

Bills Committee on Insurance Companies (Amendment) Bill 2014

**Committee Stage Amendments
(Section 68)**

Further to the proposed Committee Stage Amendments discussed at the meetings on 26 May 2015 and 2 June 2015 (LC paper No.: CB(1)877/14-15(04)), Members are invited to examine the revised amendments to section 68 (amended by Clause 73 of the Bill) at **Annex**.

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

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 Sections 65, 66 and 67 repealed**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

Section 68: Authorized insurer's relationship with its agent

- (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.

(5) The liability of an authorized insurer under this section arises whether the person purports to act as a principal or as an agent for an undisclosed or disclosed principal.

~~(6) In assessing liability for a claim under this section, the court is required to be satisfied that the proposed insured client has acted in the utmost good faith and without contributing to the failure on the part of the person to effect the proposed insurance contract.~~