

Bills Committee on Insurance Companies (Amendment) Bill 2014

**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meeting on 24 March 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 24 March 2015.

Effect of revocation or suspension of the licence of an insurance intermediary

2. The effect of new section 64ZS(a) added by Clause 71 of the Bill is that an agreement, transaction or arrangement entered into or arranged by a licensed insurance intermediary will not be affected solely because the licensee's licence is revoked or suspended. Section 64ZS(a) is similar to section 201(2) of the Securities and Futures Ordinance ("SFO") (Cap. 571). We need to recognize that a licensee may have other businesses apart from insurance intermediation and may enter into an agreement, transaction or make arrangement for an agreement or transaction not related to insurance intermediation after its licence is suspended or revoked. The wording of section 64ZS(a) therefore includes "or after".

3. We do not consider that the phrase "or after" will create a loophole to allow an insurance intermediary with its licence revoked or suspended to continue with its regulated activities, as under the new section 64G(4) added by Clause 71 of the Bill, the carrying on of a regulated activity for reward or in the course of a person's business or employment without an insurance intermediary licence is an offence and the convicted person is liable to penalty.

Determination of whether a person is fit and proper

4. As regards new section 64ZZA(1)(e) added by Clause 71 of the Bill, we envisage that the independent Insurance Authority ("IIA") will require an applicant to declare in the application form whether he has been disciplined by other local and overseas financial regulators and 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 new section 64ZZA(1)(a) to (g).

5. The Hong Kong Monetary Authority, the Securities and Futures Commission and the Mandatory Provident Fund Schemes Authority do not have a limit on the retention period of their respective regulatees' disciplinary record.

Drafting issue

6. New section 64ZZH(3) added by Clause 71 of the Bill provides that the costs and expenses incurred by an investigator other than an employee of IIA may be paid out of moneys provided by the Legislative Council ("LegCo"). This provision is necessary because of the effect of section 4 of the Public Finance Ordinance (Cap. 2) which provides that "[n]o expenditure shall be charged on the general revenue except as provided by or under this Ordinance or any other enactment". Without new section 64ZZH(3), IIA would not be eligible for moneys from the general revenue appropriated by LegCo to settle those costs and expenses. A similar provision can also be found under the SFO (section 182(2)) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (section 11(3)).

7. We do not consider it appropriate to amend the wording as suggested by Members at the meeting as the proposed version does not provide the necessary enactment and it simply empowers IIA to seek funding from LegCo. It neither reflects the policy intent nor achieves the purpose mentioned in paragraph 6 above.

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