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13 April 2007

Clerk to Bills Committee
on Shenzhen Bay Port Hong Kong Port Area Bill
Legislative Council
8 Jackson Road
Central
Hong Kong
(Attn.: Mr Raymond Lam)

Dear Mr Lam,

**Bills Committee on Shenzhen Bay Port
Hong Kong Port Area (“HKPA”) Bill**

At the meeting on 11 April 2007, a member requested us to elaborate on the binding effect of the market agreement, clarify the worries of the insurance industry over the proposed unilateral deed and consider whether we can strengthen the implementation of the market agreement by, say, providing in the market agreement that a breach of it will be seen as a contravention of certain insurance laws. We set out below our responses.

We explained at the meeting that it is the intention of both the insurance companies and the Government to enter into a legally binding market agreement. As Government agrees to take up obligations to disseminate information on the market agreement to the policyholders through relevant government departments and the mass media, there is consideration on the part of the Government to support a legally binding agreement. We have also explained at the meeting that as the

policyholders are not a party to the market agreement, they cannot enforce the market agreement. That said, in notifying the policyholders of the details of the market agreement and the list of participating insurance companies, the participating insurance companies are indeed making a representation to the affected policyholders that they waive their contractual right to enforce any exclusion clause on territorial limit and confer additional benefit on the policyholders by extending the coverage of the existing policies to include the HKPA notwithstanding any exclusion clause providing otherwise.

In case of an accident at the HKPA, the victims (i.e. the third parties who died or suffered bodily injuries in car accidents and employees who died or suffered bodily injuries during the course of work) will be able to claim compensation from the insurance companies. Once the liabilities of the insurance companies towards the victims are established, the insurance companies have an obligation to compensate the victims notwithstanding any exclusion clause.

In the unlikely event that an insurance company which has signed the market agreement wishes to backtrack and take legal action to recover compensation it pays to any third parties on the ground that the insurance policy does not cover the HKPA, the policyholder can advance such arguments as he deems fit including where appropriate referring to the market agreement, and the representation made by the insurance companies on extending the coverage to include the HKPA notwithstanding any exclusion clause in the policies. We believe that the policyholder will have a good defence and the Insurance Authority will be prepared to render assistance in any such legal proceedings.

Any representation made by the insurance industry in relation to the scope of coverage of the existing insurance policies and the waiver on the exclusion clause will only have legal effect on the parties to the policies and will not have any legal effect or confer any benefit on any other parties who are not contractual parties to the policies.

Market agreements have been proven effective in addressing market issues and the insurance industry is familiar with them. On the other hand, the use of a unilateral deed in similar circumstances is unprecedented to the industry. The industry has little understanding on the implications of a unilateral deed, and how it will compare favourably

with the market agreement. In particular, some local chief executives of foreign insurance companies will find it difficult to convince their Head Office to approve their executing such a novel deed, instead of entering into a market agreement. The power for deed execution is usually vested with the Board of Directors that may hold varied perceptions about the interpretation and applications of a deed, given the possible differences in laws between Hong Kong and their home jurisdictions. Furthermore, the insurance industry considers that a shift from a market agreement to a unilateral deed as a means of resolving market issues will have wide-ranging and unknown implications for existing and future market agreements.

Apart from unilateral deed, individual members of the Bills Committee have proposed Government to make reference of the market agreement in the Bill and make it legally binding. We are given to understand from the Hong Kong Federation of Insurers that both options do not have the support of the insurance industry. As both options are reliant on the voluntary participation of the industry, the lack of uniform support will render it less effective. Confusion and unnecessary expenses for policyholders can be avoided if the industry adopts a uniform practice in dealing with the extended coverage. There are also concerns if a voluntary market agreement supported by the industry is to be overridden and replaced by other legislative initiatives.

As to how best to strengthen the market agreement, having considered members' view, we will add a clause in the market agreement to the effect that all participating insurance companies acknowledge that a failure to honour the obligations set out in it will reflect adversely on the fitness and properness of the management of the insurance company. We believe that such explicit acknowledgement, together with keen competition in the insurance industry and the importance of upholding good reputation, will help ensure compliance with the market agreement by participating insurance companies.



(Alan K M Chu)

for Secretary for Security