



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/18/13-14
電話 TELEPHONE : 3919 3510

傳真 FAX : 2877 5029
電郵 E-MAIL : wwwlo@legco.gov.hk

By Fax (2527 0292)

5 May 2015

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

Dear Ms HUNG,

Insurance Companies (Amendment) Bill 2014

Further to my letter dated 31 March 2015, I should be grateful if you could provide further clarification on the following matters -

Clause 71 – section 64ZK(2)(a)
Clause 73 – section 68(2)

The proposed new section 64ZK(2)(a) refers to "...by 1 licensed insurance broker company..." and the proposed amended section 68(2) refers to "...by 1 authorized insurer as an agent...". However, it is noted that "1" is represented by the word "one" in many other provisions in the Bill such as the proposed new sections 64U(5)(b) and 64W(3)(b). Please clarify the inconsistency in this regard.

Clause 84 – section 96(1) and section 2(1) of Schedule 10

The proposed new section 96(1) provides "Except as otherwise provided in Schedule 10...". However, section 2(1) of the proposed new Schedule 10 provides "Subject to section 96...".

Please clarify the legislative intent of the proposed new section 96(1) and section 2(1) of the proposed new Schedule 10. Further, please confirm which of these two provisions prevail should any conflict or inconsistency arise.

Clause 86 – section 1(6) of Schedule 1B

Section 1(6) of the proposed new Schedule 1B provides that "A designation under subsection (5) ceases to have effect when the earliest of the following events occurs—

- (a) the designation is revoked by the Financial Secretary;
- (b) if the designation is made in the circumstances mentioned in subsection (4)(a)—an appointment is made under subsection (1);
- (c) if the designation is made in the circumstances mentioned in subsection (4)(b)—the deputy chairperson appointed under subsection (1) is able to act as chairperson."

Please explain the effect and meaning of a long dash "—" appearing in section 1(6)(b) and (c) mentioned above.

Further, it is noted that the long dash "—" is also used in many other provisions of the Bill, for example, the proposed new sections 5H(2)(a) and (b), 13A(12)(a) and (b), 41K(3)(a) and (b), 41N(a) and (b), 64O(2)(a) and (b), 64ZG(5)(a) and (b), 64ZH(b) and section 105(2)(a) to (g) of the proposed new Schedule 11. Please confirm that the effect and meaning of the long dash "—" used in these other provisions are the same as that in section 1(6)(b) and (c) mentioned above.

Clause 94 – section 5(8) of Schedule 10

Section 5(8) of the proposed new Schedule 10 provides that "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— ...(iii) ... the sole proprietor; **and** (b) through a counsel or solicitor or, with the leave of the Tribunal, through any other person."

Should the word "and" highlighted in bold typeface above be replaced with the word "or"?

Clause 94 – section 7(1) of Schedule 10

Section 7(1) of the proposed new Schedule 10 provides that "...the Tribunal or chairperson may make any order which it or the chairperson is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if the conditions set out in subsection (2) are met."

Please provide justification for stating "whether or not the requirements otherwise applicable to the making of the order have been complied with" in this provision. What "requirements" are contemplated to be likely not being complied with?

Clause 94 – section 3(1) of Schedule 11

The Chinese rendition of section 3(1) of the proposed new Schedule 11 provides that "凡有紀錄由前監督保管，而保監局認為需要該等紀錄，以根據本條例執行該局的職能，則前監督須在實施日期當日，將該等紀錄移交保監局，或於該日期後在切實可行範圍內，盡快如此移交。"

Would it be more succinct to provide "...，則前監督須在實施日期當日，或於該日期後在切實可行範圍內，盡快將該等紀錄移交保監局。", by reference to section 22(1) of the Communications Authority Ordinance (Cap. 616)?

Clause 94 – section 3(6) of Schedule 11

Section 3(6) of the proposed new Schedule 11 provides that "The Privacy Commissioner for Personal Data may, on and after the date on which the transfer 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."

Please clarify at what point of time is the transfer considered to be completed.

Clause 94 – section 10 of Schedule 11

Section 10 of the proposed new Schedule 11 refers to a situation where a person applies for a stay of execution of the decision of revocation after the decision takes effect and the application is granted.

Please clarify whether the person would be regarded as not having been granted a licence under the proposed new section 64U during the period from the date on which the decision of revocation takes effect to the date of application of the stay of execution of the decision and to the date on which such application is granted.

Clause 94 – Divisions 6 and 8 of Schedule 11

Both Divisions 6 and 8 of the proposed new Schedule 11 refer to "Chief Executives Registered with Approved Broker Bodies". Please explain the difference between the two.

Clause 94 – section 106(4) and (5) of Schedule 11

By reference to section 105(3)(b) of the proposed new Schedule 11, please consider simplifying the drafting by combining section 106(4) and (5).

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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