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31 March 2015

Ms HUNG Sze-man, Joan
Prin AS for Financial Services &
the Treasury (Financial Services)SD
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms HUNG,

Insurance Companies (Amendment) Bill 2014

I am scrutinizing the legal and drafting aspects of the Bill and would like to seek clarification on the following point -

General – The form of expression

It is noted that many of the provisions in the Bill which appear to provide for obligations are negatively expressed, for example, the new section 64N (clause 71 of the Bill) provides that "An authorized insurer must not enter into a contract of insurance through another person in Hong Kong unless— (a) that person is a licensed insurance intermediary; or (b) that person's duties only involve clerical or administrative duties.". Please explain the reason for choosing this form of expression.

Clause 84 – new section 80(2)(d) in new Part XI

The proposed new section 80(2)(d) refers to "controllers". It is noted that the definition of "controller" in section 2(1) of the Insurance Companies Ordinance (Cap. 41) is proposed to be amended so that it does not

apply to the proposed new Parts X and XI. In the new Part X, "controller" (控權人) is specifically defined in the new section 64F. However, "controller" is not defined in the new Part XI. Please clarify and confirm the meaning of "controller" under the new Part XI.

Clause 84 – new section 81(1)

The proposed new section 81(1) provides that "the Authority must not exercise a power under section 80 without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.". Please clarify whether the information or evidence obtained from that person can be used in other proceedings, by reference to, for example, section 307L of the Securities and Futures Ordinance (Cap. 571).

Clause 84 – new section 83(1)

The proposed new section 83(1) provides that "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 [Part XI]; and (b) take an additional action that the Authority considers appropriate in the circumstances of the case.".

Please clarify -

- (a) under the new section 83(1)(a), apart from the powers under the new section 80, what other power(s) may the Authority exercise in respect of the person under Part XI?
- (b) what "additional action" can the Authority take under the new section 83(1)(b)?

Clause 84 – new sections 92 and 127

Please clarify whether the rules made under the proposed new sections 92 and 127 are subsidiary legislation.

Clause 84 – new section 89(b)

The proposed new section 89(b) provides that "When carrying on a regulated activity, a licensed insurance intermediary 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". Please consider whether the standard of the "level of care, skill and diligence" which a licensed insurance intermediary must exercise should further be elaborated by reference to, for example, section 465 of the Companies Ordinance (Cap. 622).

Clause 84 – new section 104

The proposed new section 104 provides for costs to be awarded by the Insurance Appeals Tribunal. It makes no provision as how such costs are to be paid. It is noted that section 260(2) of Cap. 571, which is similar to the new section 104, provides that "Any costs awarded under this section are a charge on the general revenue.". Please consider whether a provision such as that in section 260(2) of Cap. 571 should be added to the new section 104.

I shall be grateful if you could let me have your response in both Chinese and English to the above at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie LO', written in a cursive style.

(Winnie LO)

Assistant Legal Adviser

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