Motor Insurers' Bureau of Hong Kong
32. Professional Insurance Brokers Association
33. 中國科學院廣澳區校友會
34. 華麗居民聯會
35. Miss Atta LEE Long-ni
36. Miss Cynthia CHEUNG Sin-tung
37. Mr Alex FU Chuen-lung
38. Mr Anthony CHIU
39. Mr Henry NG Long-sang
40. Mr Michael FUNG Kei-lap
41. Mr SO Chi-hong
42. Mr YEUNG Wai-sing, Eastern District Council member

Insurance Companies (Amendment) Bill 2014
Summary of relevant papers on policies and Committee Stage amendments ("CSAs")

Policy Items	Clause No. (Clause(s) in the Bill / Section(s) in the amended Insurance Companies Ordinance)	Administration's paper on policies ²²	Paper(s) on CSAs
<p>1. <i>Constitution of the independent Insurance Authority ("IIA")</i></p> <ul style="list-style-type: none"> • IIA and provisional IIA • functions • governance 	Clauses 9 – 15 / Sections 4AAA – 5G Clause 86 / Schedules 1B, 1C, 1D	New Part IA and New Schedules 1B, 1C & 1D (LC Paper No. CB(1)1676/13-14(02))	Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04))
<p>2. <i>Enhancement of existing regulatory powers on insurers</i></p> <ul style="list-style-type: none"> • appointment of controllers, directors and key persons in control functions • other amendments 	Clauses 16 – 54 / Sections 5H, 7 – 41 Clauses 56 – 63 / Sections 49B – 51 Clause 68 / Section 53E	Enhancement of Existing Regulatory Powers in respect of Insurers (Amendments to Parts II to VII) (LC Paper No. CB(1)1817/13-14(01))	Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04))
<p>3. <i>New regulatory powers on insurers</i></p> <ul style="list-style-type: none"> • inspection and investigation powers²³ • disciplinary powers and procedures² 	Clause 55 / Sections 41A – 41W Clause 62 / Section 50G	New Regulatory Powers in respect of Insurers (New Part VA) (LC Paper No. CB(1)1817/13-14(02))	Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04))

²² The Administration's response to public comments on the Bill is set out in the paper entitled "[Summary of Public Comments on the Bill and the Administration's Response](#)". (LC Paper No. CB(1)2027/13-14(03))

²³ The detailed provisions in relation to inspection/investigation powers and the disciplinary process for insurers are similar to those for insurance intermediaries under items 4 and 6.

Policy Items	Clause No. (Clause(s) in the Bill / Section(s) in the amended Insurance Companies Ordinance)	Administration's paper on policies ²²	Paper(s) on CSAs
<p>4. <i>Licensing regime for insurance intermediaries</i></p> <ul style="list-style-type: none"> regulated activities and exemptions application procedures and eligibility criteria inspection and investigation power² delegation of powers to the Monetary Authority 	<p>Clause 7 / Section 3A Clause 13 / Section 4G Clause 69 / Section 53F Clauses 71 – 83 / Sections 64F – 78 Clause 84 / Section 121 Clause 86 / Schedule 1A</p>	<p>Licensing Regime for Insurance Intermediaries (Amendments to Part X and Other Relevant New Provisions) (LC Paper No. CB(1)2027/13-14(01))</p>	<ul style="list-style-type: none"> Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04)) Draft CSAs proposed by the Administration (on the revised section 68) (LC Paper No. CB(1)946/14-15(01))
<p>5. <i>Transitional arrangements for insurance intermediaries</i></p> <ul style="list-style-type: none"> deeming provisions handling of outstanding cases of self-regulatory organizations 	<p>Clause 84 / Section 137 Clause 94 / Schedule 11</p>	<p>Transitional arrangements for insurance intermediaries (New Schedule 11) (LC Paper No. CB(1)257/14-15(03))</p>	<p>Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04))</p>
<p>6. <i>Disciplinary sanctions on licensed insurance intermediaries</i></p> <ul style="list-style-type: none"> conduct requirements disciplinary powers and procedures² 	<p>Clause 84 / Sections 79 – 93</p>	<p>Regulation of Insurance Intermediaries and Disciplinary Actions (New Part XI) (LC Paper No. CB(1)2027/13-14(02))</p>	<ul style="list-style-type: none"> Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04)) Draft CSAs proposed by the Administration (on the proposed new section 89 and additional consequential amendments) (LC Paper No. CB(1)946/14-15(02))

Policy Items	Clause No. (Clause(s) in the Bill / Section(s) in the amended Insurance Companies Ordinance)	Administration's paper on policies ²²	Paper(s) on CSAs
<p>7. <i>Insurance Appeals Tribunal</i></p> <ul style="list-style-type: none"> • establishment, composition and powers of the Tribunal • specified decisions 	<p>Clause 84 / Sections 94 – 115 Clause 94 / Schedules 9, 10</p>	<p>Insurance Appeals Tribunal (New Part XII and New Schedules 9 & 10) (LC Paper No. CB(1)257/14-15(04))</p>	<p>Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04))</p>
<p>8. <i>Miscellaneous matters, consequential and technical amendments</i></p> <ul style="list-style-type: none"> • power to make rules and codes etc. • levy • secrecy provisions • immunity • savings provisions 	<p>Clauses 64 – 67 / Sections 53A – 53D Clause 70 / Part IX Clause 84 / Sections 116 – 120, 122 – 137 Clauses 85, 87 – 93 / First, Second to Eighth Schedules Clause 94 / Schedule 11 Clauses 95 – 165 Schedules 1 and 2 to the Bill</p>	<p>Transition and Miscellaneous Matters (LC Paper No. CB(1)332/14-15(01))</p>	<ul style="list-style-type: none"> • Draft CSAs proposed by the Administration (LC Paper No. CB(1)877/14-15(04)) • Draft CSAs proposed by the Administration (on the proposed new section 89 and additional consequential amendments) (LC Paper No. CB(1)946/14-15(02))

(Source: Modified from LC Paper No. CB(1)369/14-15(03))

The Proposed New Section 89

The proposed new section 89 added by Clause 84 of the Bill sets out the broad principles of conduct requirements on the part of a licensed insurance intermediary when carrying on a regulated activity. The principles require that a licensed insurance intermediary –

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;
- (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;
- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;
- (h) must ensure that the policy holder's assets are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules (i.e. subsidiary legislation).

Specified Decisions

(In relation to insurers under Part 1 of new Schedule 9)

As provided in Part 1 of new Schedule 9, specified decisions made in relation to insurers are as follows –

- (a) Refusal to authorize a company to carry on insurance business;
- (b) Imposition, amendment or revocation of a condition on an authorization of a company to carry on insurance business;
- (c) Refusal to approve or revocation of approval of appointment of a controller, director or key person in control functions of an authorized insurer;
- (d) Imposition, amendment or revocation of a condition in relation to the approval of appointment of a controller, director or key person in control functions of an authorized insurer;
- (e) Objection to the proposed appointment / appointment of a controller of an authorized insurer;
- (f) Refusal to approve or revocation of approval of appointment of an actuary of an authorized insurer;
- (g) Imposition of a restriction / requirement on an authorized insurer in relation to effecting or varying contracts of insurance, investments, maintenance of assets in Hong Kong, custody of assets, premium income to be received;
- (h) Imposition of a requirement on an authorized insurer under section 35(1);
- (i) Rescission or variation of a requirement imposed under sections 27 to 35(1);
- (j) Determination of remuneration and expenses to be paid by an authorized insurer to an Advisor / Manager;
- (k) Exercise of power to take disciplinary action against authorized insurers;
- (l) Refusal to approve or revocation of approval of the appointment of an authorized representative of Lloyd's; and
- (m) Exercise of power to take disciplinary action against Lloyd's, etc.

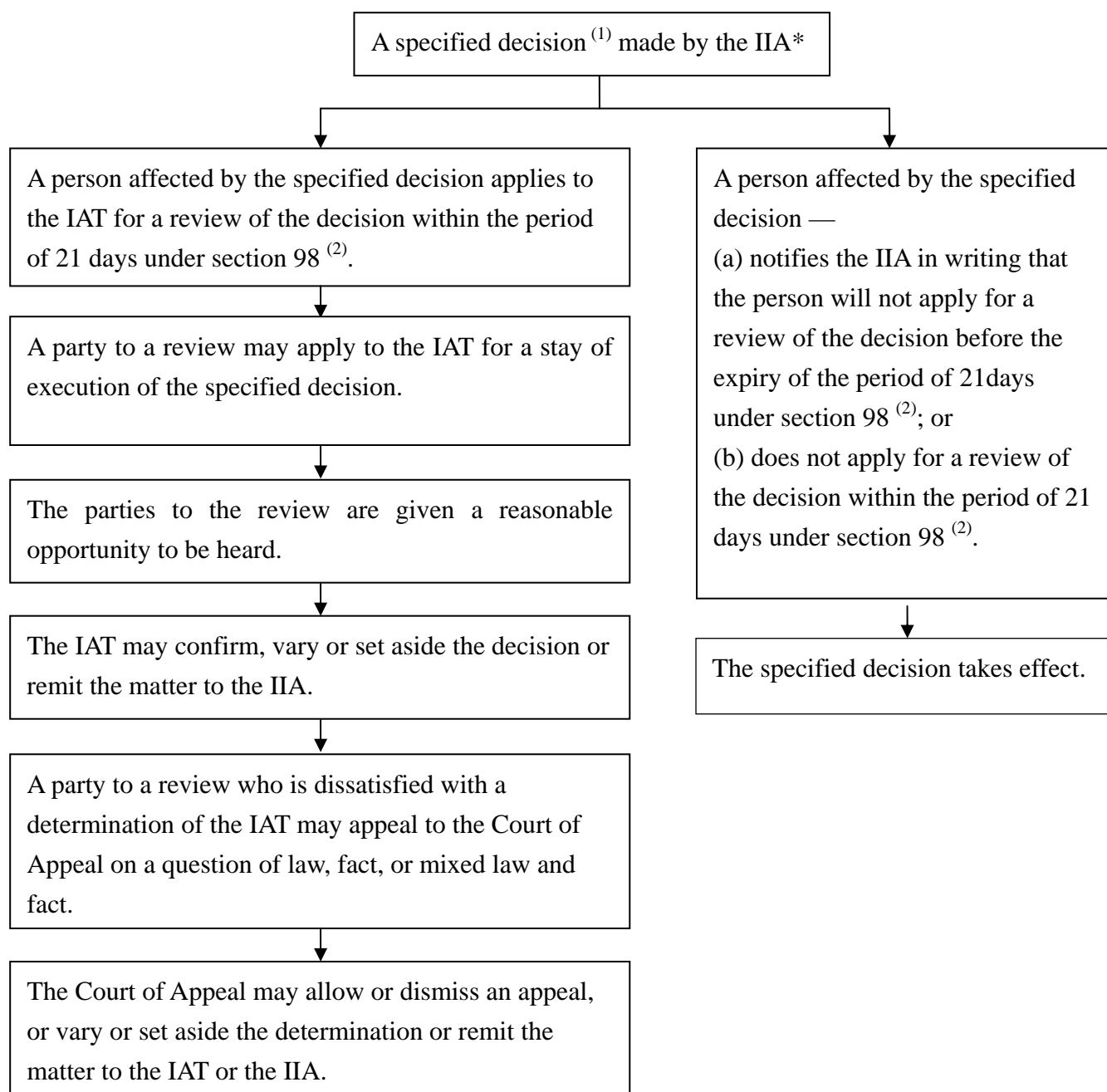
Specified Decisions

(In relation to insurance intermediaries under Part 2 of new Schedule 9)

As provided in Part 2 of new Schedule 9, specified decisions made in relation to insurance intermediaries are as follows –

- (a) Refusal to grant an insurance agency licence, an individual insurance agent licence, a technical representative (agent) licence, an insurance broker company licence, a technical representative (broker) licence;
- (b) Refusal to approve a responsible officer of a licensed insurance agency or a licensed insurance broker company;
- (c) Imposition, amendment or revocation of a condition in relation to a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC or approval granted under section 64ZE or 64ZF;
- (d) Revocation of the approval granted under section 64ZE or 64ZF;
- (e) Refusal to renew a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC;
- (f) Imposition, amendment or revocation of a condition in relation to a renewal of a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC;
- (g) Exercise of power to take disciplinary action;
- (h) Revocation or suspension of a licence or approval that is regarded as having been granted under Part 4 of Schedule 11;
- (i) Imposition, amendment or revocation of a condition in relation to a licence or approval that is regarded as having been granted under Part 4 of Schedule 11; and
- (j) Exercise of power to take disciplinary action against, or imposition of a penalty or sanction on, a specified person as defined by section 107 or 111 of Schedule 11.

Appeal mechanism for a specified decision made by the IIA



Notes:

- (1) Part 1 and Part 2 of new Schedule 9 set out specified decisions made in relation to insurers and insurance intermediaries respectively.
- (2) Under new section 98, a person affected by a specified decision may apply to the IAT for a review of the decision within the period ending 21 days after the notice informing the person of the decision has been served.
- * Before exercising its disciplinary powers on an insurer or an insurance intermediary (which is a specified decision), the IIA must give the insurer or insurance intermediary concerned a reasonable opportunity to be heard.

Transitional arrangements for insurance intermediaries

- Pre-existing insurance intermediaries validly registered with the 3 Self-regulatory Organisations (SROs) before IIA's establishment will be deemed to be licensed by IIA for 3 years starting from the commencement of the statutory licensing regime

Transitional arrangements relating to Insurance Agents Registration Board (IARB) registrants

■ Normal situation:

Section 5 of
Schedule 11

Intermediaries
validly registered
with IARB

Commencement date ("CD")

Transitional
period
expires

— Deemed licence period

Transitional arrangements relating to IARB registrants (con't)

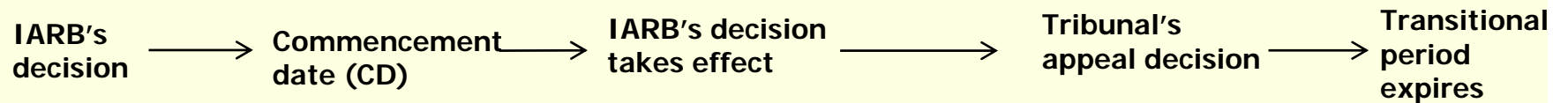
- Before commencement date, IARB made a decision that the registration be revoked:
Scenario 1 – On commencement date, decision not yet taken effect

Sections 6 & 7 of Schedule 11

Section 9 of Schedule 11

Section 10 of Schedule 11

Section 11 of Schedule 11



① not appeal + not apply for stay



② appeal (before or after CD) + not apply for stay or apply for stay (before or after CD) but stay application is rejected



IARB's decision is reversed on appeal

③ appeal (before or after CD) + apply for stay after decision takes effect & stay application granted



stay

IARB's decision is reversed on appeal

★

IARB's decision is confirmed on appeal

④ appeal (before or after CD) + apply for stay (before or after CD) before decision takes effect & stay application granted

stay

IARB's decision is reversed on appeal

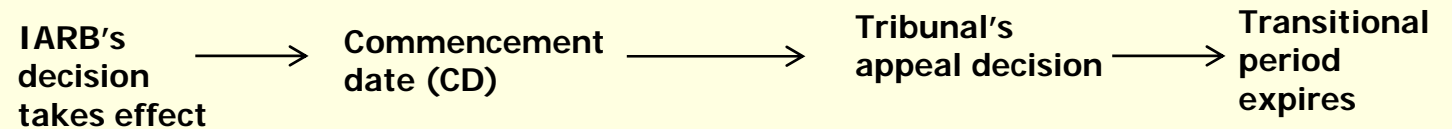
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stay

IARB's decision is confirmed on appeal

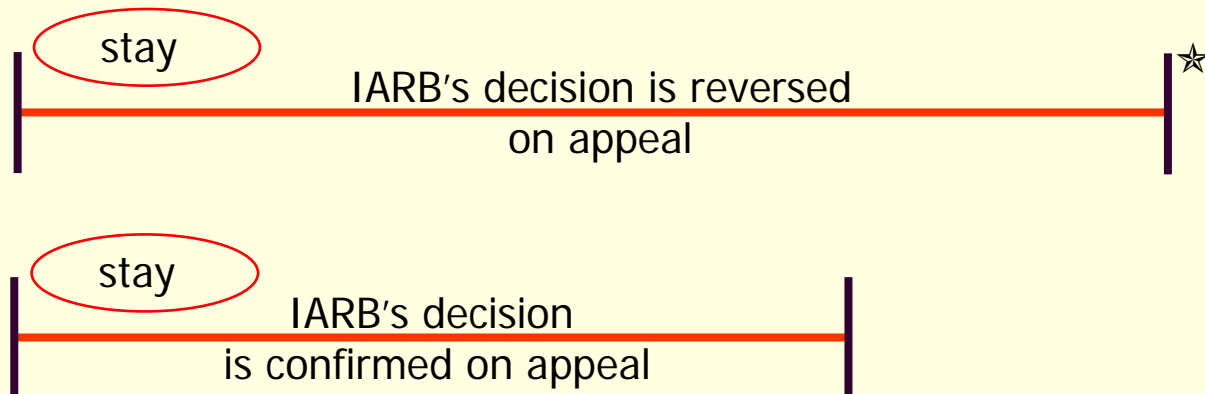
Transitional arrangements relating to IARB registrants (con't)

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



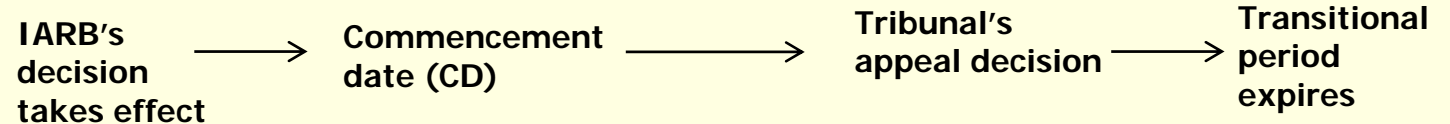
Sections 12 & 13 of Schedule 11

⑤ appeal not disposed of + stay application granted before CD



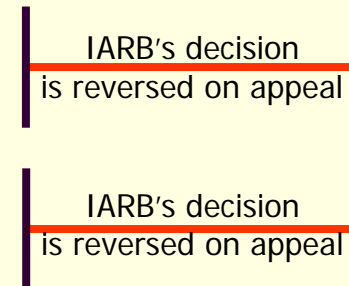
Transitional arrangements relating to IARB registrants (con't)

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



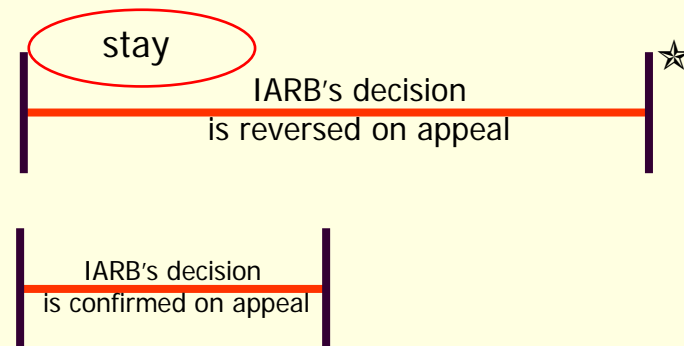
Section 15 of Schedule 11

- ⑥ appeal + apply for stay + stay application rejected
- ⑦ appeal but not apply for stay



Section 16 of Schedule 11

- ⑧ appeal + apply for stay + stay application granted after CD



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

Transitional arrangements relating to Hong Kong Confederation of Insurance Brokers (CIB)/Professional Insurance Brokers Association (PIBA) registrants

■ Normal situation:

Commencement date (CD)

Transitional period expires

Section 62 of
Schedule 11

Intermediaries
validly registered
with CIB/PIBA

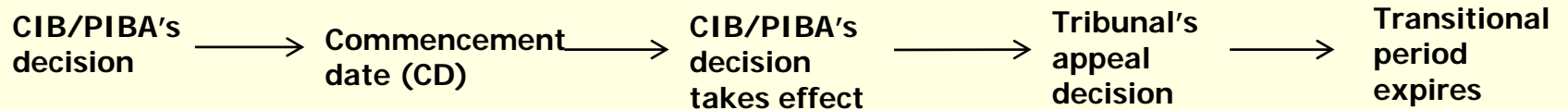


— Deemed licence period

Transitional arrangements relating to CIB/PIBA registrants (con't)

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

On commencement date, decision not yet taken effect



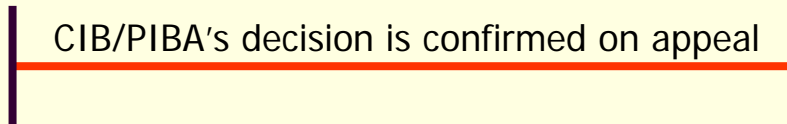
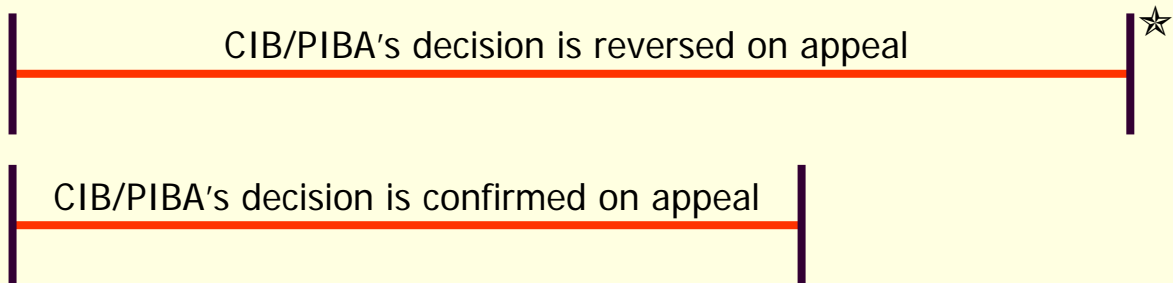
① not appeal

Section 63(2)(a)
of Schedule 11



② appeal (before or after CD)

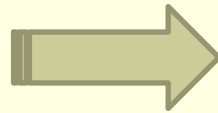
Section 63(2)(b)
of Schedule 11



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

Transitional arrangements for insurance intermediaries

Pre-IIA
complaint and
disciplinary
cases

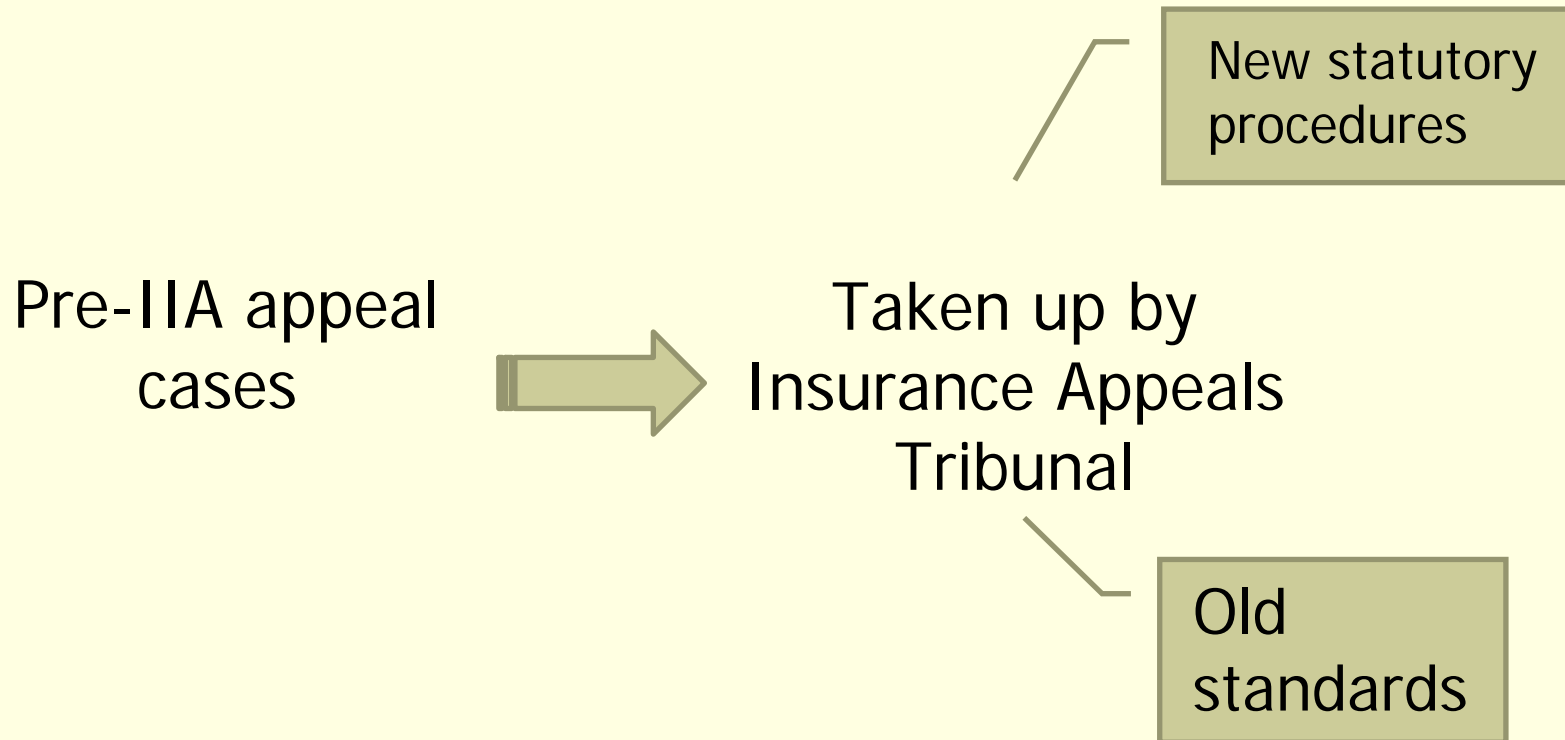


Taken up
by IIA

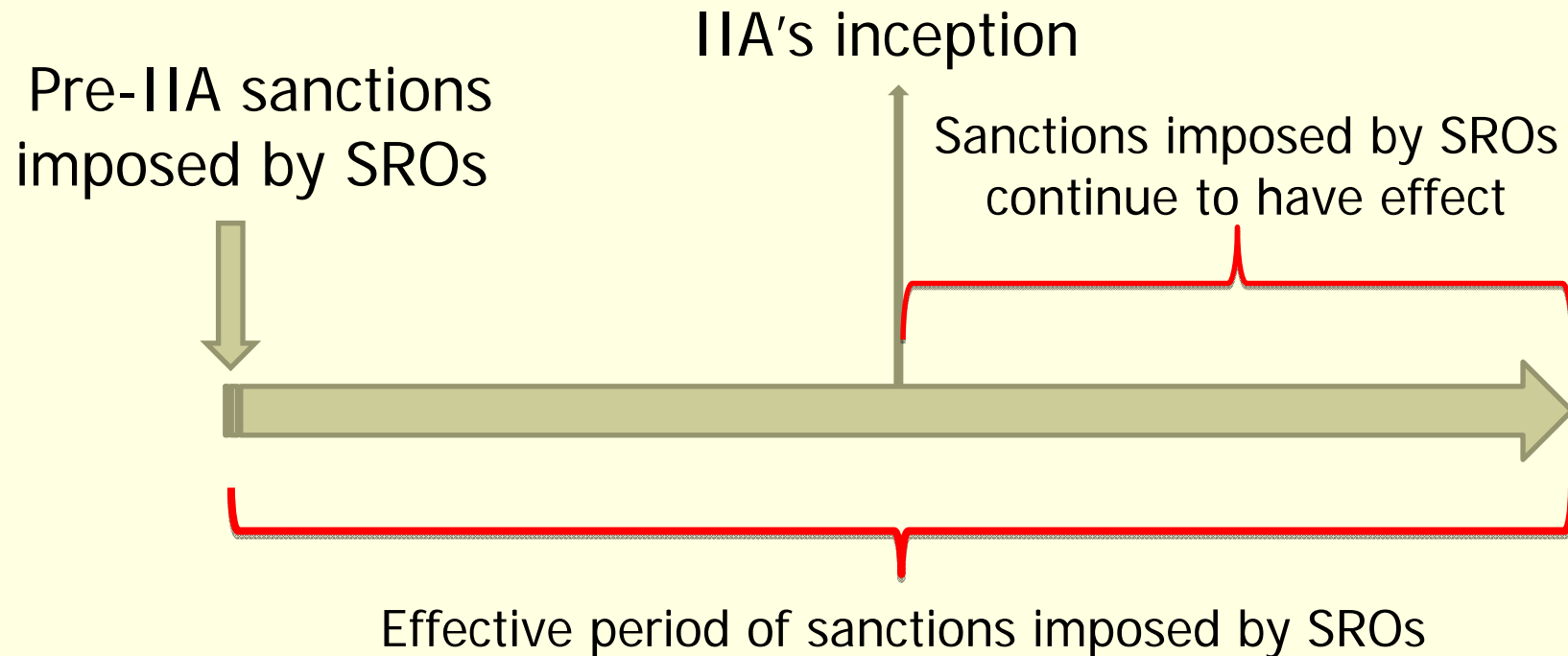
New statutory
powers and
procedures

Old standards
and sanctions
adopted by SROs

Transitional arrangements for insurance intermediaries (con't)



Transitional arrangements for insurance intermediaries (con't)



(Source : LC Paper No. CB(1)842/14-15(01))