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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 Bills 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 Schedule 11, 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. A full set of the CSAs to be moved by the Administration is in **Appendix VIII**²². The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate on the Bill

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.

Advice sought

136. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
 18 June 2015

²² Due to the voluminous content of Appendix VIII, it is provided in softcopy only.

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
Hon YIU Si-wing
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 ¹	Paper(s) on CSAs
<p>1. Constitution of the independent Insurance Authority ("IIA")</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. Enhancement of existing regulatory powers on insurers</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. New regulatory powers on insurers</p> <ul style="list-style-type: none"> • inspection and investigation powers² • 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))

¹ 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))

² 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 ¹	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 ¹	Paper(s) on CSAs
<p>7. Insurance Appeals Tribunal</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. Miscellaneous matters, consequential and technical amendments</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.

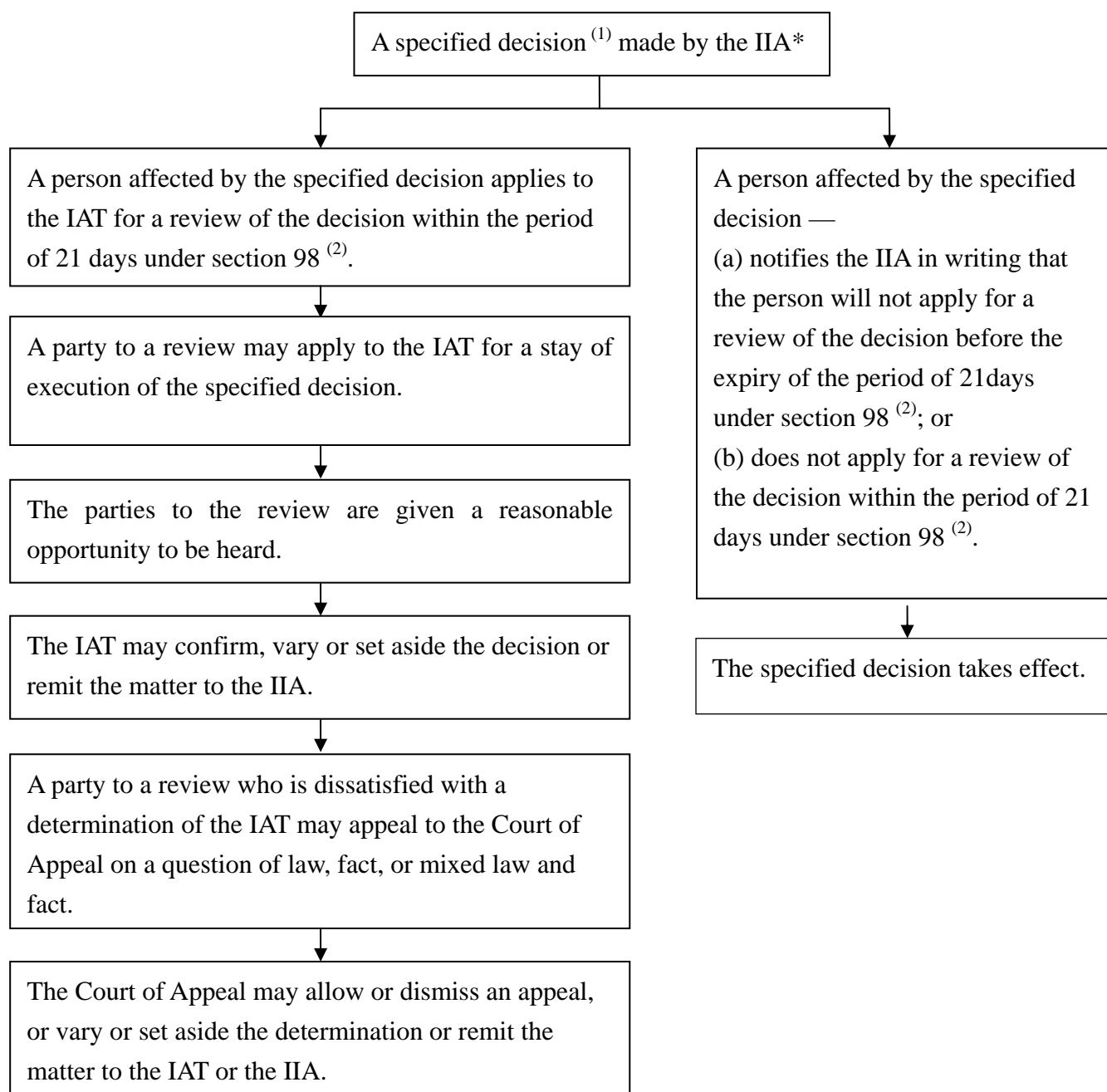
Specified Decisions

(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)

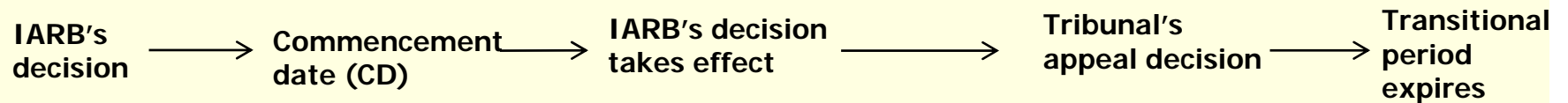
- Before commencement date, IARB made a decision that the registration be revoked:
Scenario 1 – On commencement date, decision not yet taken effect

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

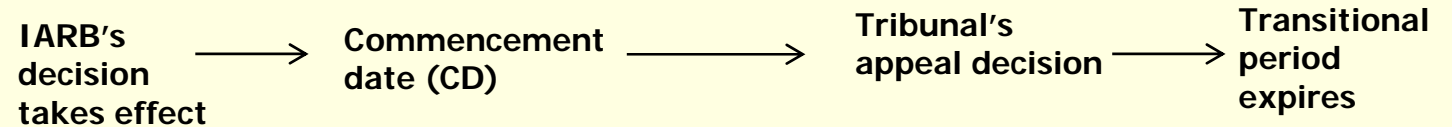
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stay

IARB's decision is confirmed on appeal

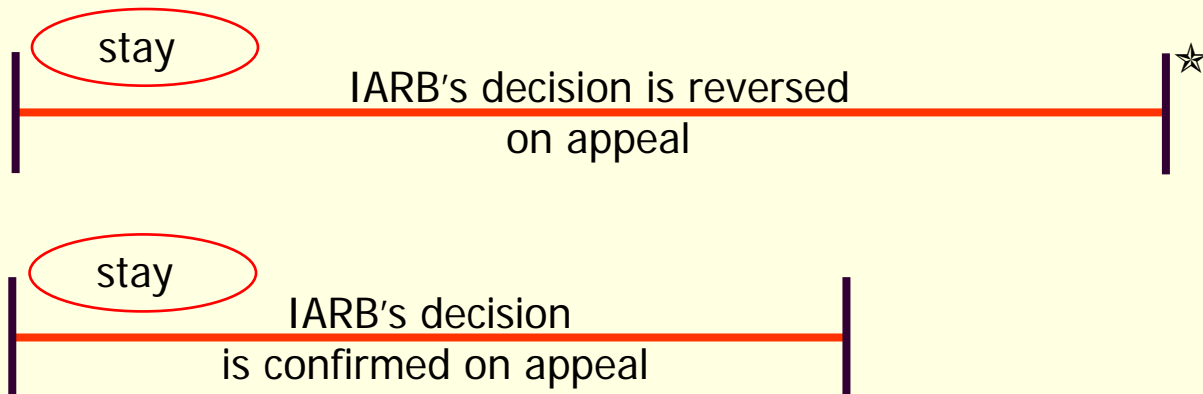
Transitional arrangements relating to IARB registrants (con't)

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



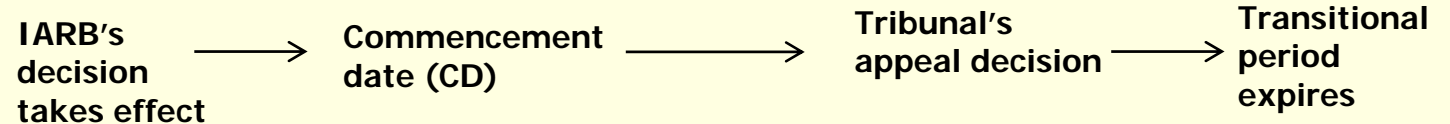
Sections 12 & 13 of Schedule 11

⑤ appeal not disposed of + stay application granted before CD



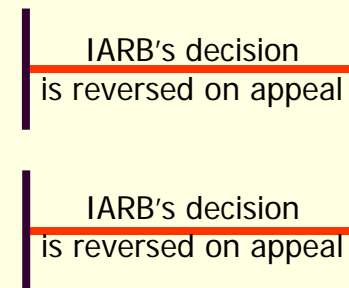
Transitional arrangements relating to IARB registrants (con't)

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



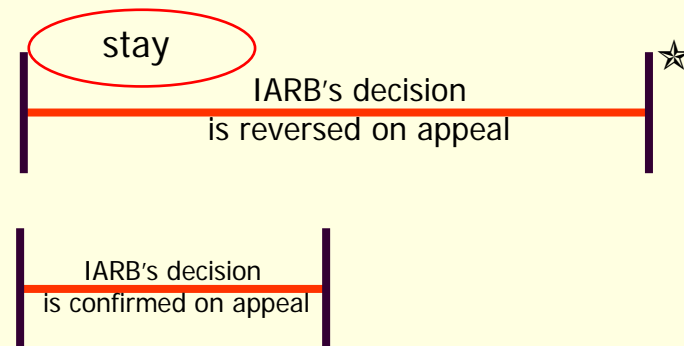
Section 15 of Schedule 11

- 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, 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

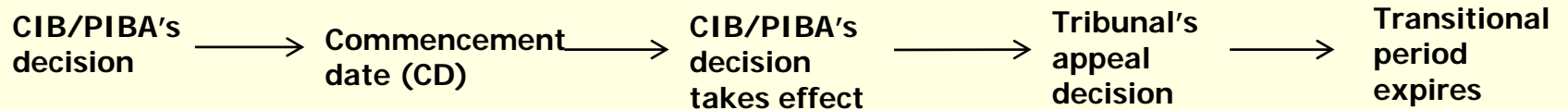


— Deemed licence period

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



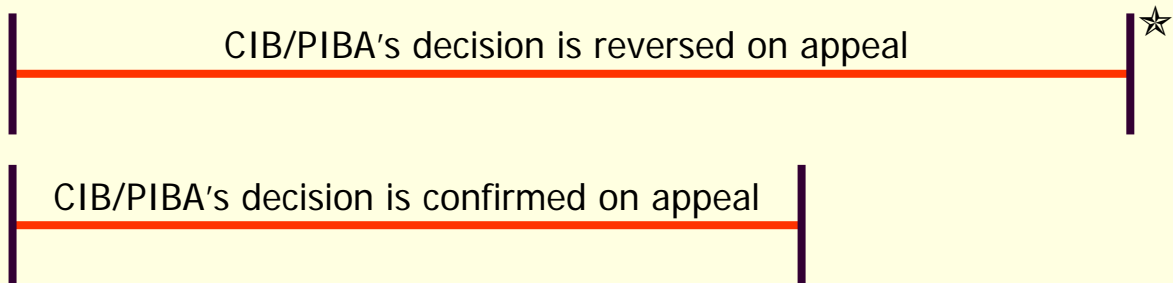
① not appeal

Section 63(2)(a)
of Schedule 11



② appeal (before or after CD)

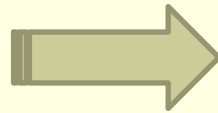
Section 63(2)(b)
of Schedule 11



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

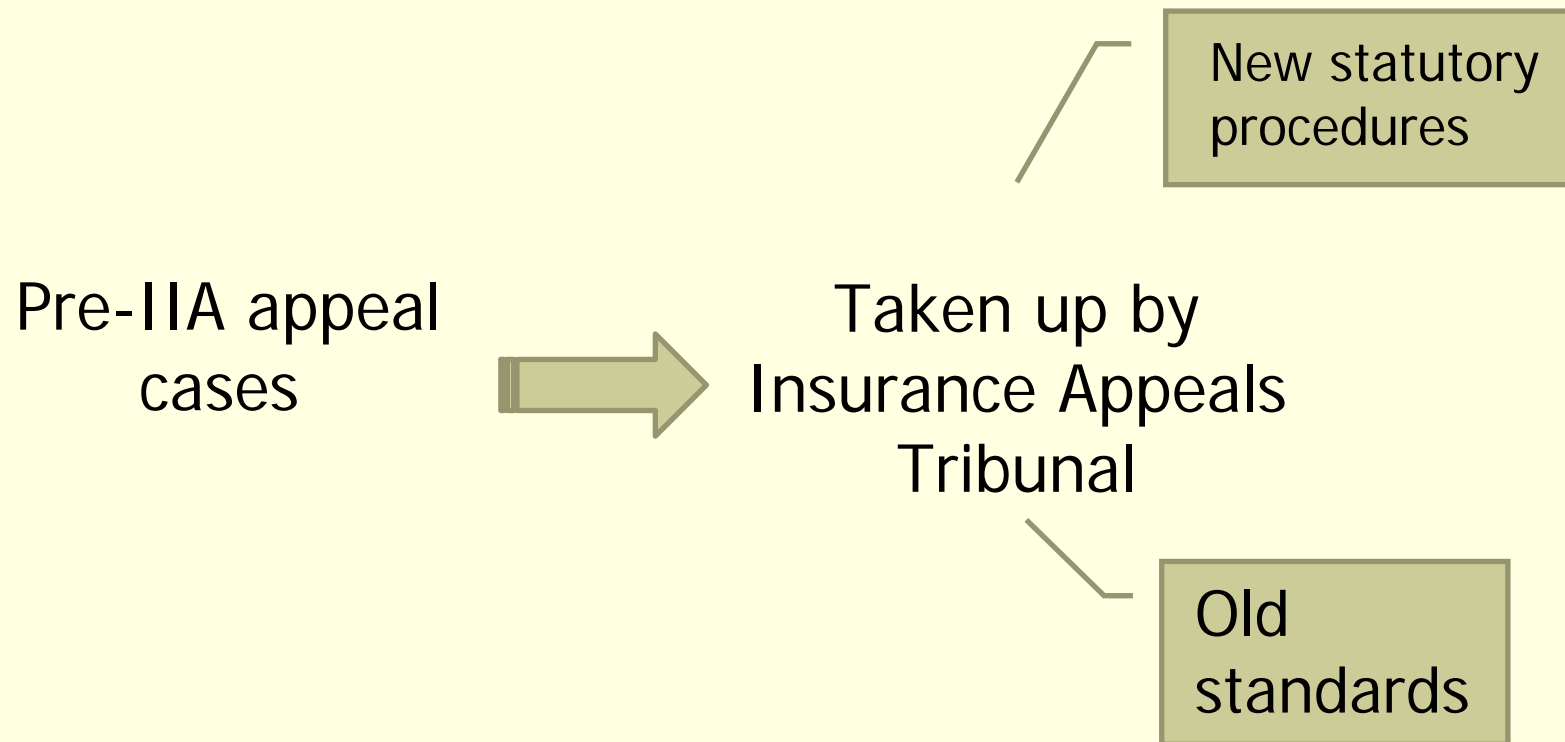


Taken up
by IIA

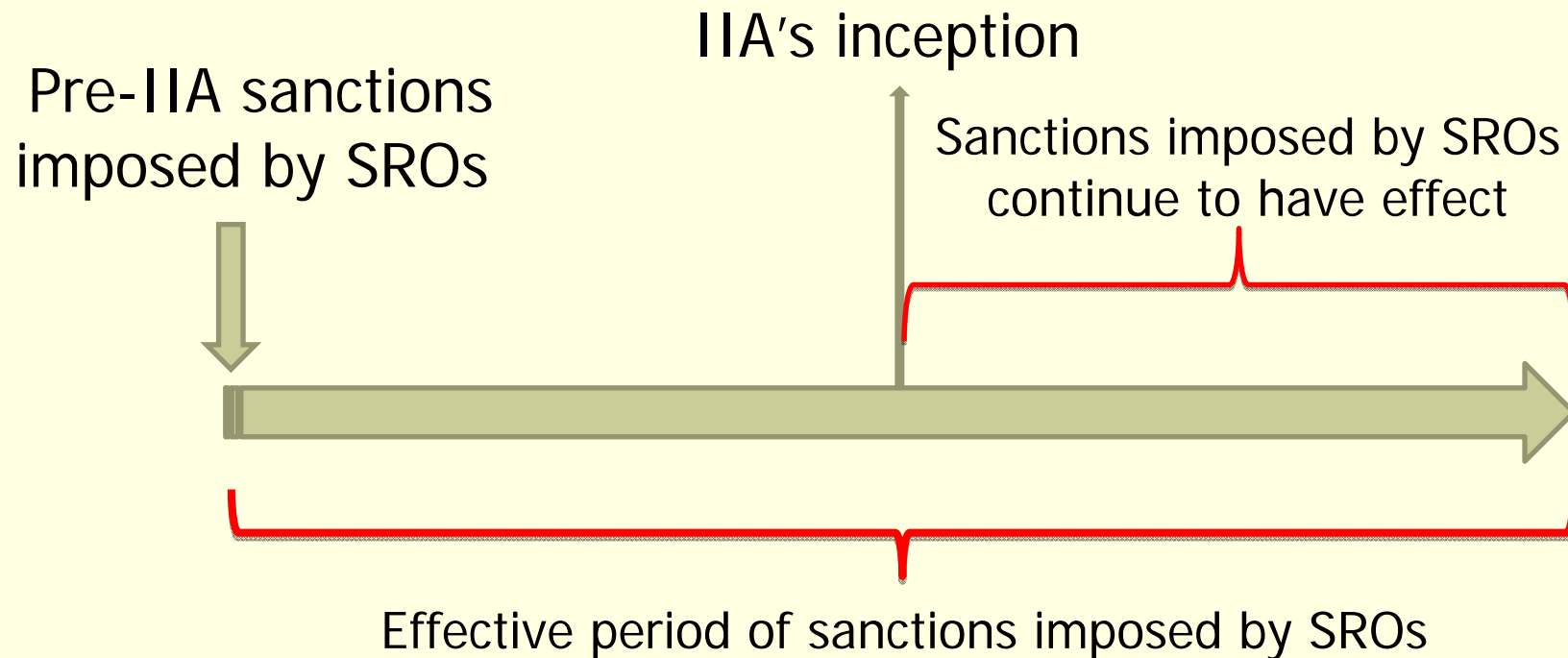
New statutory
powers and
procedures

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))

Part 2**Amendments to Insurance Companies Ordinance (Cap. 41)****3. Long title substituted**

The long title—

Repeal the long title**Substitute**

“To regulate the carrying on of insurance business; to establish the Insurance Authority (as a body corporate) to regulate the insurance industry for protecting policy holders and potential policy holders and for promoting the stable development of the insurance industry; and to provide for related matters.”.

4. Section 1 amended (short title)

Section 1—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

5. Section 2 amended (interpretation)(1) Section 2(1), definition of *Advisor*—**Repeal**

“an insurer”

Substitute

“an authorized insurer”.

(2) Section 2(1), definition of *authorized*—**Repeal**

“or deemed under section 61(1) or (2) to be so authorized”

Substitute

“or deemed to be so authorized under section 61(1) or (2) of the pre-amended Ordinance having continuing effect by the operation of section 2(7) of Schedule 11”.

(3) Section 2(1)—

Repeal the definition of *client monies***Substitute**

“*client monies* (客戶款項), in relation to a licensed insurance broker company, means the monies of the company specified in section 71(2);”.

(4) Section 2(1), ~~definition of *controller*, before “has the meaning”~~—**~~Add~~Repeal the definition of *controller*****~~Substitute~~**

~~“*controller* (控權人), except in Parts X and XI, see section 9;”.~~

(5) Section 2(1), definition of *former accountant*—**Repeal**

“an insurer”

Substitute

“an authorized insurer”.

(6) Section 2(1), definition of *former actuary*—**Repeal**

- (i) a licensed insurance broker company;
- (ii) a former licensed insurance broker company;
or
- (iii) a person who was formerly an authorized insurance broker within the meaning of the pre-amended Ordinance;”.

~~(12A) Section 2(1), Chinese text, definition of 財政年度~~

Repeal

“損益表” (wherever appearing)

Substitute

“損益帳”.

- (13) Section 2(1)—
- (a) definition of *appointed insurance agent*;
 - (b) definition of *authorized insurance broker*;
 - (c) definition of *code of practice*;
 - (d) definition of *insurance agent*;
 - (e) definition of *Insurance Authority*;
 - (f) definition of *insurance broker*;
 - (g) definition of *insurance intermediary*;
 - (h) definition of *working day*—

Repeal the definitions.

- (14) Section 2(1)—

Add in alphabetical order

“Amendment Ordinance (《修訂條例》) means the Insurance Companies (Amendment) Ordinance 2014 (of 2014);

Authority (保監局) means the body corporate established under section 4AAA(1);

authorized institution (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

client account (客戶帳戶), in relation to a licensed insurance broker company, means the account maintained by the company as referred to in section 71(1)(b) for holding client monies;

former authority (前監督) means the Insurance Authority appointed under section 4 of the pre-amended Ordinance;

key person in control functions (管控要員)—see section 13AE(12);

licensed individual insurance agent (持牌個人保險代理) means an individual who is granted a licence under section 64W;

licensed insurance agency (持牌保險代理機構) means a person who is granted a licence under section 64U;

licensed insurance agent (持牌保險代理人) means—

- (a) a licensed insurance agency;
- (b) a licensed individual insurance agent; or
- (c) a licensed technical representative (agent);

licensed insurance broker (持牌保險經紀) means—

- (a) a licensed insurance broker company; or
- (b) a licensed technical representative (broker);

licensed insurance broker company (持牌保險經紀公司) means a company which is granted a licence under section 64ZA;

licensed insurance intermediary (持牌保險中介人) means—

- (a) a licensed insurance agent; or
- (b) a licensed insurance broker;

licensed technical representative (agent) (持牌業務代表(代理人)) means an individual who is granted a licence under section 64Y;

licensed technical representative (broker) (持牌業務代表(經紀)) means an individual who is granted a licence under section 64ZC;

Mandatory Provident Fund Schemes Authority (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

material decision (關鍵決定)—see section 3A(b);

Monetary Authority (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date of section 10 of the Amendment Ordinance;

prescribed fee (訂明費用), in relation to any matter, means the fee payable under this Ordinance in relation to the matter and prescribed by a regulation made under section 126;

public (公眾) means the public of Hong Kong, and includes any class of that public;

regulated activity (受規管活動)—see section 3A(a);

regulated advice (受規管意見)—see section 3A(c);

responsible officer (負責人)—

- (a) in relation to a licensed insurance agency, means an individual who is approved by the Authority as a responsible officer of the agency under section 64ZE; or
- (b) in relation to a licensed insurance broker company, means an individual who is approved by the Authority as a responsible officer of the company under section 64ZF;

Securities and Futures Commission (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

Tribunal (審裁處) means the tribunal established under section 95.”.

(15) After section 2(2)—

Add

“(2A) In this Ordinance—

- (a) a reference to a function includes a power and a duty; and
- (b) a reference to the performance of a function includes the exercise of a power and the discharge of a duty.”.

~~(15A) Section 2(3)(a), Chinese text, after “處；”—~~

Add

“或”.

(16) Section 2(7)(a)—

Repeal

“carries on”

Substitute

“is authorized to carry on”.

- (b) render defective any legal proceedings by or against the Authority.
- (5) On and after the expiry of the period specified in subsection (2), any legal proceedings that could have been commenced or continued against the Authority by its corporate name of “Provisional Insurance Authority” may be commenced or continued against the Authority by its corporate name of “Insurance Authority”.
- (6) During the period specified in subsection (2), section 53A(1) applies to the Authority and a person who is or has been a member, employee, agent, consultant or advisor of the Authority as if after section 53A(1AA)(b), the following were added—
- “(baa) the Authority;
- (baab) a person who is or has been a member, employee, agent, consultant or advisor of the Authority;”.

10. Section 4 amended (Insurance Authority)

Section 4—

Repeal subsection (1).**11. Section 4AA added**

After section 4—

Add**“4AA. Composition of Authority**

- (1) The Authority consists of the following members who are to be appointed by the Chief Executive—
- (a) a chairperson, who is a non-executive director of the Authority;

- (b) a chief executive officer, who is an executive director of the Authority; **and**
- (c) not less than 6 other executive or non-executive directors of the Authority.
- (2) The number of non-executive directors must exceed the number of executive directors.
- (3) Of the non-executive directors—
- (a) at least 2 are to be appointed from among persons who, because of their knowledge of and experience in the insurance industry, appear to the Chief Executive to be suitable for appointment; and
- (b) the others are to be appointed from among persons who, either because of their knowledge in actuarial science, accountancy, law or consumer affairs, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for appointment.
- (4) The Authority may perform its functions despite a vacancy in its membership.
- (5) If this section ceases to be complied with, the Chief Executive must as soon as practicable make the necessary appointment to ensure that the requirements of this section are complied with.
- (6) Schedule 1B contains provisions on the constitution and proceedings of, and other matters relating to, the Authority.”.

12. Section 4A amended (functions of Insurance Authority)

- (1) Section 4A(2)—

Repeal paragraph (a)**Substitute**

- (b) unless there is evidence to the contrary, on being admitted in evidence under paragraph (a), the document—
- (i) is presumed to be certified by an authorized officer of the Authority;
 - (ii) is presumed to be a true copy of the entry or extract; and
 - (iii) is proof of its contents.
- (5) The Authority must, as far as practicable, make the register available to any person for inspection free of charge on the Internet.”.

17. Section 7 amended (application for authorization to carry on insurance business)

Section 7(2), English text—

Repeal

“the Second Schedule”

Substitute

“Schedule 2”.

18. Section 8 amended (authorization)

- (1) Section 8(3)(a)(ii)(B)—

Repeal

“regulations made under section 59(1)(aa)”

Substitute

“rules made under section 127(1)(b)”.

- (2) Section 8(3)(a)(iii)(A)(II), English text—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

- (3) Section 8(3)(a)(iii)(B)—

Repeal

“regulations made under section 59(1)(aa)”

Substitute

“rules made under section 127(1)(b)”.

- (4) Section 8(4)(b)—

Repeal

“regulations made under section 59(1)(a)”

Substitute

“rules made under section 127(1)(a)”.

- (5) Section 8(4)(b)—

Repeal

“such regulations”

Substitute

“such rules”.

- (6) Section 8(4)(c)—

Repeal

“such regulations”

Substitute

“such rules”.

18A. Section 9 amended (meaning of “controller” (控權人) in section 8(2))

- (1) Section 9, heading—**

Repeal

“in section 8(2)”.

(2) Section 9—

Repeal subsection (1)

Substitute

“(1) Except as otherwise defined in section 13A(12), 13B(1), 64F or 79(1), **controller** (控權人), in relation to an applicable company—

(a) means—

(i) a managing director of the applicable company or of a body corporate of which the applicable company is a subsidiary;

(ii) a chief executive of the applicable company or of a body corporate, being an insurer, of which the applicable company is a subsidiary;
or

(iii) a person—

(A) in accordance with whose directions or instructions the directors of the applicable company or of a body corporate of which the applicable company is a subsidiary (or any of them) are accustomed to act; or

(B) who, alone or with an associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at a general meeting of the applicable company or of a body corporate of which the applicable company is a subsidiary; but

(b) does not include a Manager.”.

(3) Section 9(2)—

Repeal

“applicant” (wherever appearing)

Substitute

“applicable company”.

(4) Section 9(2), English text—

Repeal

“it”

Substitute

“the applicable company”.

(5) Section 9(3)—

Repeal

“applicant” (wherever appearing)

Substitute

“applicable company”.

(6) After section 9(4)—

Add

“(5) In this section—

applicable company (適用公司) means—

(a) a company making an application under section 7;

or

(b) an authorized insurer.”.

19. Section 10 amended (meaning of *relevant amount* (有關數額) in section 8(3))

(1) Section 10(2), English text—

Repeal

22. Section 13 amended (fee payable upon authorization and annually thereafter)

Section 13(2)—

Repeal

“deemed by virtue of section 61(1)”

Substitute

“deemed under section 61(1) of the pre-amended Ordinance having continuing effect by the operation of section 2(7) of Schedule 11”.

23. Section 13A substituted

Section 13A—

Repeal the section**Substitute****“13A. Approval of certain controllers of authorized insurers**

- (1) An authorized insurer must not appoint an individual as a controller of the insurer unless the Authority has approved the appointment under subsection (2).
- (2) The Authority may approve the appointment of the individual as a controller of the insurer—
 - (a) on an application made by the authorized insurer in the manner specified by the Authority; and
 - (b) on payment of a prescribed fee.
- (3) An authorized insurer which applies under subsection (2) must provide the Authority with—
 - (a) the information specified in Schedule 4;
 - (b) a statement signed by the individual proposed to be appointed as a controller of the insurer that the

application is made with the individual’s knowledge and consent; and

- (c) any other information that the Authority reasonably requires to enable it to consider the application.
- (4) The Authority must not approve the appointment of an individual as a controller of the authorized insurer unless it is satisfied that the individual is a fit and proper person to be so appointed.
- (5) The Authority must give the authorized insurer and the individual a notice in writing of the result of the application made under subsection (2).
- (6) If the application is rejected, the notice must include a statement of the reasons for the rejection.
- (7) Subject to subsection (9), the Authority may, by serving a notice in writing on an authorized insurer and an individual, revoke the approval of the appointment of the individual as a controller of the insurer if it appears to the Authority that the individual is not, or is no longer, a fit and proper person to be so appointed.
- (8) The authorized insurer must, by the date specified in the notice under subsection (7), terminate the appointment of the individual as a controller of the insurer.
- (9) Before serving the notice under subsection (7), the Authority must serve on the authorized insurer and the individual a preliminary written notice stating—
 - (a) that the Authority is considering ~~to serve the~~ service on the insurer of a notice under that subsection because it appears to the Authority that the individual is not, or is no longer, a fit and proper person to be appointed as a controller of the insurer; and

- (b) that the insurer or the individual may, within 1 month after the date of service of the preliminary notice—
- (i) make written representations to the Authority; and
 - (ii) if the insurer or the individual so requests, make oral representations to a person appointed for the purpose by the Authority.
- (10) If representations are made under subsection (9), the Authority must take them into consideration before serving a notice under subsection (7).
- (11) An authorized insurer which contravenes subsection (1) or (8) commits an offence and ~~is liable—~~
- ~~(a) is liable to a fine of \$200,000; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.~~
- (12) In this section—
- controller** (控權人)—
- ~~(a) in relation to an authorized insurer which is incorporated in Hong Kong means an individual who is a managing director or chief executive of the insurer under section 9; or~~
 - ~~(b) in relation to an authorized insurer which is incorporated outside Hong Kong means an individual who is—~~
 - ~~(i) a managing director of the insurer by virtue of section 9(3)(a); or~~
 - ~~(ii) a chief executive of the insurer by virtue of section 9(3)(b).”.~~

~~(a) means—~~

~~(i) in relation to an authorized insurer which is incorporated in Hong Kong—an individual who is a managing director or chief executive of the insurer; or~~

~~(ii) in relation to an authorized insurer which is incorporated outside Hong Kong—an individual who is—~~

~~(A) a managing director of the insurer in respect of so much of its insurance business as is carried on within Hong Kong; or~~

~~(B) a chief executive of the insurer who, alone or jointly with others, is responsible (whether or not under the immediate authority of the directors) for the conduct of the whole of the insurance business carried on by the insurer within Hong Kong, not being an individual who—~~

~~(I) is also responsible for the conduct of insurance business carried on by the insurer elsewhere; and~~

~~(II) has a subordinate who is responsible for the whole of the insurance business carried on by the insurer within Hong Kong; but~~

~~(b) does not include a Manager.”.~~

24. Section 13AB added

After section 13A—

Add**“13AB. Restrictions on acting as controllers of authorized insurers in contravention of section 13A**

- (1) An individual appointed as a controller of an authorized insurer in contravention of section 13A(1) must not act or continue to act as such a controller.
- (2) An individual appointed as a controller of an authorized insurer must not continue to act as such a controller after the date specified in the notice served on the individual under section 13A(7).
- (3) An individual who contravenes subsection (1) or (2) commits an offence and is liable—
 - (a) ~~is liable~~ to a fine of \$200,000 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.”.

25. Sections 13AC to 13AH added

Before section 13B—

Add**“13AC. Approval of directors of certain authorized insurers**

- (1) An authorized insurer which is incorporated in Hong Kong must not appoint a person as a director of the insurer unless the Authority has approved the appointment under subsection (2).
- (2) The Authority may approve the appointment of the person as a director of the insurer—

- (a) on an application made by the authorized insurer in the manner specified by the Authority; and
- (b) on payment of a prescribed fee.
- (3) An authorized insurer which applies under subsection (2) must provide the Authority with—
 - (a) the information specified in Schedule 4;
 - (b) a statement signed by the person proposed to be appointed as a director of the insurer that the application is made with the person’s knowledge and consent; and
 - (c) any other information that the Authority reasonably requires to enable it to consider the application.
- (4) The Authority must not approve the appointment of a person as a director of the authorized insurer unless it is satisfied that the person is a fit and proper person to be so appointed.
- (5) The Authority must give the authorized insurer and the person a notice in writing of the result of the application made under subsection (2).
- (6) If the application is rejected, the notice must include a statement of the reasons for the rejection.
- (7) Subject to subsection (9), the Authority may, by serving a notice in writing on an authorized insurer and a person, revoke the approval of the appointment of the person as a director of the insurer if it appears to the Authority that the person is not, or is no longer, a fit and proper person to be so appointed.
- (8) The authorized insurer must, by the date specified in the notice under subsection (7), terminate the appointment of the person as a director of the insurer.

- (9) Before serving the notice under subsection (7), the Authority must serve on the authorized insurer and the person a preliminary written notice stating—
- (a) that the Authority is considering ~~to serve the service~~ on the insurer of a notice under that subsection because it appears to the Authority that the person is not, or is no longer, a fit and proper person to be appointed as a director of the insurer; and
 - (b) that the insurer or the person may, within 1 month after the date of service of the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the insurer or the person so requests, make oral representations to a person appointed for the purpose by the Authority.
- (10) If representations are made under subsection (9), the Authority must take them into consideration before serving a notice under subsection (7).
- (11) An authorized insurer which contravenes subsection (1) or (8) commits an offence and ~~is liable—~~
- ~~(a) is liable to a fine of \$200,000; and~~
 - ~~(b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.~~

13AD. Restrictions on acting as directors of authorized insurers in contravention of section 13AC

- (1) A person appointed as a director of an authorized insurer in contravention of section 13AC(1) must not act or continue to act as such a director.

- (2) A person appointed as a director of an authorized insurer must not continue to act as such a director after the date specified in the notice served on the person under section 13AC(7).
- (3) A person who contravenes subsection (1) or (2) commits an offence and ~~is liable—~~
- (a) ~~is liable~~ to a fine of \$200,000 and, in the case of an individual, also to imprisonment for 2 years; and
 - (b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

13AE. Approval of key persons in control functions of certain authorized insurers

- (1) An authorized insurer which is not a captive insurer must not appoint an individual as a key person in control functions of the insurer unless the Authority has approved the appointment under subsection (2).
- (2) The Authority may approve the appointment of the individual as a key person in control functions of the insurer—
- (a) on an application made by the authorized insurer in the manner specified by the Authority; and
 - (b) on payment of a prescribed fee.
- (3) An authorized insurer which applies under subsection (2) must provide the Authority with—
- (a) the information specified in Schedule 4;
 - (b) a statement signed by the individual proposed to be appointed as a key person in control functions of the insurer that the application is made with the individual's knowledge and consent; and

- (c) any other information that the Authority reasonably requires to enable it to consider the application.
- (4) The Authority must not approve the appointment of an individual as a key person in control functions of the authorized insurer unless it is satisfied that the individual is a fit and proper person to be so appointed.
- (5) The Authority must give the authorized insurer and the individual a notice in writing of the result of the application made under subsection (2).
- (6) If the application is rejected, the notice must include a statement of the reasons for the rejection.
- (7) Subject to subsection (9), the Authority may, by serving a notice in writing on an authorized insurer and an individual, revoke the approval of the appointment of the individual as a key person in control functions of the insurer if it appears to the Authority that the individual is not, or is no longer, a fit and proper person to be so appointed.
- (8) The authorized insurer must, by the date specified in the notice under subsection (7), terminate the appointment of the individual as a key person in control functions of the insurer.
- (9) Before serving the notice under subsection (7), the Authority must serve on the authorized insurer and the individual a preliminary written notice stating—
- (a) that the Authority is considering ~~to serve the~~ service on the insurer of a notice under that subsection because it appears to the Authority that the individual is not, or is no longer, a fit and proper person to be appointed as a key person in control functions of the insurer; and

- (b) that the insurer or the individual may, within 1 month after the date of service of the preliminary notice—
- (i) make written representations to the Authority; and
- (ii) if the insurer or the individual so requests, make oral representations to a person appointed for the purpose by the Authority.
- (10) If representations are made under subsection (9), the Authority must take them into consideration before serving a notice under subsection (7).
- (11) An authorized insurer which contravenes subsection (1) or (8) commits an offence and is liable—
- ~~(a) is liable~~ to a fine of \$200,000; and
- ~~(b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.~~
- (12) In this section—
- control function** (管控職能), in relation to an authorized insurer, means any of the following functions that is likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business carried on by the insurer—
- ~~(ii) likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business carried on by the insurer;~~
- (a) risk management function, which is a function to establish the strategies, policies and procedures to manage different types of key risks of the insurer;

- (b) financial control function, which is a function to oversee all financial matters (including investments, accounting and financial reporting) of the insurer;
- (c) compliance function, which is a function to establish and formulate the standards, policies and procedures to ensure the compliance with legal and regulatory requirements that are applicable to the insurer;
- (d) internal audit function, which is a function to establish and implement an audit plan to examine and evaluate the adequacy and effectiveness of the controls to manage risks of the insurer;
- (e) actuarial function, which is a function to evaluate and monitor—
- (i) the technical provisions, premium and pricing strategies of the insurer;
- (ii) the reserving and investment policies and reinsurance arrangements of the insurer; and
- (iii) the policies and controls in respect of the insurer's vulnerability to fluctuations in risk exposures and distribution policies;
- (af) intermediary management function, which, ~~in relation to for~~ an authorized insurer ~~which that carries on insurance business enters into contracts of insurance~~ through licensed insurance intermediaries or accepts referral of insurance business from licensed insurance intermediaries, is a function—
- (i) to establish and maintain internal control measures for—

- (Ai) administering the licensed insurance agencies and licensed individual insurance agents appointed by the insurer in relation to the regulated activities carried on by them;
- (Bii) monitoring the compliance with this Ordinance by the licensed insurance agencies and licensed individual insurance agents appointed by the insurer; and
- (Ciii) ensuring ~~the compliance by the licensed insurance intermediaries that refer that the arrangements by the licensed insurance intermediaries for the insurance business referred to the insurer with the conduct requirements specified in Part XI and in any code of conduct or guideline published under sections 92 and 93; and comply with—~~
- (A) the requirements of this Ordinance; and
- (B) the requirements imposed by the Authority in any code or guideline published under section 93 or 131;
- (bg) any other functions specified in a notice under subsection (14);
- key person in control functions* (管控要員)—
- (a) in relation to an authorized insurer which is incorporated in Hong Kong—means an individual ~~who performs responsible for the performance of~~ one or more of the control functions for the insurer; or
- (b) in relation to an authorized insurer which is incorporated outside Hong Kong—means an individual ~~who performs responsible for the~~

performance of one or more of the control functions for the insurer in respect of so much of its insurance business as is carried on within Hong Kong.

- (13) For the purposes of the definition of *key person in control functions* in subsection (12), it does not matter whether the individual is solely ~~performs~~responsible, or is jointly ~~performs~~responsible with other key persons in control functions of the authorized insurer, for the performance of the relevant functions.
- (14) Subject to subsection (15), the Financial Secretary may, by notice published in the Gazette, specify a function to be a control function under subsection (12).
- (15) The Financial Secretary must not specify a function to be a control function unless the Financial Secretary is satisfied that the function is likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business carried on by an authorized insurer.

13AF. Authority may impose conditions on granting approval under sections 13A, 13AC and 13AE

- (1) This section applies if the Authority approves the appointment of—
- an individual as a controller of an authorized insurer under section 13A;
 - a person as a director of an authorized insurer under section 13AC; or
 - an individual as a key person in control functions of an authorized insurer under section 13AE.

- The Authority may impose any conditions that it considers appropriate on the approval when granting the approval.
- The Authority may also impose any conditions that it considers appropriate on the approval after the Authority has granted the approval.
- The Authority may amend or revoke any conditions imposed under subsection (2) or (3).
- The power under subsection (2), (3) or (4) is only exercisable by notice in writing served on the authorized insurer and the individual or person.
- A notice under subsection (5) must, in the case of any conditions being imposed or amended, include a statement of reasons for imposing or amending the conditions.
- An imposition, amendment or revocation of any conditions under subsection (2), (3) or (4) takes effect at the time the notice under subsection (5) is served on the authorized insurer and the individual or person or at the time specified in the notice, whichever is the later.

13AG. Procedural requirements for rejecting application, or imposing or amending conditions

- (1) The Authority must not—
- reject an application made under section 13A(2) for the approval of the appointment of an individual as a controller of an authorized insurer;
 - impose a condition under section 13AF(2) or (3) on such an approval; or
 - amend such a condition under section 13AF(4),

- without giving the insurer and the individual an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.
- (2) The Authority must not—
- (a) reject an application made under section 13AC(2) for the approval of the appointment of a person as a director of an authorized insurer;
 - (b) impose a condition under section 13AF(2) or (3) on such an approval; or
 - (c) amend such a condition under section 13AF(4), without giving the insurer and the person an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.
- (3) The Authority must not—
- (a) reject an application made under section 13AE(2) for the approval of the appointment of an individual as a key person in control functions of an authorized insurer;
 - (b) impose a condition under section 13AF(2) or (3) on such an approval; or
 - (c) amend such a condition under section 13AF(4), without giving the insurer and the individual an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.
- (4) In this section, a reference to an opportunity to make representations is a reference to an opportunity to make written representations or oral representations.

13AH. Offence to provide false information in connection with application for approval

- (1) A person commits an offence if the person, in connection with an application for the approval under section 13A, 13AC or 13AE—
 - (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the statement is false or misleading in the material particular.
- (2) A person commits an offence if the person, in connection with an application for the approval under section 13A, 13AC or 13AE—
 - (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable to a fine at level 5 and to imprisonment for 6 months.”.

26. Section 13B amended (approval of persons proposing to become certain controllers of authorized insurer)

(1A) Section 13B(1), definition of *controller*, after “the insurer”—

Add

“, but does not include a Manager”.

- (1) Section 13B(2)(a), English text—

Repeal

“the Fifth Schedule”

- (4) Section 13C(6)(b)(iv)—

Repeal

everything after “subparagraph (iii)(A)”

Substitute

“but on an application made by that person for a review of the decision of the Authority to so serve the notice of objection, the Tribunal has set aside the decision under section 99.”

- (5) Section 13C(10)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

- (6) Section 13C(10), Chinese text, after “，在”—

Add

“該”.

28. Section 13D amended (punishment for attempted evasion of restrictions)

Section 13D(2)—

Repeal

“57”

Substitute

“122”.

29. Section 14 amended (notification of change in particulars, and objection to appointment of new director or controller)

- (1) Section 14, heading—

Repeal**“objection to appointment of new director or controller”:****Substitute****“Authority’s objection to appointment”.**

- (2) Section 14(2)—

Repeal

“directors or controllers”

Substitute

“directors, controllers or key persons in control functions”.

- (3) Section 14(2)—

Repeal

“shall forthwith”

Substitute

“must, within 1 month after the date on which the change takes place,”.

- (4) Section 14(2), English text—

Repeal

“the Second Schedule”

Substitute

“Schedule 2”.

- (5) Section 14(2A), English text—

Repeal

“the Second Schedule”

Substitute

“Schedule 2”.

- (6) Section 14(2A), after “controllers”—

Add

“or directors”.

(7) Section 14(2A)—

Repeal

“a controller” (wherever appearing)

Substitute

“a controller or director”.

(8) Section 14(2A)—

Repeal

“13A or 13B” (wherever appearing)

Substitute

“13A, 13AC or 13B”.

(9) Section 14(3)—

Repeal

“director or controller”

Substitute

“director, controller or key person in control functions”.

(10) Section 14(3)—

Repeal

“he shall forthwith”

Substitute

“the person must, within 1 month after the date on which the person becomes, or ceases to be, a director, controller or key person in control functions of the insurer.”.

(11) Section 14(4)—

Repeal

“director or controller (other than a controller to whom section 13A or 13B applies)”

Substitute

“controller or director (other than a controller or director to whom section 13A, 13AC or 13B applies)”.

(12) Section 14(5)(a)(ii)—

Repeal

“public officer”

Substitute

“person”.

(13) Section 14(5)—

Repeal paragraph (b).

(14) Section 14—

Repeal subsection (6).

~~(15) After section 14(8)—~~

Add

~~“(9) In this section—~~

~~*key person in control functions* (管控要員) has the meaning given by section 13AE(12).”.~~

30. Section 14A added

Part II, after section 14—

Add

“14A. Determination of fit and proper

(1) In determining whether a person is a fit and proper person for the purposes of sections 8, 13A, 13AC, 13AE, 13B, 14 and 15, the Authority must have regard to the following matters—

“An authorized insurer”.

(5) After section 15(3)—

Add

~~“(3A) If an authorized insurer which carries on long term business is incorporated in Hong Kong, the appointment of an actuary to the insurer is subject to the prior approval of the Authority. An authorized insurer which is incorporated in Hong Kong and carries on long term business must not appoint a person as an actuary of the insurer unless the Authority has approved the appointment under subsection (3B).”~~

~~“(3B) On an application made in the manner specified by the Authority and on payment of a prescribed fee, the Authority may approve the appointment of a person as an actuary of an authorized insurer under subsection (1)(b) if it appears to the Authority that the person is a fit and proper person to be so appointed. The Authority may approve the appointment of the person as an actuary of the authorized insurer—~~

~~_____ (a) on an application made by the insurer in the manner specified by the Authority; and~~

~~_____ (b) on payment of a prescribed fee.~~

~~“(3BA) The Authority must not approve the appointment of a person as an actuary of the authorized insurer unless it is satisfied that the person is a fit and proper person to be so appointed.”~~

(3C) The Authority must give the authorized insurer and the person a notice in writing of the result of the application made under subsection (3B).

(3D) If the application is rejected, the notice must include a statement of the reasons for the rejection.

(3E) Subject to subsection (3F), the Authority may, by serving a notice in writing on an authorized insurer and a person, revoke the approval of the appointment of the person as an actuary of the insurer if it appears to the Authority that the person is not, or is no longer, a fit and proper person to be so appointed.

~~“(3EA) The authorized insurer must, by the date specified in the notice under subsection (3E), terminate the appointment of the person as an actuary of the insurer.”~~

(3F) Before serving the notice under subsection (3E), the Authority must serve on the authorized insurer and the person a preliminary written notice stating—

(a) that the Authority is considering ~~to serve the~~ service on the insurer of a notice under that subsection because it appears to the Authority that the person is not, or is no longer, a fit and proper person to be appointed as an actuary of the insurer; and

(b) that the insurer or the person may, within 1 month after the date of service of the preliminary notice, make written representations to the Authority and, if the insurer or the person so requests, oral representations to a person appointed for the purpose by the Authority.

(3G) If representations are made under subsection (3F), the Authority must take them into consideration before serving a notice under subsection (3E).”.

(6) Section 15(5)—

Repeal

“Any insurer which fails to comply with any of the provisions of this section”

Substitute

“An authorized insurer which contravenes subsection (1), (2) or (3)”.

(7) After section 15(5)—

Add

“(6) An authorized insurer which contravenes subsection (3A) or (3EA) commits an offence and is liable—

(a) to a fine of \$200,000; and

(b) in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.”.

32. Sections 15AA, 15AB and 15AC added

After section 15—

Add**“15AA. Authority may impose conditions on granting approval under section 15**

- (1) This section applies if the Authority approves the appointment of a person as an actuary of an authorized insurer under section 15.
- (2) The Authority may impose any conditions that it considers appropriate on the approval when granting the approval.
- (3) The Authority may also impose any conditions that it considers appropriate on the approval after the Authority has granted the approval.
- (4) The Authority may amend or revoke any conditions imposed under subsection (2) or (3).

- (5) The power under subsection (2), (3) or (4) is only exercisable by notice in writing served on the authorized insurer and the person.
- (6) A notice under subsection (5) must, in the case of any conditions being imposed or amended, include a statement of reasons for imposing or amending the conditions.
- (7) An imposition, amendment or revocation of any conditions under subsection (2), (3) or (4) takes effect at the time the notice under subsection (5) is served on the authorized insurer and the person or at the time specified in the notice, whichever is the later.”.

15AB. Procedural requirements for rejecting application under section 15, or imposing or amending conditions under section 15AA

(1) The Authority must not—

(a) reject an application made under section 15(3B) for the approval of the appointment of a person as an actuary of an authorized insurer;

(b) impose a condition under section 15AA(2) or (3) on such an approval; or

(c) amend such a condition under section 15AA(4), without giving the insurer and the person an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.

(2) In this section, a reference to an opportunity to make representations is a reference to an opportunity to make written representations or oral representations.

15AC. Offence to provide false information in connection with application for approval under section 15

(1) A person commits an offence if the person, in connection with an application for the approval under section 15—

(a) makes a statement that is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the statement is false or misleading in the material particular.

(2) A person commits an offence if the person, in connection with an application for the approval under section 15—

(a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and

(b) knows that, or is reckless as to whether, the material particular is omitted from the statement.

(3) A person who commits an offence under subsection (1) or (2) is liable to a fine at level 5 and to imprisonment for 6 months.”.

33. Section 15A amended (notification in respect of auditors appointed under section 15)

(1) Section 15A(1)—

Repeal

“An insurer”

Substitute

“An authorized insurer”.

(2) Section 15A(1)(a), (b) and (c)(i) and (ii), Chinese text, before “保險人”—

Add

“該”.

(3) Section 15A(1)(c)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

(4) Section 15A(2), English text—

Repeal

“the Third Schedule” (wherever appearing)

Substitute

“Schedule 3”.

(5) Section 15A(2)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

(6) Section 15A(2)(c), Chinese text—

Repeal

“保險人”

Substitute

“該保險人的”.

(7) Section 15A(3)—

Repeal

“Any insurer”

Substitute

“An authorized insurer”.

34. Section 15B amended (notification in respect of actuaries appointed under section 15)

(1A) Section 15B, heading, after “notification”—

Add

“, and Authority’s objection to appointment.”.

(1) Section 15B(1)—

Repeal

“An insurer”

Substitute

“An authorized insurer”.

(2) Section 15B(1)(a) and (b), Chinese text, before “保險人”—

Add

“該”.

(3) Section 15B(2)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

(4) Section 15B(2)(c), Chinese text, before “保險人” (wherever appearing)—

Add

“該”.

(5) Section 15B(2)(c)(i), English text—

Repeal

“the Third Schedule”

Substitute

“Schedule 3”.

(5A) After section 15B(2)—

Add

“(2A) Subject to subsection (2B), the Authority may, by serving a notice in writing on an authorized insurer and a person, objects to the appointment of the person as an actuary (other than an actuary to whom section 15(3A) applies) of the insurer if it appears to the Authority that the person is not a fit and proper person to be so appointed.

(2B) Before serving the notice under subsection (2A), the Authority must serve on the authorized insurer and the person a preliminary written notice stating—

(a) that the Authority is considering the service on the insurer of a notice under that subsection because it appears to the Authority that the person is not a fit and proper person to be appointed as an actuary of the insurer; and

(b) that the insurer or the person may, within 1 month after the date of service of the preliminary notice, make written representations to the Authority and, if the insurer or the person so requests, oral representations to a person appointed for the purpose by the Authority.

(2C) If representations are made under subsection (2B), the Authority must take them into consideration before serving a notice under subsection (2A).”.

- (b) after serving a notice under section 13A(7) on the insurer revoking the approval of the appointment of an individual as a controller of the insurer, and despite the notice, the individual continues to act as a controller of the insurer;
- (c) after serving a notice under section 13AC(5) on the insurer rejecting the application for the approval of the appointment of a person as a director of the insurer, and despite the notice, the person is appointed as a director of the insurer;
- (d) after serving a notice under section 13AC(7) on the insurer revoking the approval of the appointment of a person as a director of the insurer, and despite the notice, the person continues to act as a director of the insurer; or
- (e) after serving a notice under section 14(4) on the insurer, and despite the notice, the person continues to act as a controller or director.”.

(4) After section 37(6)—

Add

- “(7) For the purposes of subsection (6), this section does not apply even if—
- (a) the insurer or the individual or person concerned has applied to the Tribunal under section 98 for a review of the decision of the Authority to serve the notice; and
 - (b) the Tribunal has not determined the review of the decision.”.

51. Section 38A amended (effect of direction given under section 35(2)(b))

Section 38A(1)(b)—

Repeal

“paragraph (b) of the definition of “Controller” in section 13A(1)”

Substitute

“paragraph (a)(ii) of the definition of *controller* in section 13A(12)”.

52. Section 38B amended (powers of Manager)

(1) Section 38B(1)(b), English text—

Repeal

“the Seventh Schedule”

Substitute

“Schedule 7”.

(2) Section 38B(2)(a)—

Repeal

“paragraph (b) of the definition of “controller” in section 13A(1)”

Substitute

“paragraph (a)(ii) of the definition of *controller* in section 13A(12)”.

(3) Section 38B(3)(a)(ii)—

Repeal

“paragraph (b) of the definition of “controller” in section 13A(1)”

Substitute

“paragraph (a)(ii) of the definition of *controller* in section 13A(12)”.

(4) Section 38B(4)—

Repeal

“13A(2)”

Substitute

“13A(1)”.

52A. Section 38D amended (duration of direction given under section 35(2))(1) Section 38D(1)(b)—**Repeal**“a decision of the Financial Secretary under subsection (2)”**Substitute**“a determination of the Tribunal in a review of the Authority’s direction”.(2) Section 38D—**Repeal subsection (2).****52B. Section 38E amended (Advisors and Managers)**Section 38E—**Repeal subsection (8).****53. Section 40 amended (withdrawal of authorization)**

(1) Section 40(4)—

Repeal

“section 5”

Substitute

“section 5H”.

(2) Section 40(5)—

Repeal

“section 5”

Substitute

“section 5H”.

54. Section 41 amended (offences under Part V)

(1) Section 41(1)—

Repeal paragraph (b).

(2) Section 41(1)(c) and (e)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

(3) After section 41(1)—

Add

“(1A) A person who, in purported compliance with a requirement imposed under section 34, furnishes information which the person knows to be false in a material particular, or recklessly furnishes information which is false in a material particular, commits an offence and is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.”.

55. Part VA added

After section 41—

Add

“Part VA**Further Regulatory Powers on Insurers****Division 1—Preliminary****41A. Interpretation**

In this Part—

business record (業務紀錄), in relation to an insurer, means 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;

inspector (查察員) means a person appointed as an inspector under section 41B(6);

investigator (調查員) means a person directed or appointed by the Authority under section 41D(1) to investigate any matter.

Division 2—Inspection and Investigation without Warrant**41B. Power to conduct inspection**

- (1) An inspector may exercise the powers under subsections (2) and (3) for ascertaining whether an authorized insurer is complying with, has complied with, or is likely to be able to comply with—
 - (a) a provision of this Ordinance;
 - (b) a notice or requirement given or imposed under a provision of this Ordinance;

- (c) a term or condition of an authorization granted under section 8; or
 - (d) any other condition imposed under any provision of this Ordinance.
- (2) At any reasonable time, an inspector—
 - (a) may enter any premises used by the authorized insurer in connection with its business;
 - (b) may inspect, and may make copies or otherwise record details of, a business record of the insurer; and
 - (c) may make inquiries of the insurer or a person specified in subsection (5)—
 - (i) concerning a business record of the insurer; or
 - (ii) concerning a transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer.
 - (3) In exercising a power under subsection (2)(b) or (c), the inspector may require the authorized insurer, or a person specified in subsection (5)—
 - (a) to give the inspector access to a business record of the insurer;
 - (b) to produce to the inspector, within the time and at the place specified in the requirement, a business record of the insurer; and
 - (c) to answer a question concerning—
 - (i) a business record of the insurer; or
 - (ii) a transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer.

- (4) The power under subsection (2)(c) or (3) is not exercisable in relation to a person specified in subsection (5) unless the inspector has reasonable cause to believe that the information or record being sought cannot be obtained by exercising the power in relation to the authorized insurer.
- (5) The person specified for subsections (2)(c) and (3) is a person whom the inspector has reasonable cause to believe has information relating to, or is in possession of, a business record of the authorized insurer.
- (6) The Authority may in writing appoint a person, or a person belonging to a class of persons, as an inspector for the purposes of this section.
- (7) The Authority must provide an inspector with a copy of its appointment.
- (8) When imposing a requirement on a person under subsection (3), an inspector ~~is required to~~ must, if so requested, produce a copy of the appointment to that person for inspection as soon as practicable.

41C. Inspector may require answer, etc. to be verified by statutory declaration

- (1) If a person gives an answer in compliance with a requirement imposed under section 41B(2)(c) or (3), the inspector may, in writing, require the person to verify, within the time specified in the requirement, the answer by a statutory declaration.
- (2) If a person does not give an answer in compliance with a requirement imposed under section 41B(2)(c) or (3) for the reason that the information concerned was not within the person's knowledge or possession, the inspector may, in writing, require the person to verify, within the

time specified in the requirement, by a statutory declaration, that the person did not comply with the requirement for that reason.

- (3) A statutory declaration under subsection (1) or (2) may be made before the inspector and, for that purpose, the inspector is to have full power to administer the statutory declaration.

41D. Power to conduct investigation

- (1) If—
 - (a) the Authority has reasonable cause to believe that a provision of this Ordinance may have been contravened;
 - (b) the Authority has reasonable cause to believe that a person may have been involved in defalcation, fraud, misfeasance or other misconduct in relation to the carrying on of insurance business;
 - (c) the Authority has reasonable cause to believe that a person has carried on, or is carrying on, insurance business in a manner that is not in the interests of policy holders or potential policy holders or the public interest; or
 - (d) the Authority, for considering whether to exercise any power under section 41P, has reason to enquire if—
 - (i) a person is, or was, guilty of misconduct as defined by section 41P; or
 - (ii) a person is, or was, not a fit and proper person as described in section 41P(1)(c),

the Authority may in writing direct one or more of its employees, or, with the consent of the Financial

specified in section 14A), take into account the present or past conduct of the person.

(5) ~~In~~ Subject to subsection (6), in this section—

misconduct (不當行為) means—

- (a) a contravention of a provision of this Ordinance;
- (b) a contravention of a term or condition of an authorization granted under section 8;
- (c) a contravention of any other condition imposed on an authorized insurer under a provision of this Ordinance; or
- (d) an act or omission relating to the carrying on of a class of insurance business by an authorized insurer which, in the Authority's opinion, is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest,

and *guilty of misconduct* (犯不當行為) is to be construed accordingly.

(6) This section does not apply to any contravention, act or omission specified in paragraph (a), (b), (c) or (d) of the definition of *misconduct* in subsection (5) that occurred before the commencement date of this Part.

41Q. Procedural requirements in respect of exercise of powers under section 41P

- (1) The Authority must not exercise a power under section 41P without first giving the authorized insurer in respect of whom the power is to be exercised a reasonable opportunity of being heard.
- (2) If the Authority decides to exercise a power under section 41P in respect of an authorized insurer, the

Authority must inform the insurer of its decision to do so by notice in writing.

(3) The notice must include—

- (a) a statement of the reasons for the decision;
- (b) the time when the decision is to take effect;
- (c) in so far as applicable, the duration and terms of the revocation, suspension or prohibition to be imposed under the decision;
- (d) in so far as applicable, the terms in which the authorized insurer is to be reprimanded under the decision; and
- (e) in so far as applicable, the amount of the pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.

(4) In subsection (1), a reference to an opportunity of being heard is a reference to an opportunity to make written representations or oral representations.

41R. Guidelines for exercise of power to impose pecuniary penalty under section 41P

- (1) The Authority must not exercise a power under section 41P to impose a pecuniary penalty unless—
 - (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power; and
 - (b) in exercising that power, it has had regard to the guidelines so published.
- (2) The guidelines are not subsidiary legislation.

41S. General provisions relating to exercise of disciplinary powers

- (1) At any time when the Authority is contemplating exercising a power under section 41P, it may, if it considers it appropriate to do so in the interests of policy holders or potential policy holders or the public interest, by agreement with the authorized insurer concerned—
 - (a) exercise a power that the Authority may exercise in respect of the insurer under ~~this Part~~section 41P; and
 - (b) take an additional action that the Authority considers appropriate in the circumstances of the case.
- (2) If the Authority exercises a power or takes an additional action under subsection (1), it must comply with section 41Q as if that section applied to the power or action, unless the insurer agrees otherwise.
- (3) In reaching a decision under this Division, the Authority may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.

41T. Order for payment of pecuniary penalty

- (1) An authorized insurer ordered to pay a pecuniary penalty under section 41P must pay the penalty to the Authority within 30 days, or a longer period that the Authority specifies by notice under section 41Q(3)(e), after the order has taken effect.
- (2) The Court of First Instance may, on an application of the Authority, register an order to pay a pecuniary penalty made under section 41P in the Court.

- (3) On registration, the order is to be regarded as an order of the Court of First Instance made within the civil jurisdiction of the Court for the payment of money.
- (4) For making an application under subsection (2), the Authority must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (5) A pecuniary penalty paid to or recovered by the Authority under an order made under section 41P must be paid by the Authority into the general revenue.

41U. Effect of suspension under section 41P

- (1) If the authorization of an authorized insurer is suspended under section 41P, the insurer must, during the suspension period—
 - (a) continue to be regarded for the purposes of this Ordinance to be authorized, whether in relation to all or any, or a part of all or any, of the class or classes of insurance business for which the authorization of the insurer is suspended; and
 - (b) without limiting paragraph (a), continue to be required to comply with the provisions of this Ordinance relating to an authorized insurer as would apply to the insurer were the authorization not so suspended.
- (2) Without limiting the powers that can be exercised by the Authority under section 41P, the Authority may revoke the authorization even though the authorization is suspended under section 41P.

62. Sections 50G and 50H added

Part VII, after section 50F—

Add**“50G. Further regulatory powers**

- (1) The provisions of Part VA, except sections 41P(2)(a), (b) and (c), 41U, 41V and 41W, apply to one or more of the following, as the context requires—
 - (a) Lloyd’s;
 - (b) a member of Lloyd’s who carries on insurance business in Hong Kong;
 - (c) the members of Lloyd’s taken together who carry on insurance business in Hong Kong.
- (2) A reference in those provisions to an insurer or authorized insurer is a reference to one or more of Lloyd’s, the member and the group of members.
- (3) A reference in those provisions to a controller is a reference to the authorized representative appointed under section 50B.”

50H. Part XIII applies to Lloyd’s etc.

- (1) The provisions of Part XIII, except section 120, apply to one or more of the following, as the context requires—
 - (a) Lloyd’s;
 - (b) a member of Lloyd’s who carries on insurance business in Hong Kong;
 - (c) the members of Lloyd’s taken together who carry on insurance business in Hong Kong.

(2) A reference in those provisions to an insurer or authorized insurer is a reference to one or more of Lloyd’s, the member and the group of members.

(3) A reference in those provisions to a controller is a reference to the authorized representative appointed under section 50B.

(4) Section 120 applies to Lloyd’s and a reference in that section to an authorized insurer is a reference to Lloyd’s.”.

63. Section 51 amended (exempted persons)

- (1) Section 51(f)—

Repeal

“within the meaning of section 2 of the Banking Ordinance (Cap. 155)”.

- (2) Section 51(f), English text—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

64. Section 53A amended (secrecy)

- (1) Section 53A(1)—

Repeal

“Except in the exercise”

Substitute

“Except in the performance”.

- (2) Section 53A(1)(a)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

~~(10A) Section 53A(2)—~~

Repeal

~~“13B, 14”~~

Substitute

~~“13AC, 13AE, 13B, 14, 15”.~~

(11) Section 53A(2)—

Repeal

“, 53E or 61(1)(a)”

Substitute

“or 53E”.

(12) Section 53A(2)—

Repeal

“exercise”

Substitute

“performance”.

(13) Section 53A(3)—

Repeal paragraph (a)

Substitute

“(a) in the form of a summary compiled from similar or related information provided by authorized insurers or licensed insurance intermediaries if the summary is so compiled as to prevent particulars relating to the business of those insurers or intermediaries from being ascertained from the summary;

(ab) for seeking advice from, or giving advice by, a counsel or a solicitor, or any other professional advisor acting or proposing to act in a professional capacity, in connection with a matter arising under this Ordinance;

(ac) for, or otherwise in connection with, an audit required by section 5F;”.

(14) After section 53A(3)(c)—

Add

“(ca) to the Tribunal in connection with any proceedings in the Tribunal;

(cb) by a person in connection with any judicial or other proceedings to which the person is a party;

(cc) in compliance with an order of a court, or in compliance with a law or a requirement made under a law;”.

(15) Section 53A(3)(e)—

Repeal

everything before “, in the opinion”

Substitute

“(e) to any of the persons specified in subsection (3AA) if”.

(16) Section 53A(3)(e)(ii)—

Repeal

“exercise”

Substitute

“perform”.

(17) After section 53A(3)(e)—

Add

“(ea) to the Financial Secretary, the Secretary for Justice, the Commissioner of Police, the Commissioner of the

by the Authority may include information on matters relating to the affairs of a licensed insurance intermediary.”.

66. Section 53C amended (examination by external authorities)

(1) After section 53C(1)—

Add

“(1A) A licensed insurance agency must permit an insurance supervisory authority of a place outside Hong Kong to examine its books, accounts and transactions in Hong Kong if—

- (a) that agency—
 - (i) is incorporated, or has its principal place of business, in that place; or
 - (ii) is incorporated in or outside Hong Kong and is a subsidiary or associate of an insurance agency incorporated, or which has its principal place of business, in that place; and
- (b) that insurance supervisory authority has, subject to subsection (2), the approval of the Authority to carry out such an examination.

(1B) A licensed insurance broker company must permit an insurance supervisory authority of a place outside Hong Kong to examine its books, accounts and transactions in Hong Kong if—

- (a) that company—
 - (i) is incorporated, or has its principal place of business, in that place; or
 - (ii) is incorporated in or outside Hong Kong and is a subsidiary or associate of an insurance broker company incorporated, or which has

its principal place of business, in that place; and

- (b) that insurance supervisory authority has, subject to subsection (2), the approval of the Authority to carry out such an examination.”.

(2) Section 53C(2)—

Repeal

“subsection (1)(b)”

Substitute

“subsections (1)(b), (1A)(b) and (1B)(b)”.

67. Section 53D amended (communication by prescribed person with Insurance Authority)

Section 53D(2)—

Repeal

“other than an insurer or a former insurer.”

Substitute

“other than—

- (a) an authorized insurer;
- (b) a former insurer;
- (c) a licensed insurance broker company;
- (d) a former licensed insurance broker company; or
- (e) a person who was formerly an authorized insurance broker within the meaning of the pre-amended Ordinance.”.

68. Section 53E amended (prescribed person to send report directly to Insurance Authority in certain cases)

(1) Section 53E, heading, after “**certain cases**”—

“Division 1—Preliminary

64F. Interpretation of Part X

In this Part—

agency agreement (代理協議) means an agreement entered into between an authorized insurer and a licensed insurance agency or licensed individual insurance agent under which the licensed insurance agency or licensed individual insurance agent is appointed to carry on regulated activities as an agent of the insurer;

business record (業務紀錄), in relation to a licensed insurance intermediary, means a record or document relating to a regulated activity carried on by the intermediary;

controller (控權人)—

- (a) in relation to a sole proprietorship—
 - (i) means an individual who ultimately owns or controls the carrying on of regulated activities by the sole proprietorship; or
 - (ii) if the sole proprietor is acting on behalf of another person, means the other person;
- (b) in relation to a partnership, means an individual who—
 - (i) is entitled to or controls, directly or indirectly, not less than a 15% share of the capital or profits of the partnership;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 15% of the voting rights in the partnership; or

- (iii) exercises ultimate control over the management of the partnership; or
- (c) in relation to a company, means ~~an individual a person~~ who—
 - (i) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 15% of the issued share capital of the company;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 15% of the voting rights at general meetings of the company; or
 - (iii) exercises ultimate control over the management of the company;

inspector (查察員) means a person appointed as an inspector under section 64ZZF(6);

investigator (調查員) means a person directed or appointed by the Authority under section 64ZZH(1) to investigate any matter;

licence (牌照)—

- (a) in relation to a licensed insurance agency—means an insurance agency licence granted under section 64U or renewed under section 64ZV;
- (b) in relation to a licensed individual insurance agent—means an individual insurance agent licence granted under section 64W or renewed under section 64ZV;
- (c) in relation to a licensed technical representative (agent)—means a technical representative (agent) licence granted under section 64Y or renewed under section 64ZV;

64J. Restrictions in relation to personnel of licensed insurance agencies

- (1) This section applies to a person who is—
 - (a) a proprietor or a partner of a licensed insurance agency; or
 - (b) a director or an employee of a licensed insurance agency who ~~deals with any matter that relates to~~ manages or controls any matter relating to a regulated activity of the agency.
- (2) The person must not also be—
 - (a) a proprietor or a partner of another licensed insurance agency;
 - (b) a licensed individual insurance agent;
 - (c) a licensed technical representative (agent) of another licensed insurance agency;
 - (d) a licensed technical representative (broker);
 - (e) a director or an employee of another licensed insurance agency who ~~deals with any matter that~~ relates manages or controls any matter relating to a regulated activity of that other agency; or
 - (f) a director or an employee of a licensed insurance broker company who ~~deals with any matter that~~ relates manages or controls any matter relating to a regulated activity of that company.
- (3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 6 months.

64K. Restrictions in relation to personnel of licensed insurance broker companies

- (1) This section applies to a person who—
 - (a) is a director or an employee of a licensed insurance broker company; and
 - (b) ~~deals with any matter that relates~~ manages or controls any matter relating to a regulated activity of the company.
- (2) The person must not also be—
 - (a) a proprietor or a partner of a licensed insurance agency;
 - (b) a licensed individual insurance agent;
 - (c) a licensed technical representative (agent); or
 - (d) a director or an employee of a licensed insurance agency who ~~deals with any matter that relates~~ manages or controls any matter relating to a regulated activity of the agency.
- (3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 6 months.

64L. Restrictions in relation to licensed technical representatives (agent)

- (1) A person who is a licensed technical representative (agent) of a licensed insurance agency must not also be a licensed technical representative (agent) of another licensed insurance agency.
- (2) A person who is a licensed technical representative (agent) must not carry on regulated activities in a line of business unless the licensed insurance agency by which

the person is appointed is also licensed to carry on regulated activities in that line of business.

64M. Restrictions in relation to licensed technical representatives (broker)

A person who is a licensed technical representative (broker) must not carry on regulated activities in a line of business unless the licensed insurance broker company by which the person is appointed is also licensed to carry on regulated activities in that line of business.

64N. Contracts of insurance made through persons other than licensed insurance intermediaries, etc.

- (1) An authorized insurer must not enter into a contract of insurance through another person in Hong Kong unless—
 - (a) that person is—
 - (i) a licensed insurance ~~intermediary~~ agency or a licensed individual insurance agent appointed by the insurer; or
 - (ii) a licensed insurance broker company; or
 - (b) that person's duties only involve clerical or administrative duties.
- (2) An authorized insurer must not accept a referral of insurance business from another person in Hong Kong unless—
 - (a) that person is—
 - (i) a licensed insurance ~~intermediary~~ agency or a licensed individual insurance agent appointed by the insurer; or
 - (ii) a licensed insurance broker company; or

- (b) that person's duties only involve clerical or administrative duties.
- (3) If an authorized insurer enters into a contract of insurance in contravention of subsection (1), the contract, at the option of the policy holder—
 - (a) is enforceable against the insurer by the policy holder despite the contravention; or
 - (b) is void because of the contravention.
- (4) A policy holder who under subsection (3)(b) opts to void a contract of insurance before the expiry of the contract is entitled to recover any consideration paid by the policy holder under the contract.
- (5) An authorized insurer which contravenes subsection (1) or (2) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Division 3—Licensing

Subdivision 1—Register and Maintenance of Register

64O. Register of licensed insurance intermediaries

- (1) The Authority must keep a register of licensed insurance intermediaries, in a form it thinks fit, containing—
 - (a) the name or names, and the reference number assigned by the Authority, of each licensed insurance intermediary, and if applicable, the name of each of its responsible officers;

- (b) the business address of each licensed insurance intermediary;
- (c) the conditions of the licence of each licensed insurance intermediary;
- (d) the conditions of approval of each responsible officer;
- (e) the period for which the licence of each licensed insurance intermediary is valid;
- (f) in relation to each licensed insurance agency—
 - (i) the name of each of the authorized insurers by which the licensed insurance agency is appointed;
 - (ii) the date of appointment; and
 - (iii) the date ~~that-on which~~ the appointment is terminated (if applicable);
- (g) in relation to each licensed individual insurance agent—
 - (i) the name of each of the authorized insurers by which the licensed individual insurance agent is appointed;
 - (ii) the date of appointment; and
 - (iii) the date ~~that-on which~~ the appointment is terminated (if applicable);
- (h) in relation to each licensed technical representative (agent)—
 - (i) the name of the licensed insurance agency by which the licensed technical representative (agent) is appointed;
 - (ii) the date of appointment;

- (iii) the date ~~that-on which~~ the appointment is terminated (if applicable); and
- (iv) information on whether the licensed technical representative (agent) is a responsible officer of the licensed insurance agency;
- (i) in relation to each licensed technical representative (broker)—
 - (i) the name of each of the licensed insurance broker company by which the licensed technical representative (broker) is appointed;
 - (ii) the date of appointment;
 - (iii) the date ~~that-on which~~ the appointment is terminated (if applicable); and
 - (iv) information on whether the licensed technical representative (broker) is a responsible officer of the licensed insurance broker company;
- (j) the line or lines of business which each licensed insurance intermediary may carry on;
- (k) a record of every disciplinary action (except a private reprimand) taken by a specified authority against any licensed insurance intermediary or responsible officer in the last 5 years, and if a suspension is involved, the period of the suspension;
- (l) if a licence is suspended under this Part, a note to that effect;
- (m) if a licensed insurance broker company notifies the Authority of cessation of carrying on regulated activities under section 64T, a note to that effect; and

64P. Duty to notify Authority of change in particulars

- (1) This section applies if there is a change in any of the particulars specified in subsection (2) of a licensed insurance intermediary or a responsible officer of a licensed insurance intermediary after the particulars are provided by the licensed insurance intermediary for a licence application.
- (2) The particulars are—
 - (a) name;
 - (b) business or residential address;
 - (c) telephone ~~and fax~~ numbers;
 - (d) electronic mail address; and
 - (e) any other particulars that are prescribed by rules made under section 127.
- (3) The licensed insurance intermediary must notify the Authority in writing of any change of particulars within 14 days after the date on which the change takes place.
- (4) A notification under subsection (3) must be accompanied by a prescribed fee.
- (5) The Authority must, as soon as practicable after receiving a notification under subsection (3), amend any relevant particulars in the register kept under section 64O.
- (6) A licensed insurance intermediary who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable to a fine at level 5.

64Q. Duty to notify Authority of appointment

- (1) At least ~~one month-14 days~~ before an authorized insurer appoints a licensed insurance agency to carry on

regulated activities in one or more lines of business as an agent of the insurer, the insurer must notify the Authority in writing of the intended appointment.

- (2) At least ~~one month-14 days~~ before an authorized insurer appoints a licensed individual insurance agent to carry on regulated activities in one or more lines of business as an agent of the insurer, the insurer must notify the Authority in writing of the intended appointment.
- (3) At least ~~one month-14 days~~ before a licensed insurance agency appoints a licensed technical representative (agent) to carry on regulated activities in one or more lines of business as an agent of the agency, the agency must notify the Authority in writing of the intended appointment.
- (4) At least ~~one month-14 days~~ before a licensed insurance broker company appoints a licensed technical representative (broker) to carry on regulated activities in one or more lines of business as an agent of the company, the company must notify the Authority in writing of the intended appointment.
- (5) The notification must be accompanied by—
 - (a) a prescribed fee; and
 - (b) the particulars that are prescribed by rules made under section 127.
- (6) The Authority must, after receiving a notification under subsection (1), (2), (3) or (4), update the register kept under section 64O accordingly unless the Authority is of the view that—
 - (a) in relation to subsection (1), the licensed insurance agency has not complied with, or will be unable to

64Y. Grant of licence—technical representative (agent)

- (1) An individual may apply to the Authority for a technical representative (agent) licence to carry on regulated activities in one or more lines of business, as an agent of any licensed insurance agency.
- (2) On an application made in the manner specified by the Authority and on payment of a prescribed fee, the Authority may grant to the applicant a technical representative (agent) licence to carry on regulated activities in one or more lines of business specified in the licence, as an agent of any licensed insurance agency.
- (3) The Authority must not grant the licence unless it is satisfied that—
 - (a) the applicant is a fit and proper person to carry on regulated activities in the lines of business concerned;
 - (b) the applicant is appointed as an agent by—
 - (i) a licensed insurance agency; or
 - (ii) a person who applies under section 64U for an insurance agency licence; and
 - (c) the applicant is neither the holder of a licence granted under [section 64U](#), 64W or 64ZC nor applying for such a licence.
- (4) The Authority must give the applicant a notice in writing of the result of the application made under subsection (1).
- (5) If the application is rejected, the notice must include a statement of the reasons for the rejection.

64Z. Validity of technical representative (agent) licence

A licence granted under section 64Y is valid for 3 years or, if the Authority considers it appropriate in a particular case, another period determined by the Authority, beginning on the date on which it is granted.

64ZA. Grant of licence—insurance broker company

- (1) A company may apply to the Authority for an insurance broker company licence to carry on—
 - (a) regulated activities specified in section 1(a) of Part 1 of Schedule 1A in one or more lines of business, as an agent of any policy holder or potential policy holder; and
 - (b) regulated activities specified in section 1(b), (c) and (d) of Part 1 of Schedule 1A in one or more lines of business.
- (2) An application made under subsection (1) must be accompanied by either—
 - (a) both of the following—
 - (i) an application made by an individual under section 64ZC for a technical representative (broker) licence;
 - (ii) an application made by the applicant under section 64ZF for the approval of the individual as a responsible officer of the applicant; or
 - (b) an application made by the applicant under section 64ZF for the approval of a licensed technical representative (broker) as a responsible officer of the applicant.

- (4) A notice under subsection (3)(a) must also include a statement describing—
- (a) the right of the licensed insurance broker company to make representations; and
 - (b) how and when the licensed insurance broker company may make representations.

64ZP. Licence revoked on death, dissolution, etc. of licensee

A licence is revoked—

- (a) if the licensed insurance intermediary is an individual—on the death of the individual;
- (b) if the licensed insurance intermediary is a partnership—on the dissolution of the partnership; or
- (c) if the licensed insurance intermediary is a company—on the winding up of the company or on the date on which the company is struck off the Companies Register under the Companies Ordinance (Cap. 622).

64ZQ. Licence revoked or suspended on licensed insurance intermediary's request

- (1) The Authority may revoke the licence of a licensed insurance intermediary if the intermediary requests the Authority to do so.
- (2) The Authority may suspend the licence of a licensed insurance intermediary if the intermediary requests the Authority to do so.

64ZR. Effect of suspension under this Subdivision

If the licence of a person is suspended under this Subdivision, the person must, during the suspension period—

- (a) continue to be regarded for the purposes of this Ordinance, but not sections 64G, 64ZE, 64ZF, 64ZN and 64ZO, to be licensed; and
- (b) without limiting paragraph (a), continue to be required to comply with the provisions of this Ordinance relating to a licensed insurance intermediary as would apply to the person were the licence not so suspended.

64ZS. Revocation or suspension of licence does not avoid or affect agreement, etc.

~~A~~ Subject to section 64N, a revocation or suspension of the licence of a person under this Subdivision does not—

- (a) avoid or affect an agreement, transaction or arrangement entered into or arranged by the person, regardless of whether the agreement, transaction or arrangement was entered into or arranged before or after the revocation or suspension; or
- (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

64ZT. Requirement to transfer records on revocation or suspension of licence

- (1) If the licence of a person is revoked or suspended under this Subdivision, the Authority may, by notice in writing, require the person to transfer to a client a copy of the records relating to the client's assets or affairs, held at any time for the client as specified in the notice.

the notice under subsection (2) is served on the licensee or at the time specified in the notice, whichever is the later.

64ZX. Validity of licences for which applications have been made under section 64ZV

- (1) A licence for which an application for a renewal is made under section 64ZV and which expires before the determination of the application by the Authority remains in force—
 - (a) until the licence is renewed; or
 - (b) if the renewal is refused—until the Authority’s decision to refuse to renew the licence takes effect.
- (2) Subsection (1) does not apply if the application for the renewal is withdrawn or the licence is revoked.

64ZY. Validity of licences renewed under section 64ZV

- (1) A renewal granted under section 64ZV takes effect on the day following the expiry of the licence.
- (2) A licence renewed under section 64ZV is valid for 3 years or, if the Authority considers it appropriate in a particular case, another period determined by the Authority.

Subdivision 5—Supplementary Provisions

64ZZ. Applicants to provide information

- (1) A person who applies—
 - (a) for the approval of the variation of a line of business specified in a licence under section 64S;

- (b) for a licence under section 64U, 64W, 64Y, 64ZA or 64ZC;
- (c) for the approval of an individual as a responsible officer under section 64ZE or 64ZF; or
- (d) for a renewal of a licence under section 64ZV, must provide the Authority with information that it reasonably requires to enable it to consider the application.
- (2) In considering the application, the Authority may have regard to any information in its possession (whether provided by the applicant or not).

64ZZA. Determination of fit and proper

- (1) In determining whether a person is a fit and proper person for the purposes of this Division, the Authority must have regard to the following matters—
 - (a) the education or other qualifications or experience of the person;
 - (b) the person’s ability to carry on a regulated activity competently, honestly and fairly;
 - (c) the reputation, character, reliability and integrity of the person;
 - (d) the person’s financial status or solvency;
 - (e) whether any disciplinary action has been taken against the person by—
 - (i) the Monetary Authority;
 - (ii) the Securities and Futures Commission;
 - (iii) the Mandatory Provident Fund Schemes Authority; or

- (a) may enter any business premises of the licensed insurance intermediary;
 - (b) may inspect, and may make copies or otherwise record details of, a business record of the intermediary; and
 - (c) may make inquiries of the intermediary or a person specified in subsection (5)—
 - (i) concerning a business record of the intermediary; or
 - (ii) concerning a transaction or activity that was undertaken in the course of, or may affect, the regulated activity carried on by the intermediary.
- (3) In exercising a power under subsection (2)(b) or (c), the inspector may require the licensed insurance intermediary, or a person specified in subsection (5)—
- (a) to give the inspector access to a business record of the intermediary;
 - (b) to produce to the inspector, within the time and at the place specified in the requirement, a business record of the intermediary; and
 - (c) to answer a question concerning—
 - (i) a business record of the intermediary; or
 - (ii) a transaction or activity that was undertaken in the course of, or may affect, the regulated activity carried on by the intermediary.
- (4) The power under subsection (2)(c) or (3) is not exercisable in relation to a person specified in subsection (5) unless the inspector has reasonable cause to believe that the information or record being sought cannot be

obtained by exercising the power in relation to the licensed insurance intermediary.

- (5) The person specified for subsections (2)(c) and (3) is a person whom the inspector has reasonable cause to believe has information relating to, or is in possession of, a business record of the licensed insurance intermediary.
- (6) The Authority may in writing appoint a person, or a person belonging to a class of persons, as an inspector for the purposes of this section.
- (7) The Authority must provide an inspector with a copy of its appointment.
- (8) When imposing a requirement on a person under subsection (3), an inspector ~~is required to~~ must, if so requested, produce a copy of the appointment to that person for inspection as soon as practicable.
- (9) This section is subject to section 64ZZJ.
- (10) In this section—
 - business premises* (業務處所), in relation to a licensed insurance intermediary, means any non-domestic premises at which—
 - (a) the intermediary carries on business; or
 - (b) the person by whom the intermediary is appointed as an agent carries on business.

64ZZG. Inspector may require answer, etc. to be verified by statutory declaration

- (1) If a person gives an answer in compliance with a requirement imposed under section 64ZZF(2)(c) or (3), the inspector may, in writing, require the person to

64ZZS. Production of information in information systems, etc.

If any information or matter contained in a record or document required to be produced under section 64ZZF or 64ZZH is recorded otherwise than in a legible form, a power to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

- (a) if the recording enables the information or matter to be reproduced in a legible form—in a legible form; and
- (b) if the information or matter is recorded in an information system—in a form which enables the information or matter to be reproduced in a legible form.

64ZZT. Inspection of records or documents seized, etc.

(1) If a specified person has taken possession of a record or document under this Division, the specified person must permit a person who would be entitled to inspect the record or document had the specified person not taken possession of it, to inspect it and to make copies or otherwise record details of it at all reasonable times.

(2) The permission is subject to any reasonable conditions the specified person imposes.

(3) In this section—

specified person (指明人士) means—

- (a) an authorized person within the meaning of section 64ZZP; or
- (b) an investigator.

Division 5—Miscellaneous”.**72. Sections 65, 66 and 67 repealed**

Sections 65, 66 and 67—

Repeal the sections.

73. Section 68 amended (insurance agent’s relationship with insurer)

(1) Section 68, heading—

Repeal

“Insurance agent’s relationship with insurer”

Substitute

“Authorized insurer’s relationship with its agent”.

(2) Section 68—

Repeal subsections (1), (2), (3) and (4)

Substitute

“(1) This section applies if—

- (a) an authorized insurer has appointed a person as an agent of the insurer; and
- (b) the person has dealings with another person (*client*) for—
 - (i) the issue of a contract of insurance for ~~that other person~~ the client; or
 - (ii) insurance business relating to the contract.

(2) If the person is appointed by 1 authorized insurer as an agent, the insurer is liable for any act of the person in relation to those dealings, whether or not the act is within the scope of the person’s authority.

(3) If—

- (a) the person is appointed by more than one authorized insurer as an agent;
- (b) those dealings relate to a particular line of business; and
- (c) the person is appointed by only one of those insurers (*empowering insurer*) to engage in that line of business,

the empowering insurer is liable for any act of the person in relation to those dealings, whether or not the act is within the scope of the person's authority.

(4) If—

- (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
- (b) those dealings relate to that line of business; and
- (c) an act of the person in relation to those dealings is within the scope of the person's authority in relation to only one of those insurers (*empowering insurer*),

the empowering insurer is liable for the act of the person in relation to those dealings.

(4A) If—

- (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
- (b) those dealings relate to that line of business; and
- (c) an act of the person in relation to those dealings is within the scope of the person's authority in relation to 2 or more of those insurers (*empowering insurers*),

the empowering insurers are jointly and severally liable for the act of the person in relation to those dealings.

(4B) If—

- (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
- (b) those dealings relate to that line of business; and
- (c) an act of the person in relation to those dealings is not within the scope of the person's authority in relation to any of those insurers,

all of those insurers are jointly and severally liable for the act of the person in relation to those dealings.

(4BA) Despite subsections (2), (3), (4), (4A) and (4B) and subject to subsection (4BB), an authorized insurer is not liable for the act of the person if—

- (a) the act is not within the scope of the person's authority in relation to that insurer;
- (b) the person disclosed that fact to the client before the client relied on the act; and
- (c) 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 subsection (1)(b).

(4BB) In considering a claim under this section, despite subsection (4BA), the court may take into account any other factors relevant in the circumstances in determining whether an authorized insurer is liable for the act of the person.

(4C) If a contract of insurance or an agency agreement contains a provision that is inconsistent with this section, that provision is void.”.

(3) Section 68(5)—

Repeal

“an insurer”

Substitute

“an authorized insurer”.

(4) Section 68(5)—

Repeal

“appointed insurance agent”

Substitute

“person”.

~~(5) Section 68(6)—~~

Repeal

~~“subsection (4)”~~

Substitute

~~“this section”.~~

~~(6) Section 68(6)—~~

Repeal

~~“insurance agent”~~

Substitute

~~“person”.~~

~~(5) Section 68—~~

Repeal subsection (6).

74. Section 68A added

After section 68—

Add

“68A. Validity of agency agreements

~~“(1) If an agency agreement specified in subsection (2) contains a provision purporting to affect, or having the effect of affecting the obligation of a licensed insurance intermediary under section 89(a), that provision is void.”.~~

~~“(2) The agreement specified for subsection (1) is an agreement entered into between an authorized insurer and a licensed insurance agency or licensed individual insurance agent under which the licensed insurance agency or licensed individual insurance agent is appointed to carry on regulated activities as an agent of the insurer.”.~~

75. Sections 69 and 70 repealed

Sections 69 and 70—

Repeal the sections.

76. Section 71 substituted

Section 71—

Repeal the section

Substitute

“71. Licensed insurance broker company’s client monies

(1) A licensed insurance broker company must—

- (a) hold any of the monies specified in subsection (2) separate from the company’s monies; and

- (4) Section 72—
Repeal subsection (2).
- (5) Section 72(3)—
Repeal
“An insurance broker shall”
Substitute
“A licensed insurance broker company must”.
- (6) Section 72(4)—
Repeal
“the insurance broker shall”
Substitute
“the licensed insurance broker company must”.
- (7) After section 72(4)—
Add
“(5) A licensed insurance broker company which contravenes this section commits an offence and is liable to a fine at level 3, and in the case of a continuing offence, to a further fine of \$500 for each day during which the offence continues.”.

78. Section 73 substituted

Section 73—

Repeal the section**Substitute**

- “**73. Audit of licensed insurance broker company, etc.**
(1) A licensed insurance broker company must ~~in each calendar year and within the time specified by the~~

- ~~Authority, within 6 months after the end of each financial year,~~ provide the Authority with all of the following—
- (a) a copy of the audited profit and loss account for ~~the last preceding financial that~~ year;
 - (b) a copy of the audited income and expenditure account for ~~the last preceding financial that~~ year;
 - (c) a copy of the audited balance sheet as at the end of ~~the last preceding financial that~~ year;
 - (d) an auditor’s report on the financial statements;
 - (e) an auditor’s report stating whether the auditor is of the opinion that the company has continued to comply with rules made under section 127 that set out the requirements—
 - (i) in relation to the capital and net assets of a licensed insurance broker company;
 - (ii) in relation to the professional indemnity insurance taken out by a licensed insurance broker company;
 - (iii) in relation to the keeping of separate client accounts by a licensed insurance broker company; and
 - (iv) in relation to the keeping of proper books and accounts by a licensed insurance broker company;
 - (f) any other information that is prescribed by rules made under section 127.
- (2) A licensed insurance broker company which contravenes this section commits an offence and is liable to a fine at level 6, and in the case of a continuing offence, to a

Repeal the section**Substitute****“76. Authority may petition for winding up or bankruptcy of licensed insurance intermediary**

- (1) The Authority may present a petition for a licensed insurance intermediary, other than a licensed insurance intermediary which is an authorized institution, to be wound up in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if—
- (a) the intermediary is a company which may be wound up by the Court of First Instance under that Ordinance; and
- (b) the Authority considers that it is in the public interest that the intermediary should be wound up.
- (2) However, the Authority may not present a petition under subsection (1) for a licensed insurance intermediary to be wound up if the intermediary is already being wound up by the Court of First Instance.
- (3) The Authority may present a petition for any of the following persons to be declared bankrupt if the Authority considers that it is in the public interest that the person should be made bankrupt—
- (a) an individual who is a licensed insurance intermediary;
- (b) any of the partners of a partnership which is a licensed insurance intermediary.”.

82. Section 77 repealed (offences)

Section 77—

Repeal the section.**83. Section 78 amended (exemptions)**(1) Section 78, heading, after “Exemptions”—**Add****“for authorized insurers, etc.”.**

(1A) Section 78—

Repeal subsection (1)**Substitute**

- “(1) Despite section 64G, ~~neither~~ an authorized insurer ~~nor Lloyd’s~~ is not required to be a licensed insurance intermediary in order to—
- (a) carry on any regulated activity; or
- (b) hold out that it is carrying on any regulated activity.”.

(1B) Section 78(2)—**Repeal****everything after “insurer”****Substitute****“and does not extend to its agent.”.**

(2) Section 78—

Repeal subsection (3)**Substitute**

- “(3) If a person holds out in Hong Kong—
- (a) to carry on regulated activities specified in section 1(a) of Part 1 of Schedule 1A as an agent of a policy holder or potential policy holder for contracts of reinsurance only; or

(b) to carry on regulated activities specified in section 1(b), (c) and (d) of Part 1 of Schedule 1A for contracts of reinsurance only,

the person is not required to be a licensed insurance broker.

(3A) Subsection (3) does not apply to any of the following—

- (a) a body corporate incorporated in Hong Kong;
- (b) a body corporate incorporated elsewhere which has a place of business in Hong Kong or is represented in Hong Kong by an agent;
- (c) any other person or a partnership having a place of business in Hong Kong.”.

(3) Section 78—

Repeal subsections (4) and (5).

83A. Section 78A added

After section 78—

Add

“78A. Power of Authority to grant exemptions

(1) A person may apply to the Authority for an exemption from any provision of this Part.

(2) An application for exemption must be accompanied by—

- (a) a prescribed fee; and
- (b) any information and documents that the Authority reasonably requires to enable it to consider the application.

(3) The Authority may, on receipt of an application for exemption—

- (a) approve the application and grant the exemption; or
- (b) reject the application.

(4) The Authority must give the person a notice in writing of the result of the application.

(5) In approving an application for exemption, the Authority—

(a) may limit the validity of the exemption to a specified period; and

(b) may impose any conditions that the Authority considers appropriate.

(6) The Authority may at any time by notice in writing—

(a) revoke an exemption; or

(b) revoke, vary, or add to, any condition subject to which an exemption is granted.

(7) If a condition imposed under this section in relation to an exemption is contravened—

(a) the exemption ceases to have effect; and

(b) this Part applies to the person to whom the exemption was granted as if the exemption had not been granted.”.

84. Parts XI to XIV added

Before First Schedule—

Add

“Part XI**Disciplinary Actions and Conduct Requirements
for Licensed Insurance Intermediaries and
Certain Officers****Division 1—Preliminary****79. Interpretation**

(1) In this Part—

controller (控權人) has the meaning given by section 64F;

misconduct (不當行為) means—

- (a) a contravention of a provision of this Ordinance;
- (b) a contravention of a term or condition of a licence granted under this Ordinance;
- (c) a contravention of any other condition imposed under a provision of this Ordinance; or
- (d) an act or omission relating to the carrying on of any regulated activity which, in the Authority’s opinion, is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest,

and ***guilty of misconduct*** (犯不當行為) is to be construed accordingly;

regulated person (受規管人士) means—

- (a) a licensed insurance intermediary;
- (b) a responsible officer of a licensed insurance agency;

- (c) a responsible officer of a licensed insurance broker company;
- (d) a person concerned in the management of the regulated activities carried on by a licensed insurance agency; or
- (e) a person concerned in the management of the regulated activities carried on by a licensed insurance broker company.

(2) For the purposes of paragraph (d) of the definition of ***misconduct*** in subsection (1), the Authority 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 policy holders or the public interest, unless it has had regard to those provisions set out in any code of conduct published under section 93 or any code or guideline published under section 131, that are in force at the time of the occurrence of, and applicable in relation to, the act or omission.

(3) If—

- (a) a licensed insurance agency is, or was at any time, guilty of misconduct; or
- (b) a former licensed insurance agency was at any time guilty of misconduct,

as a result of a conduct occurring with the consent or connivance of, or attributable to neglect on the part of, a person specified in subsection (4), the conduct is also to be regarded as misconduct on the part of the person, and ***guilty of misconduct*** (犯不當行為) is to be construed accordingly.

(4) The person specified for subsection (3) is—

- (i) is, or was, a regulated person; and
- (ii) is, or was, appointed as an agent by an authorized institution,

in relation to any regulated activity carried on by the institution.

(5) In subsection (1), a reference to an opportunity of being heard is a reference to an opportunity to make written representations or oral representations.

82. Guidelines for exercise of power to impose pecuniary penalty under section 80

- (1) The Authority must not exercise a power under section 80 to impose a pecuniary penalty unless—
 - (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power; and
 - (b) in exercising that power, it has had regard to the guidelines so published.
- (2) The guidelines are not subsidiary legislation.
- (3) The Authority must consult the Monetary Authority before publishing any guideline under subsection (1).

83. General provisions relating to exercise of disciplinary powers

- (1) At any time when the Authority is contemplating exercising a power under section 80, it may, if it considers it appropriate to do so in the interests of policy holders or potential policy holders or the public interest, by agreement with the person concerned—

- (a) exercise a power that the Authority may exercise in respect of the person under ~~this Part~~ [section 80](#); and
 - (b) take an additional action that the Authority considers appropriate in the circumstances of the case.
- (2) If the Authority exercises a power or takes an additional action in respect of a person under subsection (1), it must comply with section 81 as if that section applied to the power or action, unless the person agrees otherwise.
 - (3) In reaching a decision under this Part, the Authority may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.
 - (4) The Authority must consult the Monetary Authority before exercising a power under subsection (1) in respect of—
 - (a) an authorized institution;
 - (b) a person who—
 - (i) is, or was, a regulated person; and
 - (ii) is, or was, employed by an authorized institution; or
 - (c) a person who—
 - (i) is, or was, a regulated person; and
 - (ii) is, or was, appointed as an agent by an authorized institution,

in relation to any regulated activity carried on by the institution.

84. Order for payment of pecuniary penalty

- (1) A person ordered to pay a pecuniary penalty under section 80 must pay the penalty to the Authority within 30 days, or a longer period that the Authority specifies by notice under section 81(3)(e), after the order has taken effect.
- (2) The Court of First Instance may, on an application of the Authority, register an order to pay a pecuniary penalty made under section 80 in the Court.
- (3) On registration, the order is to be regarded as an order of the Court of First Instance made within the civil jurisdiction of the Court for the payment of money.
- (4) For making an application under subsection (2), the Authority must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (5) A pecuniary penalty paid to or recovered by the Authority under an order made under section 80 must be paid by the Authority into the general revenue.

Division 3—Consequences of Revocation or Suspension under Division 2

85. Effect of suspension under section 80

- (1) If a licence or approval of a person is suspended under section 80, the person must, during the suspension period—
 - (a) continue to be regarded for the purposes of this Ordinance, but not sections 64G, 64ZE, 64ZF, 64ZN and 64ZO, to be licensed; and

- (b) without limiting paragraph (a), continue to be required to comply with the provisions of this Ordinance relating to a licensed insurance intermediary or responsible officer as would apply to the person were the licence or approval not so suspended.
- (2) Without limiting the powers that can be exercised by the Authority under section 80, the Authority may—
 - (a) revoke the licence of a person under this Part even though the licence is suspended under section 80; or
 - (b) revoke the approval of a person under this Part even though the approval is suspended under section 80.

86. Revocation or suspension of licence does not avoid or affect agreement, etc.

~~A~~ Subject to section 64N, a revocation or suspension of the licence of a person under section 80 does not—

- (a) avoid or affect an agreement, transaction or arrangement entered into or arranged by the person, regardless of whether the agreement, transaction or arrangement was entered into or arranged before or after the revocation or suspension; or
- (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

87. Requirement to transfer records on revocation or suspension of licence

- (1) If the licence of a person is revoked or suspended under section 80, the Authority may, by notice in writing, require the person to transfer to a client a copy of the

- (h) must ensure that the ~~policy holder's~~ assets of the policy holder or the potential policy holder are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under sections 92 and 127.

90. Conduct requirements for licensed insurance agencies and their responsible officers

- (1) A licensed insurance agency—
 - (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the agency and the licensed technical representatives (agent) appointed by the agency;
 - (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency;
 - (c) must ensure that its responsible officer has sufficient authority within the agency for carrying out the responsibilities set out in subsection (2); and
 - (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).
- (2) A responsible officer of a licensed insurance agency must use the officer's best endeavours to ensure that the agency—
 - (a) has established and maintains proper controls and procedures for securing compliance with the

- conduct requirements set out in section 89 by the agency and the licensed technical representatives (agent) appointed by the agency; and
- (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency.

91. Conduct requirements for licensed insurance broker companies and their responsible officers

- (1) A licensed insurance broker company—
 - (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the company and the licensed technical representatives (broker) appointed by the company;
 - (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company;
 - (c) must ensure that its responsible officer has sufficient authority within the company for carrying out the responsibilities set out in subsection (2); and
 - (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).
- (2) A responsible officer of a licensed insurance broker company must use the officer's best endeavours to ensure that the company—

- (a) has established and maintains proper controls and procedures for securing compliance with the conduct requirements set out in section 89 by the company and the licensed technical representative (broker) appointed by the company; and
- (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company.

91A. Breach of conduct requirements

(1) A failure to comply with a requirement specified in section 89, 90 or 91 does not by itself render any person liable to any judicial proceedings.

(2) To avoid doubt, this section does not affect—

(a) the extent (if any) to which a failure to comply with any other provision in this Ordinance is actionable; or

(b) any liability of a person under the common law or any other enactment, regardless of whether the circumstances giving rise to the liability would also constitute a failure mentioned in subsection (1).

92. Rules on conduct requirements for licensed insurance intermediaries

- (1) The Authority may make rules requiring licensed insurance intermediaries to comply with the practices and standards, relating to the conduct of the intermediaries in carrying on regulated activities, that are specified in the rules.
- (2) Without limiting subsection (1) and without affecting section 129, the Authority may in the rules—

- (a) prohibit the use of any misleading or deceptive advertisement by a licensed insurance intermediary and impose conditions on the use of advertisements;
- (b) require a licensed insurance intermediary to provide specified information to its client on entering into a policy or on the request of the client;
- (c) require a licensed insurance intermediary to take specified steps to ascertain, in relation to its client, specified matters relating to the identity, financial situation and financial and insurance needs of the client that are relevant to the services to be provided by the intermediary;
- (d) require a licensed insurance intermediary to take specified steps before providing information or advice to its client;
- (e) require a licensed insurance intermediary to take specified steps to ensure that disclosure is made to its client of the coverage, terms and conditions, and risks in relation to the policy recommended to the client;
- (f) require a licensed insurance intermediary to take specified steps to ensure that disclosure is made to its client of any commission or advantage that the intermediary receives or is to receive in relation to the policy recommended to the client;
- (g) require a licensed insurance intermediary to take specified steps to comply with the conduct requirements under sections 89, 90 and 91;
- (h) require a licensed insurance intermediary not to effect a transaction in specified circumstances;

- (i) prohibit the use by a licensed insurance intermediary of information relating to the affairs of its clients except in specified circumstances and under specified conditions;
- (j) require a licensed insurance intermediary to take specified steps in cases of conflict of interest between the intermediary and its client;
- (k) ~~prohibit the receipt by~~ specify the circumstances and conditions under which a licensed insurance intermediary ~~of~~ may receive any property or services from another licensed insurance intermediary in consideration of directing business to that other licensed insurance intermediary; ~~except in specified circumstances and under specified conditions~~; and
- (l) provide for any other matter in relation to the practices and standards relating to conduct in carrying on regulated activities by a licensed insurance intermediary.

93. Codes of conduct for licensed insurance intermediaries

- (1) The Authority may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for giving guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities.
- (2) Subsection (1) applies without limiting the powers of the Authority to make rules under section 92.
- (3) A code of conduct may refer to obligations to observe—
 - (a) any other codes or requirements issued or imposed otherwise than by the Authority;

- (b) continuing obligations, including an obligation to provide or undergo continuous training; and
 - (c) practices and standards concerning any of the matters described in section 92(2).
- (4) The Authority may from time to time amend the whole or any part of any code of conduct published.
 - (5) A failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings.
 - (6) However, the failure may be taken into account in considering, for a provision of this Ordinance, whether the intermediary is a fit and proper person to remain licensed.
 - (7) In any proceedings under this Ordinance before a court—
 - (a) a code of conduct is admissible in evidence; and
 - (b) 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.
 - (8) A code of conduct published under this section—
 - (a) may be of general or special application and may be made so as to apply only in specified circumstances; and
 - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

- (9) A code of conduct published under this section is not subsidiary legislation.

Part XII

Insurance Appeals Tribunal

94. Interpretation

In this Part—

affected person (當事人)—

- (a) for a specified decision set out in Part 1 of Schedule 9—means—
- (i) a person who is aggrieved by the decision; or
 - (ii) a person in respect of whom the decision is made; or
- (b) for a specified decision set out in Part 2 of Schedule 9—means a person in respect of whom the decision is made;

parties (各方), in relation to a review, means—

(a) the Authority; and

(b) the person making the application for the review;

review (覆核) means a review of a specified decision by the Tribunal under section 99;

specified decision (指明決定) means a decision specified in column 2 of Part 1 or 2 of Schedule 9 that is made under, or referred to in, the provision of this Ordinance specified in column 3 of that Schedule opposite that decision.

95. Establishment of Tribunal

- (1) A tribunal is established with the name of “Insurance Appeals Tribunal” in English and “保險事務上訴審裁處” in Chinese.
- (2) The Tribunal has jurisdiction to, in accordance with this Part and Schedule 10—
 - (a) review specified decisions; and
 - (b) hear and determine a question or issue arising out of or in connection with a review.
- (3) If the Chief Executive considers it appropriate to do so, the Chief Executive may establish additional tribunals for any reviews.
- (4) The provisions of this Ordinance apply, with necessary modifications, to the additional tribunals as they apply to the Tribunal.

96. Composition of Tribunal

- (1) Except as otherwise provided in Schedule 10, the Tribunal—
 - (a) consists of a chairperson and 2 other members; and
 - (b) is to be presided over by the chairperson who is to sit with the 2 other members.
- (2) A member of the Tribunal (including the chairperson) may be paid, as a fee for his or her service, the amount that the Financial Secretary considers appropriate.
- (3) The amount payable under this section is a charge on the general revenue.

97. Schedule 10 has effect in relation to Tribunal

Schedule 10 has effect—

100. Powers of Tribunal

- (1) Subject to Schedule 10, the Tribunal may, for the purpose of a review, on its own initiative or on the application of a party to the review—
- (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
 - (b) determine the manner in which any material mentioned in paragraph (a) is received;
 - (c) by notice in writing signed by the chairperson of the Tribunal, require a person—
 - (i) to attend before it at any sitting and to give evidence; and
 - (ii) to produce any article, record or document in the person's possession or control relating to the subject matter of the review;
 - (d) administer oaths;
 - (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
 - (f) order a witness to provide evidence for the purpose of the review by affidavit;
 - (g) order a person not to publish or otherwise disclose any material the Tribunal receives;
 - (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in private;

- (i) stay any of the proceedings in the review on any grounds and on any terms and conditions that it considers appropriate having regard to the interests of justice;
- (j) determine the procedure to be followed in the review; and
- (k) exercise other powers or make other orders that may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

(1A) The Tribunal may, with the consent of the parties to a review, determine the review on the basis of written submissions only.

- (2) A person commits an offence if the person, without reasonable excuse—
- (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1);
 - (b) disrupts any sitting of the Tribunal or otherwise misbehaves during any sitting of the Tribunal;
 - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where the person's attendance is so required without the permission of the Tribunal;
 - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of that attendance; or

- (2) Subsection (1) does not apply to—
- (a) an auditor appointed under section 5E or 72; and
 - (b) an auditor or actuary appointed under section 15.

Division 2—Other Offences and Supplementary Provisions on Offences

Subdivision 1—Other Offences

117. Misleading statements, etc. and false information

- (1) A person commits an offence if the person induces or attempts to induce another person to enter into, or offer to enter into, a contract of insurance—
 - (a) by a statement, promise or representation which the person knows to be false, misleading or deceptive;
 - (b) by a dishonest concealment of material facts; or
 - (c) by the reckless making (dishonest or otherwise) of a statement, promise or representation which is false, misleading or deceptive.
- (2) A person commits an offence if the person—
 - (a) causes or permits to be included in a document specified in subsection (3) a statement which the person knows to be false in a material particular; or
 - (b) recklessly causes or permits to be included in a document specified in subsection (3) a statement which is false in a material particular.
- (3) The document specified for subsection (2) is—
 - (a) a notice or statement or certificate served or furnished or sent out under a provision of this Ordinance; or

- (b) a document or copy of a document deposited or submitted under a provision of this Ordinance.
- (4) A person who commits an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

118. Restriction on use of certain terms and representations associated with insurance business

- (1) Except as provided for in section 121, a person must not, without the written consent of the Authority given generally or in a particular case or class of cases, use any of the following in the description or name under which the person is carrying on business in or from Hong Kong—
 - (a) the word “insurance” or “assurance”, or a derivative of the word in English, or a translation of the word or derivative in any language;
 - (b) the Chinese expression “保險”, or the character “保” followed immediately by the character “險”;
 - (c) the letters “i”, “n”, “s”, “u”, “r”, “a”, “n”, “c” and “e” in that order;
 - (d) the letters “a”, “s”, “s”, “u”, “r”, “a”, “n”, “c” and “e” in that order.
- (2) Subsection (1) does not apply to any of the following—
 - (a) an authorized insurer;
 - (b) an approved association of underwriters;
 - ~~(c) Lloyd’s;~~

- (d) a licensed insurance intermediary;
 - (da) a person to whom section 78(3) applies;
 - (e) an association that comprises mainly licensed insurance intermediaries or their employees, and that is formed for the protection or promotion of their mutual interests;
 - (f) an association of insurers or their employees that is formed for the protection or promotion of their mutual interests.
- (3) A person who is not an authorized insurer must not, without the written consent of the Authority given generally or in a particular case or class of cases, make a representation in a bill head, letter paper, notice or advertisement, or in any other manner, that the person—
- (a) is an authorized insurer; or
 - (b) is carrying on insurance business in or from Hong Kong.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable to a fine of \$200,000 and, in the case of an individual, also to imprisonment for 2 years.
- (5) In subsection (1)—
- description* (描述) includes a statement that may be construed to mean that a person (however described) is a subsidiary, the holding company, or a subsidiary of the holding company, of an authorized insurer, a licensed insurance agent-agency or a licensed insurance broker company.

119. Person not to disclose information obtained in the course of inspection, investigation or disciplinary action

- (1) This section applies to—

- (a) a person on whom a requirement under section 41B, 41C, 41D or 41E has been imposed by an inspector or investigator;
 - (b) a person on whom a requirement under section 64ZZF, 64ZZG, 64ZZH or 64ZZI has been imposed by an inspector or investigator; or
 - (c) a person who has been given a notice under section 41Q(2) or 81(2).
- (2) The person specified in subsection (1)(a) or (b) must not disclose any information obtained in the course of the requirement being imposed, or in the course of a compliance or purported compliance with the requirement, to any other person unless—
- (a) the Authority consents to the disclosure; or
 - (b) any of the conditions specified in subsection (4) is satisfied.
- (3) The person specified in subsection (1)(c) must not disclose any information obtained from the notice, or from any communication with the Authority in relation to the subject matter of the notice, unless—
- (a) the Authority consents to the disclosure; or
 - (b) any of the conditions specified in subsection (4) is satisfied.
- (4) The conditions specified for subsections (2)(b) and (3)(b) are—
- (a) the information has already been made available to the public because of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 53A;

- (ii) holding himself or herself out as so giving regulated advice;
- (c) prohibit a certified public accountant from—
 - (i) giving regulated advice wholly incidental to his or her practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or
 - (ii) holding himself or herself out as so giving regulated advice;
- (d) prohibit a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) from—
 - (i) giving regulated advice wholly incidental to the discharge of its duty as such a trust company; or
 - (ii) holding itself out as so giving regulated advice;
- (e) prohibit an actuary from—
 - (i) giving regulated advice wholly incidental to his or her practice as an actuary; or
 - (ii) holding himself or herself out as so giving regulated advice;
- (f) prohibit a person from giving regulated advice through—
 - (i) a newspaper, magazine, book or other publication that is made generally available to the public (excluding one that is made available on subscription only);

- (ii) a television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; or
 - (iii) electronic communication to the public;
 - (g) prohibit a person from—
 - (i) giving regulated advice in the course of—
 - (A) carrying on the business of loss assessment on behalf of an authorized insurer, policy holder or insurance claimant; or
 - (B) carrying on the business of settling claims on behalf of an authorized insurer; or
 - (ii) holding himself or herself out as so giving regulated advice; or
 - (h) prohibit a company from—
 - (i) giving regulated advice to a specified company; or
 - (ii) holding itself out as so giving regulated advice.
 - (2) Section 64G or 118 does not prohibit a person acting on behalf of an authorized insurer or a licensed insurance intermediary from carrying on a regulated activity if carrying on that activity only involves the discharge of clerical or administrative duties for the insurer or the intermediary.
- (2A) Section 64G or 118 does not prohibit an employee of any of the following authorized insurers from carrying on a regulated activity in the course of employment—

- (a) an authorized insurer which is authorized to carry on in or from Hong Kong reinsurance business only;
- (b) an authorized insurer which is a captive insurer.
- (2B) Without limiting subsection (2A), section 64G or 118 does not prohibit an employee of an authorized insurer from carrying on a regulated activity if carrying on that activity only involves the discharge of any of the following duties for the insurer in the course of employment—
- (a) to make an assessment of the risks to be accepted by the insurer under a contract of insurance;
- (b) to determine the terms and conditions of a contract of insurance to be issued by the insurer;
- (c) to process any claim lodged under a contract of insurance issued by the insurer.

(3) In subsection (1)—

actuary (精算師) means a person who holds a qualification specified in the Schedule to the Insurance Companies (Actuaries' Qualifications) Regulations (Cap. 41 sub. leg. A) or specified in a guideline published under section 131;

specified company (指明公司), in relation to a company, means—

- (a) a wholly owned subsidiary of the company;
- (b) another company which holds all the issued shares of the company; or
- (c) a wholly owned subsidiary of that other company mentioned in paragraph (b).

- (4) For the purposes of this section, a company is a wholly owned subsidiary of another company if it has only the following as members—
 - (a) that other company;
 - (b) a nominee of that other company;
 - (c) a wholly owned subsidiary of that other company;
 - (d) a nominee of such a wholly owned subsidiary.
- (5) The Financial Secretary may, by notice published in the Gazette, amend subsection (1).

122. Offences by bodies corporate and partners

- (1) If an offence under this Ordinance is committed by a body corporate, and it is proved that the offence—
 - (a) was committed with the consent or connivance of an individual specified in subsection (3); or
 - (b) was attributable to any neglect or omission on the part of an individual specified in subsection (3),
 the individual also commits the offence.
- (2) If a person who commits an offence under this Ordinance is a partner of a partnership, and it is proved that the offence—
 - (a) was committed with the consent or connivance of any other partner ~~or any person concerned in the management~~ of the partnership; or
 - (b) was attributable to any neglect or omission on the part of any other partner, ~~or any person concerned in the management~~ of the partnership,
 the other partner ~~or the person concerned in the management~~ of the partnership also commits the offence.

- (3) The individual specified for subsection (1) is—
- (a) a controller (within the meaning of the relevant provisions) of the body corporate;
 - (b) 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 key person in control functions or responsible officer of the body corporate; or
 - (c) if the body corporate is managed by its members, one of the members of the body corporate.
- (4) An offence under this Ordinance committed by a body corporate is presumed to have been committed with the consent or connivance of, or to be attributable to neglect or omission on the part of, a controller (within the meaning of the relevant provisions), director, ~~manager, company secretary~~ key person in control functions, responsible officer or member of the body corporate ~~or any other person~~ if it is proved that, at the time the offence was committed, the controller, director, ~~manager, company secretary~~ key person in control functions, responsible officer or member ~~or other person~~ was concerned in the management of the body corporate.
- (5) An offence under this Ordinance committed by a partner of a partnership is presumed to have been committed with the consent or connivance of, or to be attributable to neglect or omission on the part of, any other partner in the partnership ~~or any other person~~ if it is proved that, at the time the offence was committed, the other partner ~~or person~~ was concerned in the management of the partnership.

- (6) The presumption under subsection (4) or (5) is rebutted by a person charged with an offence under this Ordinance by virtue of that subsection if—
- (a) there is sufficient evidence to raise an issue that the offence was committed without the person's consent or connivance and was not attributable to the person's neglect or omission; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

123. Time limit for proceedings for offences

Criminal proceedings for an offence under this Ordinance must be commenced within whichever of the following period expires first—

- (a) the period of 3 years beginning on the date immediately after the date on which the offence is discovered by, or comes to the notice of, the Authority;
- (b) the period of 6 years beginning on the date immediately after the offence is committed.

124. Prosecution of offences by Authority

- (1) The Authority may prosecute an offence under this Ordinance, or an offence of conspiracy to commit such an offence, in its own name.
- (2) However, if the Authority so prosecutes, the offence must be tried before a magistrate as an offence that is triable summarily.

~~(3) For the prosecution of an offence referred to in subsection (1), an employee of the Authority who is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)~~

- ~~(a) may appear and plead before a magistrate; and~~
~~(b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.~~
- (4) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

Division 3—Services

125. Service of notices, etc.

A written notice or direction or other document (however described) permitted or required to be issued or served (however described) to or on a person, other than the Authority or the Monetary Authority, for this Ordinance is to be regarded as duly issued or served if—

- (a) for an individual, it is—
- (i) delivered to the individual by hand;
 - (ii) left at, or sent by post to, the last known business or residential address of the individual;
 - (iii) sent by fax transmission to the last known fax number of the individual; or
 - (iv) sent by electronic mail transmission to the last known electronic mail address of the individual;
- (b) for a company, it is—
- (i) delivered to any officer of the company by hand;

- (ii) left at, or sent by post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 622);
 - (iii) sent by fax transmission to the last known fax number of the company; or
 - (iv) sent by electronic mail transmission to the last known electronic mail address of the company;
- (c) for a non-Hong Kong company, it is—
- (i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part 16 of the Companies Ordinance (Cap. 622) at the person's address delivered to the Registrar of Companies under that Ordinance;
 - (ii) sent by fax transmission to the last known fax number of the person; or
 - (iii) sent by electronic mail transmission to the last known electronic mail address of the person;
- (d) for a partnership, it is—
- (i) delivered to any partner of the partnership by hand;
 - (ii) left at, or sent by post to, the last known principal place of business of the partnership;
 - (iii) sent by fax transmission to the last known fax number of the partnership; or
 - (iv) sent by electronic mail transmission to the last known electronic mail address of the partnership;

- (a) in relation to a matter relating to any of the functions of the Authority under this Ordinance; or
 - (b) in relation to the operation of a provision of this Ordinance.
- (2) To avoid doubt, the power of the Authority to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Authority to publish codes or guidelines under any provision of this or any other Ordinance.
- (3) The Authority may from time to time amend the whole or any part of a code or guideline published.
- (4) A failure on the part of a person to comply with the provisions set out in a code or guideline does not by itself render the person liable to any judicial or other proceedings.
- (5) However, in any proceedings under this Ordinance before a court—
- (a) the code or guideline is admissible in evidence; and
 - (b) if a provision in the code or guideline 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.
- (6) A code or guideline published under this section—
- (a) may be of general or special application or may be made so as to apply only in specified circumstances; and
 - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

- (7) A code or guideline published under this section is not subsidiary legislation.

132. Orders and regulations for levies

~~(1) A levy specified by the Chief Executive in Council by order published in the Gazette is payable to the Authority by the person so specified in the order for every contract of insurance.~~

(1) If a contract of insurance relates to—

(a) a prescribed class of insurance business; or

(b) a prescribed type of contract of insurance,

a prescribed levy is payable to the Authority for the contract by its policy holder.

(2) For the purposes of subsection (1), the Chief Executive in Council, ~~by order published in the Gazette—~~

(a) may specify any rate or amount as a prescribed levy under subsection (1);

(b) may specify any class of insurance business as a prescribed class of insurance business under subsection (1)(a);

(c) may specify any type of contract of insurance as a prescribed type of contract of insurance under subsection (1)(b);

(d) may specify the rate or amount of the prescribed levy payable for a contract of insurance—

(i) as a percentage of the premium payable for the contract of insurance;

(ii) as a fixed amount;

(iii) as a nil rate, nil amount or nil percentage; or

- (iv) as to be calculated in any other manner specified in the order; and
 - (e) may specify different rates for different classes of insurance business or different types of contract of insurance.
- (3) The Authority may recover the amount of a levy payable under this section as a civil debt due to it.
 - (4) The Chief Executive in Council may make regulations for—
 - (a) the payment of levies;
 - (b) the payment of charges or penalties for late payment of levies; and
 - (c) the keeping, examination and audit of the accounts of authorized insurers and licensed insurance intermediaries relating to the collection and payment of levies.

133. Reduction of levies

- (1) If during a financial year of the Authority the requirements set out in subsection (2) are met, the Authority must consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced.
- (2) The requirements are—
 - (a) that the reserves of the Authority, after deducting depreciations and all provisions, are more than twice its estimated operating expenses for the financial year; and
 - (b) that the Authority has no outstanding debt.
- (3) The Authority may, after consulting the Financial Secretary under subsection (1), recommend to the Chief

Executive in Council that the rate or amount of a levy be reduced.

134. Procedural requirements for publishing notices under sections 13AE(14) and 121(5)

- (1) If the Financial Secretary proposes to publish a notice under section 13AE(14) or 121(5), the Financial Secretary must publish a draft of the proposed notice, in the manner the Financial Secretary considers appropriate, for inviting representations on the proposed notice by the public.
- (2) If the Financial Secretary publishes a notice after a draft has been published under subsection (1), the Financial Secretary must comply with subsections (3) and (4).
- (3) The Financial Secretary must publish, in the manner that it considers appropriate, an account setting out in general terms—
 - (a) the representations made on the draft; and
 - (b) the response of the Financial Secretary to the representations.
- (4) If the Financial Secretary considers the notice published is significantly different from the draft, the Financial Secretary must publish, in the manner the Financial Secretary considers appropriate, details of the difference.
- (5) Subsections (1) and (2) do not apply if the Financial Secretary considers, in the circumstances of the case, that—
 - (a) it is inappropriate or unnecessary that those subsections should apply; or
 - (b) the delay involved in complying with those subsections would not be—

- (3) A member of the Authority may at any time resign from office by notice in writing to the Chief Executive.
- (4) Unless it is otherwise provided in the terms and conditions of the appointment under subsection (2), a notice of resignation takes effect—
 - (a) on the date specified in the notice; or
 - (b) if no date is so specified, on the date of receipt by the Chief Executive of the notice.
- (5) The Authority must pay a member of the Authority the remuneration, allowances or expenses determined by the Chief Executive.

4. Removal of members of Authority

- (1) If the Chief Executive is satisfied that a member of the Authority—
 - (a) has become a public officer;
 - (b) has become bankrupt;
 - (c) is incapacitated by physical or mental illness;
 - (d) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
 - (e) is otherwise unable or unfit to perform the functions of a member of the Authority,
 the Chief Executive may declare the member's office to be vacant.
- (2) The Chief Executive must give notice of the declaration in the manner that the Chief Executive thinks fit.

- (3) Subsection (4) applies if the notice of the declaration is given otherwise than by notice published in the Gazette.
- (4) The Chief Executive must, as soon as practicable after giving notice under subsection (2), give another notice of the declaration by notice published in the Gazette.

5. Disclosure of ~~pecuniary~~ interests by members of Authority

- (1) If—
 - (a) a member of the Authority has ~~a pecuniary interest~~, in a matter that is considered or is to be considered at a meeting of the Authority, an interest which is of a class or description determined by the Authority under subsection (2); and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as practicable after becoming aware of the relevant facts, disclose the ~~nature of the~~ interest at a meeting of the Authority.

~~(2) A disclosure by a member of the Authority at a meeting of the Authority that the member—~~

~~(a) is an officer or member, or is in the employment, of a specified company or other body;~~

~~(b) is a partner, or is in the employment, of a specified person; or~~

~~(c) has some other specified interest relating to a specified company or other body or to a specified person;~~

~~is a sufficient disclosure of the nature of the interest in a matter relating to that company or other body or to that person which may arise after the date of the disclosure~~

- ~~and which is required to be disclosed under subsection (1).~~
- ~~(2) The Authority may—~~
- ~~(a) determine the class or description of the interest required to be disclosed;~~
- ~~(b) determine the details of the interest required to be disclosed and the manner in which the interest is to be disclosed; and~~
- ~~(c) from time to time change any matter determined under paragraph (a) or (b).~~
- (3) Particulars of a disclosure made under this section must be recorded by the Authority in a book kept for the purpose and that book must be open at all reasonable hours to inspection by the public.
- (4) After a member of the Authority has disclosed ~~the nature of~~ an interest in a matter, the member must not, unless the Authority otherwise determines—
- (a) be present during a deliberation of the Authority with respect to the matter; or
- (b) take part in a decision of the Authority with respect to the matter.
- (5) For making a determination by the Authority under subsection (4), a member of the Authority who has ~~a pecuniary-an~~ interest in a matter to which the disclosure relates—
- (a) must not be present during the Authority's deliberation for making the determination; and
- (b) must not take part in the Authority's making of the determination.

- (6) A contravention of this section does not invalidate a decision of the Authority.

6. Meetings

- (1) Meetings of the Authority—
- (a) must be held as often as necessary for performing its functions; and
- (b) may be convened by the chairperson, deputy chairperson, chief executive officer, or any 2 other members, of the Authority.
- (2) At a meeting of the Authority—
- (a) if the chairperson of the Authority is present—he or she is to be the chairperson of the meeting;
- (b) if the chairperson of the Authority is not present but the deputy chairperson of the Authority is present—the deputy chairperson is to be the chairperson of the meeting; or
- (c) if neither the chairperson nor the deputy chairperson of the Authority is present—the members of the Authority present must choose one of their number to be the chairperson of the meeting.
- (3) The quorum for a meeting of the Authority is the number that is not less than one-third of the number of the executive directors of the Authority and not less than one-third of the number of the non-executive directors of the Authority.
- (4) Despite section 1(6) and (7) of this Schedule, for forming a quorum under subsection (3)—

8. Seal and regulation of administration, etc.

- (1) The Authority must have a seal, the affixing of which must be authenticated by—
 - (a) the signature of the chairperson or the deputy chairperson of the Authority; or
 - (b) the signature of another member of the Authority authorized by it to act in that behalf.
- (2) A document purporting to be a document duly executed under the seal of the Authority is to be received in evidence without further proof and is, unless the contrary is proved, to be regarded as a document so executed on being received in evidence.
- (3) The Authority must organize and regulate its administration, procedure and business in a manner that it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Schedule 1C

[s. 4C]

**Constitution and Proceedings of Industry
Advisory Committees**

1. An industry advisory committee consists of the following members—
 - (a) the chairperson of the Authority;
 - (b) the chief executive officer of the Authority;

- (c) not more than 2 other executive directors of the Authority who must be appointed by the Authority; **and**
 - (d) not less than 8 but not more than 12 other members who must be appointed by the Financial Secretary after consultation with the Authority.
2. In appointing a person as a member under section 1(d) of this Schedule, the Financial Secretary must have been satisfied that in the opinion of the Authority, the person has knowledge of, or experience in, the insurance industry, and the conduct of regulated activities and consumer affairs.
3. An industry advisory committee must meet at least once every 3 months to advise the Authority.
4. A meeting of an industry advisory committee may be convened by—
 - (a) the chairperson of the Authority;
 - (b) the chief executive officer of the Authority; or
 - (c) any 3 other members of the industry advisory committee.
5. At a meeting of an industry advisory committee—
 - (a) if the chairperson of the Authority is present—he or she is to be the chairperson of the meeting; or
 - (b) if the chairperson of the Authority is not present—the members of the industry advisory committee present must choose one of their number to be the chairperson of the meeting.
6. The quorum for a meeting of an industry advisory committee is a majority of its members.
7. If a member of an industry advisory committee appointed under section 1(c) of this Schedule ceases to be an executive

“[para. 3, Sch. 2]”.

(10A) Schedule 2, Form C, heading—

Repeal

“13A(1)”

Substitute

“13A(12)”.

(11) Schedule 2, Form C—

Repeal

“Name of insurer”

Substitute

“Name of authorized insurer”.

(12) Schedule 2, Form C—

Repeal

“13A(1)” (wherever appearing)

Substitute

“13A(12)”.

88. Third Schedule amended (accounts and statements)

(1) Third Schedule, English text, heading—

Repeal

“THIRD SCHEDULE”

Substitute

“Schedule 3”.

(2) Schedule 3—

Repeal

“[ss. 17, 18, 22 & 50]”

Substitute

“[ss. 2, 10, 15A, 15B, 17, 18, 20, 21, 22A, 25A, 25B, 50C & 136]”.

(3) Schedule 3, English text, Part 1, paragraph 1(1), definition of *accounting class of general business* and *accounting class*—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

(4) Schedule 3, Part 1, paragraph 4(1)(a)(ii)—

Repeal

“regulations made under section 59(1)(aa)”

Substitute

“rules made under section 127(1)(b)”.

(5) Schedule 3, Part 1, paragraph 4(1AC)(c)(ii)—

Repeal

“regulations made under section 59(1)(aa)”

Substitute

“rules made under section 127(1)(b)”.

(6) Schedule 3, English text, Part 1, paragraph 5(1)(b)(i)(B)—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

(7) Schedule 3, Part 1, paragraph 5(1)(b)(ii)—

Repeal

“regulations made under section 59(1)(ab)”

- “Schedule 1”.
- (17) Schedule 3, English text, Part 8, paragraph 41(2)—
Repeal
“the First Schedule”
Substitute
“Schedule 1”.
- (18) Schedule 3, English text, Part 8, Form HKL1, Note—
Repeal
“the First Schedule”
Substitute
“Schedule 1”.
- (19) Schedule 3, Part 8, Form HKL1, Note—
Repeal
“Insurance Companies Ordinance”
Substitute
“Insurance Ordinance”.
- (20) Schedule 3, English text, Part 8, Form HKL2, Note 1—
Repeal
“the First Schedule”
Substitute
“Schedule 1”.
- (21) Schedule 3, Part 8, Form HKL2, Note 1—
Repeal
“Insurance Companies Ordinance”
Substitute
“Insurance Ordinance”.

- 89. Fourth Schedule amended (proposed appointment of controller within the meaning of section 13A(1) or authorized representative under section 50B)**
- (1) Fourth Schedule, English text, heading—
Repeal
“FOURTH SCHEDULE”
Substitute
“Schedule 4”.
- (1A) Schedule 4, heading—
Repeal
“13A(1)”
Substitute
“13A(12)”.
- (2) Schedule 4—
Repeal
“[ss. 13A(2)(a) & 50B]”
Substitute
“[ss. 13A, 13AC, 13AE, 50B & 136]”.
- (3) Schedule 4, English text, paragraph 1, heading—
Repeal
“Fourth Schedule”
Substitute
“Schedule 4”.
- (3A) Schedule 4, paragraph 1(a)—
Repeal
“13A(2)(a)”

Substitute“13A(3)(a)”.(3B) Schedule 4, paragraph 1(a)—**Repeal**“13A(1)”**Substitute**“13A(12)”.(3C) Schedule 4, paragraph 2(a)—**Repeal**“13A(2)(a)”**Substitute**“13A(3)(a)”.(3D) Schedule 4, paragraph 2(a)—**Repeal**“13A(1)”**Substitute**“13A(12)”.

(4) Schedule 4, English text, Form A—

Repeal

“[para. 2, 4th Sch.]”

Substitute

“[para. 2, Sch. 4]”.

(4A) Schedule 4, Form A, heading—**Repeal**“13A(1)”**Substitute**“13A(12)”.(4B) Schedule 4, Form A—**Repeal**“13A(1)” (wherever appearing)**Substitute**“13A(12)”.

(5) Schedule 4, English text, Form B—

Repeal

“[para. 2, 4th Sch.]”

Substitute

“[para. 2, Sch. 4]”.

(5A) Schedule 4, Form B, heading—**Repeal**“13A(1)”**Substitute**“13A(12)”.(5B) Schedule 4, Form B—**Repeal**“13A(1)” (wherever appearing)**Substitute**“13A(12)”.**90. Fifth Schedule amended (person proposing to become controller within the meaning of section 13B(1))**

(1) Fifth Schedule, English text, heading—

Repeal

“FIFTH SCHEDULE”

Column 1	Column 2	Column 3
Item	Description of decision	Provision
	business	
4.	Refusal to approve the appointment of an individual as a controller of an authorized insurer	Section 13A(5)
5.	Revocation of approval of appointment of an individual as a controller of an authorized insurer	Section 13A(7)
6.	Refusal to approve the appointment of a person as a director of an authorized insurer	Section 13AC(5)
7.	Revocation of approval of appointment of a person as a director of an authorized insurer	Section 13AC(7)
8.	Refusal to approve the appointment of an individual as a key person in control functions of an authorized insurer	Section 13AE(5)
9.	Revocation of approval of appointment of an individual as a key person in control functions of an authorized insurer	Section 13AE(7)
10.	Imposition, amendment or revocation of a condition in	Section 13AF

Column 1	Column 2	Column 3
Item	Description of decision	Provision
	relation to the approval of appointment of a controller, director or key person in control functions of an authorized insurer	
11.	Objection to a person being proposed to become a controller of an authorized insurer	Section 13B(4)
12.	Objection to the appointment of a controller <u>or director</u> of an authorized insurer	Section 14(4)
13.	Refusal to approve the appointment of a person as an actuary of an authorized insurer	Section 15(3C)
14.	Revocation of approval of the appointment of a person as an actuary of an authorized insurer	Section 15(3E)
<u>14A.</u>	<u>Imposition, amendment or revocation of a condition in relation to the approval of appointment of an actuary of an authorized insurer</u>	<u>Section 15AA</u>
<u>14B.</u>	<u>Objection to the appointment of an actuary of an authorized insurer</u>	<u>Section 15B(2A)</u>

Column 1	Column 2	Column 3
Item	Description of decision	Provision
15.	Imposition of a restriction on effecting or varying contracts of insurance by an authorized insurer	Section 27
16.	Imposition of a requirement on an authorized insurer about investments	Section 28
17.	Imposition of a requirement on an authorized insurer about maintenance of assets in Hong Kong	Section 29
18.	Imposition of an additional requirement on an authorized insurer about custody of assets	Section 30
19.	Imposition of a limitation of the premium income to be received by an authorized insurer	Section 31
20.	Imposition of a requirement on an authorized insurer	Section 35(1)
<u>20A.</u>	<u>Direction in respect of the affairs, business and property of an authorized insurer</u>	<u>Section 35(2)</u>
21.	Rescission or variation of a requirement imposed under sections 27 to 35(1)	Section 38(1)

Column 1	Column 2	Column 3
Item	Description of decision	Provision
22.	Determination of remuneration and expenses to be paid by an authorized insurer to an Advisor or Manager	Section 38E(5)
23.	Exercise of power to take disciplinary action against an authorized insurer	Section 41P(1)
24.	Refusal to approve the appointment of a person as the authorized representative of Lloyd's	Section 50B
25.	Revocation of approval of the appointment of a person as the authorized representative of Lloyd's	Section 50B
26.	Exercise of power to take disciplinary action against Lloyd's, etc.	Section 50G

Part 2

Specified Decisions Made in respect of Insurance Intermediaries

Column <u>1</u>	Column 2	Column 3
Item	Description of decision	Provision
1.	Refusal to grant an	Section 64U(4)

Column 1	Column 2	Column 3
Item	Description of decision	Provision
	insurance agency licence	
2.	Refusal to grant an individual insurance agent licence	Section 64W(2)
3.	Refusal to grant a technical representative (agent) licence	Section 64Y(2)
4.	Refusal to grant an insurance broker company licence	Section 64ZA(3)
5.	Refusal to grant a technical representative (broker) licence	Section 64ZC(2)
6.	Refusal to approve an individual as a responsible officer of a licensed insurance agency	Section 64ZE(3)
7.	Refusal to approve an individual as a responsible officer of a licensed insurance broker company	Section 64ZF(3)
8.	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 64ZG

Column 1	Column 2	Column 3
Item	Description of decision	Provision
	section 64ZE or 64ZF	
9.	Revocation of the approval granted under section 64ZE	Section 64ZL(2)
10.	Revocation of the approval granted under section 64ZF	Section 64ZM(2)
11.	Refusal to renew a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC	Section 64ZV(4)
12.	Imposition, amendment or revocation of a condition in relation to a renewal of a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC	Section 64ZW
13.	Exercise of power to take disciplinary action	Section 80(1), (2) and (3)
14.	Revocation or suspension of a licence or approval that is regarded as having been granted under Part 4 of Schedule 11	Section 105 of Schedule 11
15.	Imposition, amendment or revocation of a condition in relation to a licence or approval that is	Section 106 of Schedule 11

Column 1	Column 2	Column 3
Item	Description of decision	Provision
	regarded as having been granted under Part 4 of Schedule 11	
16.	Exercise of power to take disciplinary action against, or imposition of a penalty or disciplinary sanction on, a specified person as defined by section 107 of Schedule 11	Section 110(3)-108(4) of Schedule 11
17.	Exercise of power to take disciplinary action against, or imposition of a penalty or sanction on, a specified person as defined by section 111 of Schedule 11	Section 113 of Schedule 11

Schedule 10[ss. 95, 96,
97, 100,
103 & 115]**Appointment of Members and Proceedings of Tribunal, etc.****1. Interpretation**

(1) In this Schedule—

application for review (覆核申請) means an application made under section 98;*chairperson* (主席) means the chairperson of the Tribunal;*ordinary member* (普通成員) means a member of the Tribunal other than the chairperson;*panel member* (上訴委員) means a member of the panel appointed under section 2 of this Schedule;~~*parties* (各方), in relation to a review, means—~~~~—(a) the Authority; and~~~~—(b) the person making the application for review in question;~~*Secretary* (局長) means the Secretary for Financial Services and the Treasury.

(2) In this Schedule—

~~*parties* (各方), *review* (覆核), and *specified decision* (指明決定) and *Tribunal* (審裁處) have the same meaning as in Part XII.~~**2. Appointment of panel**

(1) Subject to section 96, the Chief Executive must appoint persons to a panel comprising the number of members that the Chief Executive considers appropriate.

(2) A panel member—

4. Appointment of ordinary members

- (1) For determining a review, the Secretary on the recommendation of the chairperson must appoint 2 panel members as ordinary members in relation to the review.
- (2) Subject to subsections (3) and (5), an ordinary member is appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
- (3) An ordinary member may at any time resign from office by notice in writing to the Secretary.
- (4) A notice of resignation takes effect—
 - (a) on the date the Secretary receives the notice; or
 - (b) if a later date is specified in the notice, on that later date.
- (5) If an ordinary member ceases to be a panel member, he or she ceases to be an ordinary member.

4A. Further provisions relating to chairperson and ordinary members

- (1) If, during the sittings of a review, there is a change in any of the persons specified in subsection (2), then—
 - (a) if the parties to the review so consent, the sittings may continue despite the change; or
 - (b) in the absence of the consent of the parties to the review, the sittings must not continue but may begin anew.
- (2) The following persons are specified—
 - (a) the chairperson or a person acting as the chairperson in relation to the review;

- (b) a panel member acting as an ordinary member in relation to the review.

5. Sittings

- (1) The chairperson must convene the sittings of the Tribunal that are necessary to determine a review.
- (2) Before convening a sitting in respect of a review, the Tribunal may give directions to the parties to the review concerning—
 - (a) procedural matters to be complied with by the parties; and
 - (b) the time within which the parties are required to comply with those matters.
- (3) Subject to subsection (4), at any sitting of the Tribunal—
 - (a) the chairperson and 2 ordinary members must be present;
 - (b) the chairperson must preside; and
 - (c) every question before the Tribunal must be determined by the majority of votes cast by the chairperson and the ordinary members, except that a question of law is to be determined by the chairperson alone.
- (4) At any sitting of the Tribunal held in respect of any matter which is determined by the chairperson alone as the sole member of the Tribunal under section 8(1) of this Schedule—
 - (a) the chairperson only must be present; and
 - (b) every question before the Tribunal must be determined by the chairperson.
- (5) Every sitting of the Tribunal must be held in public.

- (6) However, subsection (5) does not apply if the Tribunal, on its own initiative or on the application of any of the parties to the review, determines that in the interests of justice a sitting, or a part of the sitting, must be held in private.
- (7) If an application is made under subsection (6) for a determination that a sitting or any part of the sitting must be held in private, a hearing of the application must be held in private.
- (8) The parties to a review must, at any sitting of the Tribunal relating to the review, be entitled to be heard—
- (a) in person, or—
 - (i) for the Authority or a company—through an officer or employee of the Authority or the company (as the case may be);
 - (ii) for a partnership—through a partner; or
 - (iii) for a sole proprietorship—through the sole proprietor; ~~and or~~
 - (b) through a counsel or solicitor or, with the leave of the Tribunal, through any other person.
- (9) The chairperson must prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which must contain the particulars relating to the proceedings that the chairperson considers appropriate.
- (10) The order of proceedings at any sitting of the Tribunal must be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

6. Preliminary conferences

- (1) If the conditions set out in subsection (2) are satisfied, the chairperson may, on his or her own initiative or on

- the application of any of the parties to the review, direct that a conference be held for any one or more of the purposes set out in subsection (3).
- (2) The conditions are—
- (a) the chairperson, after considering any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review, considers it appropriate to hold the conference; and
 - (b) the parties agree or, for an application made by a party under subsection (1), the other party agrees.
- (3) The purposes are—
- (a) to enable the parties to prepare for the conduct of the review;
 - (b) to assist the Tribunal to determine issues for the purposes of the review;
 - (c) to generally secure the just, expeditious and economical conduct of the review.
- (4) A conference is to be attended by the parties or their representatives and presided over by the chairperson.
- (5) At a conference held in accordance with a direction of the chairperson under subsection (1), the chairperson may—
- (a) give any direction the chairperson considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
 - (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

- (a) there is an application described in subsection (1)(c); and
- (b) the chairperson—
 - (i) cannot perform his or her functions because of illness, absence from Hong Kong or any other reason; or
 - (ii) considers it improper or undesirable that he or she should perform his or her functions in relation to the application.

9. Privileges and immunities

Except as otherwise provided in this Ordinance, the Tribunal, the chairperson and ordinary members, and any party, witness, counsel, solicitor, or any other person involved, in a review, have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

Schedule 11

[ss. 2, 13 &
137 & Sch. 9]

Savings and Transitional Arrangements for Insurance Companies (Amendment) Ordinance 2014

Part 1

Preliminary

1. Interpretation of Schedule 11

In this Schedule—

applicable rule (適用規則) means a rule that is—

- (a) ~~referred to in~~ within the meaning of section 123 or 124 of this Schedule; and
- (b) published under section 125(1) of this Schedule;

approved broker body (認可經紀團體) means a body of insurance brokers approved under section 70 of the pre-amended Ordinance;

commencement date (實施日期)—

- (a) except in relation to Parts 4, 5, 6, 7 and 8 of this Schedule, means the date on which section 10 of the Amendment Ordinance comes into operation;
- (b) in relation to Parts 4, 5, 6, 7 and 8 of this Schedule, means the date on which section 71 of the Amendment Ordinance comes into operation;

HKFI (保聯) means the Hong Kong Federation of Insurers;

IARB (委員會) means the Insurance Agents Registration Board set up by HKFI;

information (資訊) includes data, text, images, sound codes, computer programmes, software and databases;

(b) exemption or condition to, or limitation for, an exemption that has been given or imposed in relation to an authorized insurer under the pre-amended Ordinance,

and was in force immediately before the commencement date is to continue in force for the remainder of its validity period as if the Amendment Ordinance had not been enacted.

(8) If a form, document or instrument (including a form, document or instrument referred to in subsection (4) issued or made by or on behalf of the former authority for the performance of its function under the pre-amended Ordinance)—

(a) was specified, prescribed, printed or duplicated for use in connection with the pre-amended Ordinance; and

(b) was in force immediately before the commencement date,

it may be so used despite the fact that it contains a reference to the former authority, and that reference is to be construed as a reference to the Authority.

Part 3

Transfer of Records from Former Authority to Authority

3. Former authority to transfer records to Authority

(1) All records in the former authority's custody and are, in the opinion of the Authority, required for it to perform its functions under this Ordinance must be transferred from the former authority to the Authority on or before

the commencement date ~~or as soon as practicable after that date.~~

(2) In relation to a record transferred under this section, all the rights and obligations of the former authority subsisting immediately before the transfer are to be transferred to the Authority on the transfer of the record.

(3) The Authority must ensure that there are in place proper procedures and systems to safeguard against unauthorized access to, or unauthorized use of, the records transferred under this section.

(4) In relation to personal data transferred under this section, the Personal Data (Privacy) Ordinance (Cap. 486) applies as if the data had been received by the Authority rather than the former authority.

(5) In relation to personal data transferred under this section, ~~—~~

~~(a)~~ (a) the Authority 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; and

~~(6b)~~ (b) ~~The the~~ Privacy Commissioner for Personal Data may, on and after the date on which the data is transfer~~transferred— is— completed~~, exercise in relation to the Authority any power under the Personal Data (Privacy) Ordinance (Cap. 486) that the Commissioner could have, immediately before that date, exercised in relation to the former authority for a breach or alleged breach by the former authority of a requirement under that Ordinance.

(7) The transfer of a record by the former authority to the Authority under this section does not amount to—

- (a) a breach of duty of confidentiality to which the former authority is subject immediately before the transfer; or
- (b) a contravention by the Authority or the former authority of the Personal Data (Privacy) Ordinance (Cap. 486).

Part 3A

Appeals to Financial Secretary that have been Made or could have been Made before Commencement Date

3A. Interpretation of Part 3A of this Schedule

In this Part—

specified decision (指明決定) means—

- (a) a decision made by the former authority to refuse to authorize a company under section 8 of the pre-amended Ordinance on the ground (or on grounds including the ground) that a person as mentioned in section 8(2) of the pre-amended Ordinance is not a fit and proper person to hold the position held by the person;
- (b) a decision of the former authority to refuse to authorize a company under section 8(1)(b)(ii) of the pre-amended Ordinance;
- (c) a decision of the former authority to serve a notice of objection under section 13A(5) of the pre-amended Ordinance;

- (d) a decision of the former authority to serve a notice of objection under section 13B(4) of the pre-amended Ordinance;
- (e) a decision of the former authority to serve a notice of objection under section 14(4) of the pre-amended Ordinance;
- (f) a direction given by the former authority under section 35(2) of the pre-amended Ordinance;
- (g) a determination made by the former authority under section 38E(5) of the pre-amended Ordinance;
- (h) a decision of the former authority to serve a notice of objection under section 50B(3) of the pre-amended Ordinance;
- (i) a decision of the former authority to serve a notice of removal under section 50B(4) of the pre-amended Ordinance;
- (j) a decision of de-registration of a person as an appointed insurance agent as defined by section 2(1) of the pre-amended Ordinance under section 66(7) of the pre-amended Ordinance; or
- (k) a decision of the former authority under section 75(1) of the pre-amended Ordinance to withdraw—
 - (i) the authorization of an insurance broker as defined by section 2(1) of the pre-amended Ordinance; or
 - (ii) the approval of a body of insurance brokers approved under section 70 of the pre-amended Ordinance.

3B. Appeals not yet determined by Financial Secretary

(1) This section applies if an appeal against a specified decision—

- (a) has been made to the Financial Secretary; but
- (b) has not been finally disposed of before the commencement date.

(2) On or after the commencement date—

- (a) the Tribunal is to handle the appeal as if it was an appeal made to the Tribunal under section 3C of this Schedule; and
- (b) the Financial Secretary is to cease to have power to handle the appeal.

3C. Appeals not made to Financial Secretary before commencement date

(1) This section applies if—

- (a) a specified decision was made before the commencement date;
- (b) an appeal against the decision could have been made to the Financial Secretary under the pre-amended Ordinance but for the Amendment Ordinance;
- (c) the period within which an appeal against the decision could be made has not expired, or there is no time limit prescribed for such an appeal, under the pre-amended Ordinance; and
- (d) no appeal has been made to the Financial Secretary before the commencement date against the decision.

(2) On or after the commencement date, an appeal against the decision may only be made to the Tribunal.

3D. Determination of appeals under sections 3B and 3C of this Schedule

(1) An appeal mentioned in section 3B or 3C of this Schedule must be determined by the Tribunal by reference to the provisions of the pre-amended Ordinance that would have applied to the specified decision had the Financial Secretary continued to have the power to handle the appeal, or had the appeal been made to the Financial Secretary.

(2) Part XII applies to an appeal mentioned in section 3B or 3C of this Schedule as if—

- (a) a reference to a review in that Part was a reference to such an appeal; and
- (b) a reference to a party to a review included the Authority.

(3) However, the Tribunal must not determine the appeal by remitting the matter in question to the Financial Secretary.

Part 4**Savings and Transitional Arrangements Relating to Licensing and Approval****Division 1—Preliminary****4. Interpretation of ~~this~~ Part 4 of this Schedule**

In this Part—

specified date (指明日期), in relation to an application made under section 64U(1), 64W(1), 64Y(1), 64ZA(1), 64ZC(1), 64ZE(1) or 64ZF(1)—

- (a) if the application is granted, means the date on which the application is granted by the Authority to the applicant; or
- (b) if the application is rejected, means—
 - (i) the expiry of 21 days after the notice informing the applicant of the results of the application has been sent; or
 - (ii) (if an appeal is made against the results of the application within the period ending 21 days after the notice has been sent) the date on which the appeal is disposed of or withdrawn;

transitional period (過渡期) means the period of 3 years beginning on the commencement date.

Division 2—Savings and Transitional Arrangements for Insurance Agencies

Subdivision 1—General Provision

5. Insurance agencies registered with IARB

If a person was, immediately before the commencement date, registered with IARB as an insurance agency, the person is to be regarded as—

- (a) having been granted a licence under section 64U; and
- (b) being so licensed from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Revocation not yet Taken Effect on Commencement Date

6. Application of section 7 of this Schedule

Section 7 of this Schedule applies if—

- (a) a person was registered with IARB as an insurance agency before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the person be revoked;
- (c) the decision has not taken effect on the commencement date; and
- (d) the person does not appeal against the decision.

7. No appeal against decision been made

Despite section 5 of this Schedule, the person is to be regarded as—

- (a) having been granted a licence under section 64U; and
- (b) being so licensed from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect.

8. Application of sections 9, 10 and 11 of this Schedule

Sections 9, 10 and 11 of this Schedule apply if—

- (a) a person was registered with IARB as an insurance agency before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the person be revoked;

- (c) the decision has not taken effect on the commencement date; and
- (d) the person has appealed against the decision but the appeal is not finally disposed of before the commencement date or the person appeals against the decision on or after the commencement date.

9. No application for stay of execution or application for stay of execution rejected

If the person does not apply for a stay of execution of the decision or if the person makes such an application but the application is rejected, then despite section 5 of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) ~~on appeal—~~
 - ~~(i) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule—from the date on which time the determination of the Tribunal takes effect until the expiry of the transitional period; or~~
 - ~~(ii) if the decision is confirmed by the Tribunal but the person appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.~~

10. Stay of execution granted after decision takes effect

If the person applies for a stay of execution of the decision after the decision takes effect and the application is granted, then despite section 5 of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) on appeal—
 - (i) if the decision is reversed by the Tribunal, subject to section 19(1) of this Schedule—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
 - (ii) if the decision is confirmed by the Tribunal—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

11. Stay of execution granted before decision takes effect

If the person applies for a stay of execution of the decision before the decision takes effect and the application is granted, then despite section 5 of this Schedule, the person is to be

regarded as having been granted a licence under section 64U and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 3—Stay of Execution Granted before Commencement Date

12. Application of section 13 of this Schedule

Section 13 of this Schedule applies if—

- (a) a person was registered with IARB as an insurance agency before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the person be revoked;
- (c) the person has appealed against the decision and applied for a stay of execution of the decision and the application was granted before the commencement date; and
- (d) the appeal is not finally disposed of ~~on-before~~ the commencement date.

13. Stay of execution granted ~~before commencement date~~ and appeal not disposed of ~~on-before~~ commencement date

Despite section 5 of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 4—Decision of Revocation Taken Effect on or before Commencement Date

14. Application of sections 15 and 16 of this Schedule

Sections 15 and 16 of this Schedule apply if—

- (a) a person was registered with IARB as an insurance agency before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the person be revoked;
- (c) the decision has taken effect on or before the commencement date;
- (d) the person appeals against the decision before, on or after the commencement date; and

- (e) (if the person has appealed against the decision before the commencement date) the appeal is not finally disposed of ~~on~~before the commencement date.

15. No application for stay of execution or application for stay of execution rejected

~~If—~~

~~—(a) the person does not apply for a stay of execution of the decision or the person makes such an application but the application is rejected; and~~

~~—(b) the decision is reversed by the Tribunal on appeal, then despite section 5 of this Schedule and subject to section 19(1) of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If the person does not apply for a stay of execution of the decision or the person makes such an application but the application is rejected, then despite section 5 of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

(a) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or

(b) if the decision is confirmed by the Tribunal on appeal, but the person appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the

Court of Appeal takes effect until the expiry of the transitional period.

16. Stay of execution granted after commencement date

If the person applies for a stay of execution of the decision and the application is granted after the commencement date, then despite section 5 of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 5—Application for Registration Rejected before Commencement Date

17. Applications for registration rejected

~~If—~~

~~—(a) a person applied to IARB for registration as an insurance agency but IARB has, before the~~

~~commencement date, made a decision that the application be rejected;~~

~~(b) the person appeals against the decision; and~~

~~(c) the decision is reversed by the Tribunal on appeal,~~

~~subject to section 19(1) of this Schedule, the person is to be regarded as having been granted a licence under section 64U and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If a person applied to IARB for registration as an insurance agency but IARB has, before the commencement date, made a decision that the application be rejected and the person appeals against the decision, the person is to be regarded as having been granted a licence under section 64U and as being so licensed—

(a) if the decision is reversed by the Tribunal on appeal, subject to section 19(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or

(b) if the decision is confirmed by the Tribunal on appeal, but the person appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination— from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

Subdivision 6—Supplementary Provisions

18. Appeals not disposed of on expiry of transitional period

In relation to sections 10, 11, 13 and 16 of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the person is to be regarded as having been granted a licence under section 64U until the expiry of that date.

19. Appeals to Court of Appeal

- (1) In relation to sections 9(b)(i), 10(b)(i), 11(a), 13(a), 15(a), 16(a) and 17(a) of this Schedule, if—
 - (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the licence regarded as having been granted under section 64U is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to sections 10(b)(ii), 11(b), 13(b) and 16(b) of this Schedule, if—
 - (a) the person appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the person is also to be regarded as having been granted a licence under section 64U from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

- (a) having been granted a licence under section 64W; and
- (b) being so licensed from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect.

27. Application of sections 28, 29 and 30 of this Schedule

Sections 28, 29 and 30 of this Schedule apply if—

- (a) an individual was registered with IARB as an individual agent before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the decision has not taken effect on the commencement date; and
- (d) the individual has appealed against the decision but the appeal is not finally disposed of before the commencement date or the individual appeals against the decision on or after the commencement date.

28. No application for stay of execution or application for stay of execution rejected

If the individual does not apply for a stay of execution of the decision or if the individual makes such an application but the application is rejected, then despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and

- (b) ~~on appeal—~~

- ~~(i) if the decision is reversed by the Tribunal—~~on appeal~~, subject to section 38(1) of this Schedule—from the ~~date on which time~~ the determination of the Tribunal takes effect until the expiry of the transitional period; or~~
- ~~(ii) if the decision is confirmed by the Tribunal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.~~

29. Stay of execution granted after decision takes effect

If the individual applies for a stay of execution of the decision after the decision takes effect and the application is granted, then despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) on appeal—
 - (i) if the decision is reversed by the Tribunal, subject to section 38(1) of this Schedule—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
 - (ii) if the decision is confirmed by the Tribunal—from the ~~date on which time~~ the application

for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or

- (iii) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

30. Stay of execution granted before decision takes effect

If the individual applies for a stay of execution of the decision before the decision takes effect and the application is granted, then despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule—from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 3—Stay of Execution Granted before Commencement Date

31. Application of section 32 of this Schedule

Section 32 of this Schedule applies if—

- (a) an individual was registered with IARB as an individual agent before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the individual has appealed against the decision and applied for a stay of execution of the decision and the application was granted before the commencement date; and
- (d) the appeal is not finally disposed of ~~on before~~ the commencement date.

32. Stay of execution granted ~~before commencement date and appeal not disposed of on before~~ commencement date

Despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule—from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or

- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 4—Decision of Revocation Taken Effect on or before Commencement Date

33. Application of sections 34 and 35 of this Schedule

Sections 34 and 35 of this Schedule apply if—

- (a) an individual was registered with IARB as an individual agent before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the decision has taken effect on or before the commencement date;
- (d) the individual appeals against the decision before, on or after the commencement date; and
- (e) (if the individual has appealed against the decision before the commencement date) the appeal is not finally disposed of ~~on~~ before the commencement date.

34. No application for stay of execution or application for stay of execution rejected

~~If—~~

- ~~(a) the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected; and~~
- ~~(b) the decision is reversed by the Tribunal on appeal,~~

~~then despite section 24 of this Schedule and subject to section 38(1) of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

~~If the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected, then despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—~~

~~(a) if the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule—
from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or~~

~~(b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.~~

35. Stay of execution granted after commencement date

If the individual applies for a stay of execution of the decision and the application is granted after the commencement date, then despite section 24 of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule—

from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;

- (b) if the decision is confirmed by the Tribunal on appeal—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 5—Application for Registration Rejected before Commencement Date

36. Applications for registration rejected

~~If—~~

- ~~(a) an individual applied to IARB for registration as an individual agent but IARB has, before the commencement date, made a decision that the application be rejected;~~
- ~~(b) the individual appeals against the decision; and~~
- ~~(c) the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If an individual applied to IARB for registration as an individual agent but IARB has, before the commencement

date, made a decision that the application be rejected, and the individual appeals against the decision, the individual is to be regarded as having been granted a licence under section 64W and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 38(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or
- (b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

Subdivision 6—Supplementary Provisions

37. Appeals not disposed of on expiry of transitional period

In relation to sections 29, 30, 32 and 35 of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the individual is to be regarded as having been granted a licence under section 64W until the expiry of that date.

38. Appeals to Court of Appeal

- (1) In relation to sections 28(b)(i), 29(b)(i), 30(a), 32(a), 34(a), 35(a) and 36(a) of this Schedule, if—
- (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
- (b) the Court of Appeal reverses the determination,

the licence regarded as having been granted under section 64W is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.

(2) In relation to sections 29(b)(ii), 30(b), 32(b) and 35(b) of this Schedule, if—

(a) the individual appeals to the Court of Appeal against the determination of the Tribunal; and

(b) the Court of Appeal reverses the determination,

the individual is also to be regarded as having been granted a licence under section 64W from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

39. Effect of application for individual insurance agent licence

If an individual who is regarded as having been granted a licence under section 64W makes an application for an individual insurance agent licence under that section in the manner, and within the time, specified by the Authority, the licence regarded as having been granted under that section is to remain in force until the specified date.

40. Conditions imposed by IARB

A condition imposed by IARB in relation to the registration of an individual as an individual agent that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to IARB) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the licence that is regarded as having been granted under section 64W to the individual.

41. Requirements to comply with conditions

An individual who is regarded as having been granted a licence under section 64W must, during the period when the licence is in force, comply with any condition under sections 40 and 106 of this Schedule.

42. Application of provisions relating to licensed individual insurance agents

A provision in this Ordinance relating to a licensed individual insurance agent applies to an individual who is regarded under this Division as having been granted a licence under section 64W.

Division 4—Savings and Transitional Arrangements for Technical Representatives and Responsible Officers Registered with IARB

Subdivision 1—General Provision

43. Technical representatives and responsible officers registered with IARB

If an individual was, immediately before the commencement date, registered with IARB as a technical representative or a responsible officer, the individual is to be regarded as—

- (a) having been granted a licence under section 64Y; and
- (b) being so licensed from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Revocation not yet Taken Effect on Commencement Date

44. Application of section 45 of this Schedule

Section 45 of this Schedule applies if—

- (a) an individual was registered with IARB as a technical representative or a responsible officer before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the decision has not taken effect on the commencement date; and
- (d) the individual does not appeal against the decision.

45. No appeal against decision been made

Despite section 43 of this Schedule, the individual is to be regarded as—

- (a) having been granted a licence under section 64Y; and
- (b) being so licensed from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect.

46. Application of sections 47, 48 and 49 of this Schedule

Sections 47, 48 and 49 of this Schedule apply if—

- (a) an individual was registered with IARB as a technical representative or a responsible officer before the commencement date;

- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the decision has not taken effect on the commencement date; and
- (d) the individual has appealed against the decision but the appeal is not finally disposed of before the commencement date or the individual appeals against the decision on or after the commencement date.

47. No application for stay of execution or application for stay of execution rejected

If the individual does not apply for a stay of execution of the decision or if the individual makes such an application but the application is rejected, then despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) ~~on appeal—~~
 - ~~(i) if the decision is reversed by the Tribunal ~~on appeal~~, subject to section 57(1) of this Schedule—from the ~~date on which time~~ the determination of the Tribunal takes effect until the expiry of the transitional period; or~~
 - ~~(ii) if the decision is confirmed by the Tribunal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses~~

the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

48. Stay of execution granted after decision takes effect

If the individual applies for a stay of execution of the decision after the decision takes effect and the application is granted, then despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) on appeal—
 - (i) if the decision is reversed by the Tribunal, subject to section 57(1) of this Schedule— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
 - (ii) if the decision is confirmed by the Tribunal— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

49. Stay of execution granted before decision takes effect

If the individual applies for a stay of execution of the decision before the decision takes effect and the application is granted, then despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal— from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn— from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 3—Stay of Execution Granted before Commencement Date

50. Application of section 51 of this Schedule

Section 51 of this Schedule applies if—

- (a) an individual was registered with IARB as a technical representative or a responsible officer before the commencement date;
- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the individual has appealed against the decision and applied for a stay of execution of the decision

and the application was granted before the commencement date; and

- (d) the appeal is not finally disposed of ~~on-before~~ the commencement date.

51. Stay of execution granted ~~before commencement date~~ and appeal not disposed of ~~on-before~~ commencement date

Despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 4—Decision of Revocation Taken Effect on or before Commencement Date

52. Application of sections 53 and 54 of this Schedule

Sections 53 and 54 of this Schedule apply if—

- (a) an individual was registered with IARB as a technical representative or a responsible officer before the commencement date;

- (b) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (c) the decision has taken effect on or before the commencement date;
- (d) the individual appeals against the decision before, on or after the commencement date; and
- (e) (if the individual has appealed against the decision before the commencement date) the appeal is not finally disposed of ~~on-before~~ the commencement date.

53. No application for stay of execution or application for stay of execution rejected

~~If—~~

~~—(a) the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected; and~~

~~—(b) the decision is reversed by the Tribunal on appeal, then despite section 43 of this Schedule and subject to section 57(1) of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected, then despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

~~(a) if the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or~~

~~(b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination— from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.~~

54. Stay of execution granted after commencement date

If the individual applies for a stay of execution of the decision and the application is granted after the commencement date, then despite section 43 of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal— from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn— from the ~~date on which time~~ the application for the stay of execution of the

decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 5—Application for Registration Rejected before Commencement Date

55. Applications for registration rejected

If—

~~(a) an individual applied to IARB for registration as a technical representative or a responsible officer but IARB has, before the commencement date, made a decision that the application be rejected;~~

~~(b) the individual appeals against the decision; and~~

~~(c) the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If the individual applied to IARB for registration as a technical representative or a responsible officer but IARB has, before the commencement date, made a decision that the application be rejected and the individual appeals against the decision, the individual is to be regarded as having been granted a licence under section 64Y and as being so licensed—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 57(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or

(b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

Subdivision 6—Supplementary Provisions

56. Appeals not disposed of on expiry of transitional period

In relation to sections 48, 49, 51 and 54 of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the individual is to be regarded as having been granted a licence under section 64Y until the expiry of that date.

57. Appeals to Court of Appeal

- (1) In relation to sections 47(b)(i), 48(b)(i), 49(a), 51(a), 53(a), 54(a) and 55(a) of this Schedule, if—
 - (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the licence regarded as having been granted under section 64Y is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to sections 48(b)(ii), 49(b), 51(b) and 54(b) of this Schedule, if—
 - (a) the individual appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination,

the individual is also to be regarded as having been granted a licence under section 64Y from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

58. Effect of application for technical representative (agent) licence

If an individual who is regarded as having been granted a licence under section 64Y makes an application for a technical representative (agent) licence under that section in the manner, and within the time, specified by the Authority, the licence regarded as having been granted under that section is to remain in force until the specified date.

59. Conditions imposed by IARB

A condition imposed by IARB in relation to the registration of an individual as a technical representative or a responsible officer (as the case may be) that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to IARB) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the licence that is regarded as having been granted under section 64Y to the individual.

60. Requirements to comply with conditions

An individual who is regarded as having been granted a licence under section 64Y must, during the period when the licence is in force, comply with any condition under sections 59 and 106 of this Schedule.

61. Application of provisions relating to licensed technical representative (agent)

A provision in this Ordinance relating to a licensed technical representative (agent) applies to an individual who is regarded under this Division as having been granted a licence under section 64Y.

Division 5—Savings and Transitional Arrangements for Authorized Insurance Brokers**Subdivision 1—General Provision****62. Authorized insurance brokers registered with approved broker bodies**

If a company was, immediately before the commencement date, registered with an approved broker body as a member, the company is to be regarded as—

- (a) having been granted a licence under section 64ZA; and
- (b) being so licensed from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Expulsion not yet Taken Effect immediately before Commencement Date**63. Company being expelled from membership of approved broker body**

- (1) Despite section 62 of this Schedule, if—
 - (a) a company was registered with an approved broker body as a member before the commencement date;
 - (b) the approved broker body with which the company was registered has, before the commencement date,

made a decision that the company be expelled from the membership of the body; and

- (c) the decision has not taken effect ~~immediately before on~~ the commencement date,

subject to section 65(1) of this Schedule, the company is to be regarded as having been granted a licence under section 64ZA and as being so licensed from the commencement date until the ~~expiry of the date-time~~ specified in subsection (2).

- (2) The ~~date-time~~ specified for subsection (1) is—
 - (a) if the company does not appeal against the decision, the ~~date on which-time~~ the decision takes effect;
 - (b) if the company appeals against the decision and—
 - (i) if the decision is reversed by the Tribunal on appeal, subject to section 65(1) of this Schedule, the ~~date on which-expiry of~~ the transitional period ~~expires~~;
 - (ii) if the decision is confirmed by the Tribunal on appeal, the ~~date on which-time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn, the ~~date on which-time~~ the appeal is withdrawn.

Subdivision 3—Supplementary Provisions**64. Appeals not disposed of on expiry of transitional period**

In relation to section 63(1) and (2)(b) of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the company is to be regarded as

having been granted a licence under section 64ZA until the expiry of that date.

65. Appeals to Court of Appeal

- (1) In relation to section 63(1) and (2)(b)(i) of this Schedule, if—
 - (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the licence regarded as having been granted under section 64ZA is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to section 63(1) and (2)(b)(ii) of this Schedule, if—
 - (a) the company appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the company is also to be regarded as having been granted a licence under section 64ZA from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

66. Effect of application for insurance broker company licence

If a company which is regarded as having been granted a licence under section 64ZA makes an application for an insurance broker company licence under that section in the manner, and within the time, specified by the Authority, the licence regarded as having been granted under that section is to remain in force until the specified date.

67. Conditions imposed by approved broker body

A condition imposed by an approved broker body in relation to the registration of a company as a member that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to the approved broker body) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the licence that is regarded as having been granted under section 64ZA to the company.

68. Requirements to comply with conditions

A company which is regarded as having been granted a licence under section 64ZA must, during the period when the licence is in force, comply with any condition under sections 67 and 106 of this Schedule.

69. Application of provisions relating to licensed insurance broker companies

~~A~~ Subject to section 69A of this Schedule, a provision in this Ordinance relating to a licensed insurance broker company applies to a company which is regarded under this Division as having been granted a licence under section 64ZA.

69A. Application of section 64T to companies applying for de-registration

(1) This section applies to a company which—

- (a) is regarded under this Division as having been granted a licence under section 64ZA; and
- (b) has, before the commencement date, applied to an approved broker body for de-registration as a member of the body on the ground of cessation of business.

(2) Except as otherwise provided in this section, section 64T applies to the company.

(3) The company is to be regarded as having complied with section 64T(1).

(4) Despite section 64T(2) and (3), the company is only required to submit to the Authority, if so required by the Authority, any document specified in section 64T(2) not later than 6 months after the commencement date.

Division 6—Savings and Transitional Arrangements for Technical Representatives and Chief Executives Registered with Approved Broker Bodies

Subdivision 1—General Provision

70. Technical representatives and chief executives registered with approved broker bodies

If an individual was, immediately before the commencement date, registered with an approved broker body as a technical representative or a chief executive, the individual is to be regarded as—

- (a) having been granted a licence under section 64ZC; and
- (b) being so licensed from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Removal from Register not yet Taken Effect immediately before Commencement Date

71. Individual whose name being removed from register of approved broker body

- (1) Despite section 70 of this Schedule, if—

- (a) an individual was registered with an approved broker body as a technical representative or a chief executive before the commencement date;
- (b) the approved broker body with which the individual was registered has, before the commencement date, made a decision that the individual's name be removed from the relevant register maintained by the body; and
- (c) the decision has not taken effect **immediately before on** the commencement date,

subject to section 73(1) of this Schedule, the individual is to be regarded as having been granted a licence under section 64ZC and as being so licensed from the commencement date until the ~~expiry of the date-time~~ specified in subsection (2).

- (2) The ~~date-time~~ specified for subsection (1) is—
 - (a) if the individual does not appeal against the decision, the ~~date on which-time~~ the decision takes effect; or
 - (b) if the individual appeals against the decision and—
 - (i) if the decision is reversed by the Tribunal on appeal, subject to section 73(1) of this Schedule, the ~~date on which-expiry of~~ the transitional period ~~expires~~;
 - (ii) if the decision is confirmed by the Tribunal on appeal, the ~~date on which-time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn, the ~~date on which-time~~ the appeal is withdrawn.

Subdivision 3—Supplementary Provisions**72. Appeals not disposed of on expiry of transitional period**

In relation to section 71(1) and (2)(b) of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the individual is to be regarded as having been granted a licence under section 64ZC until the expiry of that date.

73. Appeals to Court of Appeal

- (1) In relation to section 71(1) and (2)(b)(i) of this Schedule, if—
- (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination,
- the licence regarded as having been granted under section 64ZC is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to section 71(1) and (2)(b)(ii) of this Schedule, if—
- (a) the individual appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination,
- the individual is also to be regarded as having been granted a licence under section 64ZC from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

74. Effect of application for technical representative (broker) licence

If an individual who is regarded as having been granted a licence under section 64ZC makes an application for a technical representative (broker) licence under that section in the manner, and within the time, specified by the Authority, the licence regarded as having been granted under that section is to remain in force until the specified date.

75. Conditions imposed by approval broker body

A condition imposed by an approved broker body in relation to the registration of an individual as a technical representative or a chief executive that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to the approved broker body) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the licence that is regarded as having been granted under section 64ZC to the individual.

76. Requirements to comply with conditions

An individual who is regarded as having been granted a licence under section 64ZC must, during the period when the licence is in force, comply with any condition under sections 75 and 106 of this Schedule.

77. Application of provisions relating to licensed technical representative (broker)

A provision in this Ordinance relating to a licensed technical representative (broker) applies to an individual who is regarded under this Division as having been granted a licence under section 64ZC.

Division 7—Savings and Transitional Arrangements for Responsible Officers of Insurance Agencies

Subdivision 1—General Provision

78. Responsible officers of insurance agencies registered with IARB

If—

- (a) an individual was, immediately before the commencement date, registered with IARB as a responsible officer of an insurance agency registered with IARB; and
- (b) the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U,

the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Revocation not yet Taken Effect on Commencement Date

79. Application of section 80 of this Schedule

Section 80 of this Schedule applies if—

- (a) an individual was registered with IARB as a responsible officer of an insurance agency registered with IARB before the commencement date;

- (b) the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U;
- (c) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (d) the decision has not taken effect on the commencement date; and
- (e) the individual does not appeal against the decision.

80. No appeal against decision been made

Despite section 78 of this Schedule, the individual is to be regarded as—

- (a) having been granted an approval under section 64ZE as a responsible officer of the insurance agency; and
- (b) being so approved from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect.

81. Application of sections 82, 83 and 84 of this Schedule

Sections 82, 83 and 84 of this Schedule apply if—

- (a) an individual was registered with IARB as a responsible officer of an insurance agency registered with IARB before the commencement date;
- (b) the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U;

- (c) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (d) the decision has not taken effect on the commencement date; and
- (e) the individual has appealed against the decision but the appeal is not finally disposed of before the commencement date or the individual appeals against the decision on or after the commencement date.

82. No application for stay of execution or application for stay of execution rejected

If the individual does not apply for a stay of execution of the decision or if the individual makes such an application but the application is rejected, then despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) ~~on appeal—~~
 - ~~(i) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule—from the date on which time the determination of the Tribunal takes effect until the expiry of the transitional period; or~~
 - ~~(ii) if the decision is confirmed by the Tribunal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses~~

the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

83. Stay of execution granted after decision takes effect

If the individual applies for a stay of execution of the decision after the decision takes effect and the application is granted, then despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) from the commencement date until the ~~expiry of the date on which time~~ the decision takes effect; and
- (b) on appeal—
 - (i) if the decision is reversed by the Tribunal, subject to section 92(1) of this Schedule—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
 - (ii) if the decision is confirmed by the Tribunal—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

84. Stay of execution granted before decision takes effect

If the individual applies for a stay of execution of the decision before the decision takes effect and the application is granted, then despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 3—Stay of Execution Granted before Commencement Date

85. Application of section 86 of this Schedule

Section 86 of this Schedule applies if—

- (a) an individual was registered with IARB as a responsible officer of an insurance agency registered with IARB before the commencement date;
- (b) the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U;

- (c) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (d) the individual has appealed against the decision and applied for stay of execution of the decision and the application was granted before the commencement date; and
- (e) the appeal is not finally disposed of ~~on-before~~ the commencement date.

86. Stay of execution granted ~~before commencement date and appeal not disposed of on-before~~ commencement date

Despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule— from the commencement date until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the commencement date until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the commencement date until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 4—Decision of Revocation Taken Effect on or before Commencement Date**87. Application of sections 88 and 89 of this Schedule**

Sections 88 and 89 of this Schedule apply if—

- (a) an individual was registered with IARB as a responsible officer of an insurance agency registered with IARB before the commencement date;
- (b) the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U;
- (c) IARB has, before the commencement date, made a decision that the registration of the individual be revoked;
- (d) the decision has taken effect on or before the commencement date;
- (e) the individual appeals against the decision before, on or after the commencement date; and
- (f) (if the individual has appealed against the decision before the commencement date) the appeal is not finally disposed of ~~on~~ before the commencement date.

88. No application for stay of execution or application for stay of execution rejected

~~If—~~

- ~~(a) the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected; and~~

~~(b) the decision is reversed by the Tribunal on appeal, then despite section 78 of this Schedule and subject to section 92(1) of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

If the individual does not apply for a stay of execution of the decision or the individual makes such an application but the application is rejected, then despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

(a) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule— from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or

(b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination— from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

89. Stay of execution granted after commencement date

If the individual applies for a stay of execution of the decision and the application is granted after the commencement date, then despite section 78 of this Schedule, the individual is to be regarded as having been granted an approval under section

64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule—
from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the expiry of the transitional period;
- (b) if the decision is confirmed by the Tribunal on appeal—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the determination of the Tribunal takes effect; or
- (c) if the appeal is withdrawn—from the ~~date on which time~~ the application for the stay of execution of the decision is granted until the ~~expiry of the date on which time~~ the appeal is withdrawn.

Subdivision 5—Application for Registration Rejected before Commencement Date

90. Applications for registration rejected

~~(1) If~~Subsection (2) applies if—

- (a) an individual applied to IARB for registration as a responsible officer of an insurance agency registered with IARB but IARB has, before the commencement date, made a decision that the application be rejected;
- (b) the individual appeals against the decision; and
- ~~(c) the decision is reversed by the Tribunal on appeal; and~~

~~(d)~~ the insurance agency is regarded under section 5 of this Schedule as having been granted a licence under section 64U₂;

~~subject to section 92(1) of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved from the date on which the determination of the Tribunal takes effect until the expiry of the transitional period.~~

(2) The individual is to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency and as being so approved—

- (a) if the decision is reversed by the Tribunal on appeal, subject to section 92(1) of this Schedule—
from the time the determination of the Tribunal takes effect until the expiry of the transitional period; or
- (b) if the decision is confirmed by the Tribunal on appeal, but the individual appeals to the Court of Appeal against the determination of the Tribunal, and the Court of Appeal reverses the determination—from the time the decision of the Court of Appeal takes effect until the expiry of the transitional period.

Subdivision 6—Supplementary Provisions

91. Appeals not disposed of on expiry of transitional period

In relation to sections 83, 84, 86 and 89 of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the individual is to be regarded as having been granted an approval under section 64ZE as a

responsible officer of the insurance agency until the expiry of that date.

92. Appeals to Court of Appeal

- (1) In relation to sections 82(b)(i), 83(b)(i), 84(a), 86(a), 88(a), 89(a) and 90(2)(a) of this Schedule, if—
 - (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the approval regarded as having been granted under section 64ZE is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to sections 83(b)(ii), 84(b), 86(b) and 89(b) of this Schedule, if—
 - (a) the individual appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the individual is also to be regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

93. Effect of application for approval under section 64ZE

- (1) This section applies to an individual who is regarded as having been granted an approval under section 64ZE as a responsible officer of an insurance agency that is regarded as having been granted a licence under section 64U.

- (2) If the agency makes an application for the approval of the individual as a responsible officer of the agency under section 64ZE in the manner, and within the time, specified by the Authority, the approval regarded as having been granted under that section is to remain in force until the specified date.

94. Conditions imposed by IARB

A condition imposed by IARB in relation to the registration of an individual as a responsible officer of an insurance agency that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to IARB) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the approval that is regarded as having been granted under section 64ZE to the individual.

95. Requirements to comply with conditions

An individual who is regarded as having been granted an approval under section 64ZE as a responsible officer of the insurance agency must, during the period when the approval is in force, comply with any condition under sections 94 and 106 of this Schedule.

96. Application of provisions relating to responsible officers of licensed insurance agencies

A provision in this Ordinance relating to a responsible officer of a licensed insurance agency applies to an individual who is regarded under this Division as having been granted an approval under section 64ZE.

Division 8—Savings and Transitional Arrangements for Chief Executives Registered with Approved Broker Bodies

Subdivision 1—General Provision

97. Chief executives registered with approved broker bodies

If—

- (a) an individual was, immediately before the commencement date, registered with an approved broker body as a chief executive of a company that is a member of the body; and
- (b) the company is regarded under section 62 of this Schedule as having been granted a licence under section 64ZA,

the individual is to be regarded as having been granted an approval under section 64ZF as a responsible officer of the company and as being so approved from the commencement date until the expiry of the transitional period.

Subdivision 2—Decision of Revocation not yet Taken Effect immediately before Commencement Date

98. Individual whose registration as chief executive being revoked

(1) Despite section 97 of this Schedule, if—

- (a) an individual was registered with an approved broker body as a chief executive of a company that is a member of the body before the commencement date;

- (b) the company is regarded under section 62 of this Schedule as having been granted a licence under section 64ZA;
- (c) the approved broker body with which the individual was registered has, before the commencement date, made a decision that the individual's registration with the body as a chief executive be revoked; and

- (d) the decision has not taken effect ~~immediately before on~~ the commencement date,

subject to section 100(1) of this Schedule, the individual is to be regarded as having been granted an approval under section 64ZF as a responsible officer of the company and as being so approved from the commencement date until the ~~expiry of the date time~~ specified in subsection (2).

(2) The ~~date time~~ specified for subsection (1) is—

- (a) if the individual does not appeal against the decision, the ~~date on which time~~ the decision takes effect; or
- (b) if the individual appeals against the decision and—
 - (i) if the decision is reversed by the Tribunal on appeal, subject to section 100(1) of this Schedule, the ~~date on which expiry of~~ the transitional period ~~expires~~;
 - (ii) if the decision is confirmed by the Tribunal on appeal, the ~~date on which time~~ the determination of the Tribunal takes effect; or
 - (iii) if the appeal is withdrawn, the ~~date on which time~~ the appeal is withdrawn.

Subdivision 3—Supplementary Provisions**99. Appeals not disposed of on expiry of transitional period**

In relation to section 98(1) and (2)(b) of this Schedule, if the appeal is not finally disposed of on the date on which the transitional period expires, the individual is to be regarded as having been granted an approval under section 64ZF as a responsible officer of the company until the expiry of that date.

100. Appeals to Court of Appeal

- (1) In relation to section 98(1) and (2)(b)(i) of this Schedule, if—
 - (a) the Authority appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the approval regarded as having been granted under section 64ZF is to remain in force until the ~~expiry of the date on which time~~ the decision of the Court of Appeal takes effect.
- (2) In relation to section 98(1) and (2)(b)(ii) of this Schedule, if—
 - (a) the individual appeals to the Court of Appeal against the determination of the Tribunal; and
 - (b) the Court of Appeal reverses the determination, the individual is also to be regarded as having been granted an approval under section 64ZF as a responsible officer of the company from the ~~date on which time~~ the decision of the Court of Appeal takes effect until the expiry of the transitional period.

101. Effect of application for approval under section 64ZF

- (1) This section applies to an individual who is regarded as having been granted an approval under section 64ZF as a responsible officer of a company that is regarded as having been granted a licence under section 64ZA.
- (2) If the company makes an application for the approval of the individual as a responsible officer of the company under section 64ZF in the manner, and within the time, specified by the Authority, the approval regarded as having been granted under that section is to remain in force until the specified date.

102. Conditions imposed by approved broker body

A condition imposed by an approved broker body in relation to the registration of an individual as a chief executive that was in force immediately before the commencement date (except a condition relating to the payment of fees or charges to the approved broker body) is, on the commencement date, taken to be a condition imposed by the Authority in relation to the approval that is regarded as having been granted under section 64ZF to the individual.

103. Requirements to comply with conditions

An individual who is regarded as having been granted an approval under section 64ZF as a responsible officer of the company must, during the period when the approval is in force, comply with any condition under sections 102 and 106 of this Schedule.

104. Application of provisions relating to responsible officers of licensed insurance broker companies

A provision in this Ordinance relating to a responsible officer of a licensed insurance broker company applies to an

application information (申請資料) means information provided by a person to an entity specified in column 2 of the Table in relation to an application for the registration or approval of the person as the type of person specified in column 3 of the Table opposite the entity.

Table

Column 1	Column 2	Column 3
Item	Entity	Application for registration or approval as the following types of person
1.	IARB	An insurance agency
2.	IARB	An individual agent
3.	IARB	A technical representative
4.	IARB	A responsible officer
5.	Approved broker body	An insurance broker
6.	Approved broker body	A technical representative
7.	Approved broker body	A chief executive

106. Licences and approval regarded as granted are subject to conditions imposed by Authority

- (1) A licence or an approval that is regarded as having been granted to a person under Division 2, 3, 4, 5, 6, 7 or 8 of this Part is subject to any condition that the Authority imposes.
- (2) The Authority may, at any time during the transitional period, by notice in writing, amend or revoke any condition imposed, or impose new conditions.
- (3) If the Authority by notice in writing amends or revokes a condition or imposes a new condition under subsection (2), the amendment, revocation or imposition takes effect at the time the notice is served on the person or at the time specified in the notice, whichever is the later.
- (4) The Authority must not impose a condition under subsection (1), or amend such a condition under subsection (2), without giving the person an opportunity to make representations as to why the condition should not be imposed or amended.
- (5) In this section, a reference to an opportunity to make representations is a reference to an opportunity to make written representations or oral representations.

Part 5

~~Complaints that have been Lodged or could have been Lodged~~ Contraventions of Applicable Rules before Commencement Date

107. Interpretation of Part 5 of this Schedule

In this Part—

self-regulatory body (自我規管團體)—

- (a) in relation to ~~a complaint that has been lodged, or could have been lodged, with IARB before the commencement date~~ an alleged contravention of a requirement under a rule within the meaning of section 123 of this Schedule—means IARB; ~~and or~~
- (b) in relation to ~~a complaint that has been lodged, or could have been lodged, with an approved broker body before the commencement date~~ an alleged contravention of a requirement under a rule within the meaning of section 124 of this Schedule—means ~~the~~ an approved broker body;

specified person (指明人士) means—

- (a) an insurance agency registered with IARB;
- (b) an individual agent registered with IARB;
- (c) a technical representative registered with IARB;
- (d) a responsible officer registered with IARB;
- (e) an insurance broker registered with an approved broker body;
- (f) a technical representative registered with an approved broker body; or
- (g) a chief executive registered with an approved broker body.

~~**108. Complaints not yet disposed of by self-regulatory bodies**~~

- ~~(1) This section applies if a complaint in relation to a specified person has been lodged with a self-regulatory body but has not been disposed of on the commencement date.~~
- ~~(2) On or after the commencement date—~~

- ~~(a) the Authority is to handle the complaint as if it was a complaint lodged with the Authority under section 109 of this Schedule; and~~
- ~~(b) the self-regulatory body is to cease to have power to handle the complaint.~~

108. Alleged contraventions before commencement date(1) This section applies if—

- (a) there is a case of alleged contravention by a specified person of any requirement under an applicable rule that occurred before the commencement date; but
- (b) the case has not been disposed of before the commencement date.

(2) On or after the commencement date, the case may only be handled by the Authority.(3) The case must be handled by the Authority by reference to the applicable rule that would have applied to the specified person and the matter in question had the case been handled by the self-regulatory body concerned.(4) The Authority may take one or more of the following actions—

- (a) direct that an investigation under section 64ZZH be conducted;
- (b) dismiss the case;
- (c) commence disciplinary proceedings;
- (d) if appropriate, impose a disciplinary sanction on the specified person that could have been imposed by the self-regulatory body concerned had the case been handled by the body.

~~109. Complaints not lodged with self-regulatory bodies before commencement date~~~~(1) This section applies if—~~~~(a) a complaint concerns an act or omission that—~~~~(i) relates to a specified person; and~~~~(ii) occurred before the commencement date;~~~~(b) the complaint could have been lodged with a self-regulatory body under the applicable rule that would have applied to the specified person and the matter in question but for this section; and~~~~(c) no complaint has been lodged in relation to the specified person with a self-regulatory body immediately before the commencement date in relation to the matter in question.~~~~(2) On or after the commencement date, the complaint may only be lodged with the Authority.~~~~110. Determination of complaints under sections 108 and 109 of this Schedule~~~~(1) A complaint in relation to a specified person mentioned in section 108 or 109 of this Schedule must be handled by the Authority by reference to the applicable rule that would have applied to the specified person and the matter in question had the complaint been lodged with the self-regulatory body concerned.~~~~(2) The Authority may—~~~~(a) direct that an investigation under section 64ZZH be conducted;~~~~(b) dismiss the complaint; or~~~~(c) take any other action that is permitted under the applicable rule.~~~~(3) The Authority may take a disciplinary action, or impose a penalty or sanction, that could have been made by the self-regulatory body concerned had the complaint been dealt with by the body.~~**Part 6****Investigations that were not Completed before Commencement Date**~~111. Interpretation of Part 6 of this Schedule~~~~In this Part—~~~~*self-regulatory body* (自我規管團體)—~~~~(a) in relation to an investigation that was conducted by IARB before the commencement date means IARB; and~~~~(b) in relation to an investigation that was conducted by an approved broker body before the commencement date means the body;~~~~*specified person* (指明人士) means—~~~~(a) an insurance agency registered with IARB;~~~~(b) an individual agent registered with IARB;~~~~(c) a technical representative registered with IARB;~~~~(d) a responsible officer registered with IARB;~~~~(e) an insurance broker registered with an approved broker body;~~~~(f) a technical representative registered with an approved broker body; or~~

~~(g) a chief executive registered with an approved broker body.~~

~~**112. Investigations not yet completed by self-regulatory bodies**~~

~~(1) This section applies if an investigation in relation to a specified person has been conducted by a self-regulatory body but has not been completed on the commencement date.~~

~~(2) On or after the commencement date—~~

~~(a) the Authority is to conduct the investigation under section 64ZZH; and~~

~~(b) the self-regulatory body is to cease to have power to conduct the investigation.~~

~~**113. Investigations under section 112 of this Schedule**~~

~~After the investigation is completed, the Authority may take a disciplinary action, or impose a penalty or sanction, that could have been made by the self-regulatory body concerned had the investigation been conducted by the body.~~

Part 7

Appeals that have been Made or could have been Made before Commencement Date

114. Interpretation of Part 7 of this Schedule

In this Part—

self-regulatory body (自我規管團體)—

- (a) in relation to an appeal that has been made, or could have been made, to the Appeals Tribunal

established by HKFI before the commencement date—means the Appeals Tribunal; ~~and or~~

- (b) in relation to an appeal that has been made, or could have been made, to an approved broker body before the commencement date—means the body;

specified person (指明人士) means—

- (a) an insurance agency registered with IARB;
 (b) an individual agent registered with IARB;
 (c) a technical representative registered with IARB;
 (d) a responsible officer registered with IARB;
 (e) an insurance broker registered with an approved broker body;
 (f) a technical representative registered with an approved broker body; or
 (g) a chief executive registered with an approved broker body.

115. Appeals not yet determined by self-regulatory bodies

- (1) This section applies if an appeal in relation to a specified person (including application for leave to appeal) ~~is~~

~~(a)~~ has been made to a self-regulatory body; but

~~(b)~~ has not been finally disposed of ~~on~~ ~~before~~ the commencement date.

- (2) On or after the commencement date—

- (a) the Tribunal is to handle the appeal as if it was an appeal made to the Tribunal under section 116 of this Schedule; and
 (b) the self-regulatory body is to cease to have power to handle the appeal.

116. Appeals not made to self-regulatory bodies before commencement date

- (1) This section applies if—
- (a) a decision was made by a self-regulatory body before the commencement date in relation to a specified person;
 - (b) an appeal against the decision could have been made to a self-regulatory body under the applicable rule that would have applied to the specified person and the matter in question but for this section;
 - (c) the period within which ~~the~~an appeal against the decision could be made has not expired under the applicable rule; and
 - (d) no appeal has been made to a self-regulatory body ~~immediately~~ before the commencement date in relation to the matter in question.
- (2) On or after the commencement date, ~~the~~an appeal against the decision may only be made to the Tribunal.

117. Determination of appeals under sections 115 and 116 of this Schedule

- (1) An appeal mentioned in section 115 or 116 of this Schedule must be determined by the Tribunal by reference to the applicable rule that would have applied to the specified person and the matter in question had the application for the appeal been made to the self-regulatory body concerned.
- (2) Part XII applies to an appeal mentioned in section 115 or 116 of this Schedule as if—

- (a) a reference to a review in that Part was a reference to such an appeal ~~mentioned in section 115 or 116 of this Schedule~~; and
 - (b) a reference to a party to ~~the~~a review included the Authority.
- (3) However, the Tribunal must not determine the appeal by remitting the matter in question to the self-regulatory body.

Part 8**Effect of Disciplinary Sanctions Imposed before Commencement Date****118. Interpretation of Part 8 of this Schedule**

In this Part—

self-regulatory body (自我規管團體)—

- (a) in relation to a sanction imposed on a person before the commencement date by IARB—means IARB; and or
- (b) in relation to a sanction imposed on a person before the commencement date by an approved broker body—means the body.

119. Effect of disciplinary sanctions imposed by self-regulatory bodies

- (1) If a self-regulatory body imposed a disciplinary sanction on a person before the commencement date—
- (a) on the commencement date, the sanction is to be regarded as a disciplinary action taken by the Authority under section 80; and

- (b) subject to sections 115 and 116 of this Schedule, the sanction continues to take effect until the expiry of the period, or the occurrence of the event, specified by the self-regulatory body.
- (2) If a self-regulatory body imposed a fine on a person before the commencement date and the fine or part of the fine was not paid, that fine or that part of it may be recovered by the self-regulatory body as a civil debt on or after the commencement date.

Part 9

Records and Assistance Required from Certain Bodies

120. IARB and approved broker bodies to provide records and assistance to Authority in relation to licence and approval

- (1) IARB and every approved broker body must provide the Authority with records and assistance that the Authority requires for—
- (a) considering whether a person may be regarded as having been granted a licence or approval under Division 2, 3, 4, 5, 6, 7 or 8 of Part 4 of this Schedule;
- (b) considering whether a person may be granted a licence or approval under section 64U, 64W, 64Y, 64ZA, 64ZC, 64ZE or 64ZF; and
- (c) compiling a complete and accurate register of every such persons.
- (2) The records referred to in subsection (1) do not include a notification of change of particulars, or of the appointment, of any of the following persons that has not

been processed or validly registered with IARB or the approved broker body by a date specified by the Authority—

- (a) an insurance agency registered with IARB;
- (b) an individual agent registered with IARB;
- (c) a technical representative registered with IARB;
- (d) a responsible officer registered with IARB;
- (e) an insurance broker registered with an approved broker body;
- (f) a technical representative registered with an approved broker body;
- (g) a chief executive registered with an approved broker body.
- (3) The records and assistance must be provided to the Authority in the manner, and within the time, specified by the Authority.

121. Self-regulatory bodies to provide records and assistance to Authority in relation to ~~complaints~~cases of alleged contravention, appeals and disciplinary sanctions

- (1) A self-regulatory body must provide the Authority with records and assistance that the Authority requires for compiling a complete and accurate record of—
- (a) the ~~complaints that have been lodged with~~cases of alleged contravention of the requirements under the applicable rules that have been handled by the body;
- (b) the appeals (including applications for leave to appeal) that have been made to the body; and

- (c) the disciplinary sanctions that have been imposed by the body.
- (2) The records and assistance must be provided to the Authority in the manner, and within the time, specified by the Authority.
- (3) In this section—
- self-regulatory body* (自我規管團體)—
- (a) in relation to a ~~complaint lodged with case handled by~~ IARB or a sanction imposed by IARB—means IARB;
- (b) in relation to an appeal made to the Appeals Tribunal established by HKFI—means the Appeals Tribunal; ~~and/or~~
- (c) in relation to a ~~complaint lodged with case handled by~~ an approved broker body, an appeal made to an approved broker body or a sanction imposed by an approved broker body—means the body.

122. Records to be provided under sections 120 and 121 of this Schedule

- (1) In relation to a record provided by a person to the Authority under section 120 or 121 of this Schedule, all the rights and obligations of the person subsisting immediately before the provision are taken to be transferred to the Authority on the provision of the record.
- (2) The Authority must ensure that there are in place proper procedures and systems to safeguard against unauthorized access to, or unauthorized use of, the records provided under sections 120 and 121 of this Schedule.

- (3) In relation to personal data provided under sections 120 and 121 of this Schedule, the Personal Data (Privacy) Ordinance (Cap. 486) applies as if the data had been received by the Authority rather than the person concerned.
- (4) In relation to personal data provided under sections 120 and 121 of this Schedule, the Authority must ensure that the personal data is used, disclosed and retained for the purposes set out in those sections and the performance of its functions under this Ordinance.
- (5) The provision of a record by a person to the Authority under section 120 or 121 of this Schedule does not amount to—
- (a) a breach of duty of confidentiality to which the person is subject immediately before the provision; or
- (b) a contravention by the person or the Authority of the Personal Data (Privacy) Ordinance (Cap. 486).

123. HKFI to provide rules to Authority

- (1) HKFI must provide the Authority with a complete set of rules that have been from time to time issued or approved by HKFI, or issued by IARB under the authority of HKFI, in relation to a person specified in subsection (2).
- (2) The person specified for subsection (1) is—
- (a) an insurance agency registered with IARB;
- (b) an individual agent registered with IARB;
- (c) a technical representative registered with IARB; or
- (d) a responsible officer registered with IARB.

- (2) On an application under subsection (1), the Court of First Instance—
- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, may order the person to comply with the requirement within the time specified by the Court; and
- (b) on being satisfied that the failure was without reasonable excuse, may punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).”
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Part 3

Related and Consequential Amendments

Division 1—Amendment to Specification of Public Offices

Notice (Cap. 1 sub. leg. C)

95. Schedule amended

The Schedule—

Repeal the entry relating to the Insurance Authority.

Division 2—Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

96. Section 265 amended (preferential payments)

Section 265(6), definition of *general business*—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

Division 3—Amendment to Legal Aid Ordinance (Cap. 91)

97. Schedule 3 amended (proceedings for which legal aid may be given under section 5A)

Schedule 3, Part 1, paragraph 6(a)—

Repeal

122. Section 42 amended (Authority may disclose certain information despite section 41)

Section 42(1)(d), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局”.

123. Section 42AA amended (~~Authority or~~ specified entity may disclose information obtained under Part 4A despite section 41)

Section 42AA(5)(a), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局”.

124. Section 42B amended (immunity)

Section 42B(3)(a), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局”.

Division 21—Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)**125. Section 2 amended (interpretation)**(1) Section 2, definition of *authorized insurer*—**Repeal**

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

(2) Section 2—

Repeal the definition of *Insurance Authority***Substitute**

“*Insurance Authority* (保險業監管局保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41);”.

126. Section 7 amended (what is a substantial financial institution for the purposes of this Regulation?)

Section 7(3)(b), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局保監局”.

127. Section 8 amended (what is adequate insurance for the purposes of registered schemes?)

(1) Section 8(2)(a)—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

(2) Section 8(3)(b), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局保監局”。

128. Schedule 1 amended (investment of scheme funds)

Schedule 1, section 19(1)(a)—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

**Division 22—Amendment to Personal Data (Privacy)
Ordinance (Cap. 486)**

129. Section 2 amended (interpretation)

Section 2(1), definition of *financial regulator*—

Repeal paragraph (f)**Substitute**

“(f) the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41);”.

**Division 23—Amendment to Legislative Council Ordinance
(Cap. 542)**

130. Section 20C amended (composition of the insurance functional constituency)

Section 20C—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

**Division 24—Amendments to Merchant Shipping (Local
Vessels) Ordinance (Cap. 548)**

131. Section 2 amended (interpretation)

(1) Section 2, definition of *authorized insurer*, paragraph (a)—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

(2) Section 2, English text, definition of *authorized insurer*, paragraph (a)—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

(3) Section 2, English text, definition of *authorized insurer*, paragraph (b)—

Repeal

“the First Schedule”

Substitute

“Schedule 1”.

(4) Section 2, Chinese text, definition of *獲授權保險人*, paragraph (b)—

Repeal

“保險業監督”

Substitute

“Insurance Ordinance”.

164. Section 881 amended (permitted disclosure and restrictions)

Section 881(2)(a)(xiii), Chinese text—

Repeal

“保險業監督”

Substitute

“保險業監管局”.

**Division 32—Amendments to Hong Kong Export Credit
Insurance Corporation Ordinance (Cap. 1115)**

165. Section 10 amended (Advisory Board establishment)

(1) Section 10(2)—

Repeal paragraph (a).

(2) Section 10(3)—

Repeal

“the Commissioner of Insurance and”.

**Division 33—Amendments to Limited Liability Partnerships
(Top-up Insurance) Rules (L.N. 103 of 2015)**

**166. Rule 3 amended (from whom top-up insurance should be
obtained—requirements under section 7AD(2)(b) and (4)(b) of
Ordinance)**

(1) Rule 3(1)(a)—

Repeal

“Insurance Companies Ordinance (Cap. 41)”

Substitute

“Insurance Ordinance (Cap. 41) (*Cap. 41*), or deemed to be so authorized under section 61(1) or (2) of Cap. 41 as in force immediately before the commencement date of section 10 of the Insurance Companies (Amendment) Ordinance 2014 (___ of 2014) having continuing effect by the operation of section 2(7) of Schedule 11 to Cap. 41.”.

(2) Rule 3(1)(a), English text—

Repeal

“First Schedule”

Substitute

“Schedule 1”.

(3) Rule 3(1)(c), Chinese text—

Repeal

“保險業監督”

Substitute

“保監局”.

(4) Rule 3(2), definition of *company*—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

(5) Rule 3(2)—

Repeal the definition of *Insurance Authority*

Substitute

“*Insurance Authority* (保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41);”.

(6) Rule 3(2), definition of *Lloyd’s*—

Repeal

“Insurance Companies Ordinance”

Substitute

“Insurance Ordinance”.

Schedule 1

[s. 2]

Minor Amendments to Insurance Ordinance Relating to Replacement of “Insurance Authority” by “Authority”

	Column 1	Column 2	Column 3
	Provision	Repeal	Substitution
1.	Section 4, heading	Insurance Authority	Authority
2.	Section 4(2)	(a) Insurance Authority of any of his functions (b) and the Insurance Authority	Authority of any of its functions and the Authority
3.	Section 4A, heading	Insurance Authority	Authority
4.	Section 4A(1) and (2)	Insurance Authority (wherever appearing)	Authority
5.	Section 6(1) and (2)	Insurance Authority	Authority
6.	Section 7(1) and (2)	Insurance Authority	Authority

	Column 1	Column 2	Column 3
	Provision	Repeal	Substitution
61.	Section 38E(7), Chinese text	保險人清盤	該保險人清盤
62.	Section 38E(8)	an insurer	an authorized insurer
63.	Section 42, heading	insurer	authorized insurer
64.	Section 42(1)	an insurer	an authorized insurer
65.	Section 43, heading	insurer	authorized insurer
66.	Section 43	an insurer	an authorized insurer
67.	Section 43, Chinese text	保險人即	該保險人即
68.	Section 44(1), (2), (3) and (4)	an insurer	an authorized insurer
69.	Section 45, heading	insurer	authorized insurer
70.	Section 45(1)	an insurer	an authorized insurer
71.	Section 45(2)	an insurer	an authorized insurer

	Column 1	Column 2	Column 3
	Provision	Repeal	Substitution
72.	Section 45(2)(a) and (b), Chinese text	保險人 (wherever appearing)	該保險人
73.	Section 45(4A)	an insurer	an authorized insurer
74.	Section 45(4B)	an insurer	an authorized insurer
75.	Section 45(5)	an insurer	an authorized insurer
76.	Section 46, heading	insurer	authorized insurer
77.	Section 46(1)	an insurer	an authorized insurer
78.	Section 46(2)	existing insurer	existing authorized insurer
79.	Section 46(5) and (6), Chinese text	保險人	有關保險人
80.	Section 46(7), Chinese text	(a) 保險人的 (b) 保險人作出	有關保險人的 該保險人作出
81.	Section 47, heading	insurers	authorized insurers