

**Bills Committee on  
Insurance Companies (Amendment) Bill 2014**

**Insurance Appeals Tribunal  
(New Part XII and New Schedules 9 & 10)**

## **INTRODUCTION**

This paper briefs Members on the policy objectives and major provisions in the new Part XII of the Insurance Companies Ordinance (Cap. 41) (“ICO”), added by Clauses 84 and 94 of the Insurance Companies (Amendment) Bill 2014 (“the Bill”). These provisions are related to the establishment, composition and powers of the Insurance Appeals Tribunal (“IAT”) and its review of specified decisions made by the independent Insurance Authority (“IA”).

## **BACKGROUND**

2. At present, appeals against certain decisions of the Insurance Authority (“IA”) are made to the Financial Secretary (“FS”).<sup>1</sup> Such decisions include refusal of authorization or objection to the appointment of controllers of insurers, de-registration of insurance agents or withdrawal of authorization of insurance brokers.

## **POLICY OBJECTIVES AND MAJOR PROVISIONS**

3. We have proposed to modernize the appellate mechanism under the new regulatory regime by setting up an independent quasi-judicial body (the IAT) chaired by a former judge or a person qualified for appointing as a High Court judge. The flowchart illustrating the appeal mechanism is at **Annex A**. The proposal is modelled on the appeal systems established for reviewing the decisions of other financial market regulators.

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<sup>1</sup> Sections 11, 13A, 13B, 14, 38D, 38E, 50B, 66 and 75 of the existing ICO provide that appeals against the decisions of the IA can be made to the FS.

### **(a) Establishment and composition of the IAT**

4. New section 95 added by Clause 84 of the Bill establishes the IAT as an independent quasi-judicial body. New section 95(2) provides that the IAT has jurisdiction to review specified decisions listed in new Schedule 9 (added by clause 94), as well as to hear and determine a question or issue arising out of or in connection with a review by the IAT. To allow flexibility for the IAT to handle more than one case at a time, new section 95(3) provides that the Chief Executive (“CE”) may establish additional tribunals for any reviews if appropriate.

5. New section 96 and sections 2 to 4 of new Schedule 10 provide for the composition of the IAT. Section 3 of new Schedule 10 stipulates that the IAT’s chairperson shall be appointed by the CE. The chairperson must not be a public officer or a member of the IIA, and he/she must be –

- (a) a former Justice of Appeal of the Court of Appeal;
- (b) a former judge or a former deputy judge of the Court of First Instance; or
- (c) eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4).

6. A panel of members<sup>2</sup> will be appointed by the CE. The IAT will comprise a chairperson and two members. Section 4 of new Schedule 10 provides that, for the purpose of determining each review, the Secretary of Financial Services and the Treasury should, on the recommendation of the chairperson of the IAT, appoint two panel members as ordinary members in relation to the review.

### **(b) Powers of the IAT**

7. To ensure that the IAT can provide an effective remedy in each review, new section 99 provides that the IAT may confirm, vary or set aside a specified decision of the IIA or substitute another decision for the decision. The IAT may also remit the matter to the IIA with directions to revisit the decision. Before making a decision, the IAT

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<sup>2</sup> A panel member must not be a public officer or a member of the IIA.

must give the parties to the review a reasonable opportunity to be heard.

8. In addition, new sections 100, 102 and 104 set out other powers of the IAT which are similar to those of a court, including the power to obtain evidence, punish for contempt and award costs, so as to facilitate it to perform its functions effectively. New section 100(1) provides that the IAT has power to obtain evidence, including requiring a person to attend before it at any sitting and to give evidence, and to prohibit the disclosure of any material it receives at any sitting which is held in private. New section 100(2) sets out the circumstances under which a person may commit an offence in the conduct of proceedings before the IAT, e.g. hindering or deterring any person from attending before the IAT (see **Annex B**). New section 102(4) provides that a person will not face the “double jeopardy” of being punished by the IAT for contempt and being prosecuted for the same conduct.

9. New section 104 empowers the IAT to, by order, award costs to the parties to a review. The IAT will have discretion to determine whether to award costs and the sum awarded. In particular, section 104(3) provides that Order 62 of the Rules of the High Court (sub. leg. A of Cap. 4) applies to the award of costs, and to the taxation of any costs awarded, by the IAT. Order 62 rule 5 of the Rules of the High Court stipulates that when the Court exercises discretion to award costs, the Court must, to such extent as may be appropriate in the circumstances, take into account the conduct of all the parties. The conduct of the parties includes –

- (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (b) the manner in which a party has pursued or defended his case or a particular allegation or issue;
- (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
- (d) conduct before, as well as during, the proceedings.

10. New section 105 requires the IAT to notify the parties to the review its determination and the reasons for its determination. The IAT may by order prohibit the disclosure of its determination, its cost order or its reasons for the determination or costs order if the sitting relating to the

review, or part of it, is held in private. New section 107 provides that an order of the IAT<sup>3</sup> may be registered in the Court of First Instance. Orders so registered are regarded as orders of the Court of First Instance.

**(c) Specified decisions**

11. Part 1 and Part 2 of new Schedule 9 set out the specified decisions made in relation to insurers and insurance intermediaries respectively that can be reviewed by the IAT. Specified decisions in respect of the insurers (see **Annex C**) are related to -

- (a) authorization of insurers (see items (a) and (b) of Annex C);
- (b) approval of personnel in senior management, such as controller, director, key person in control functions or actuary, of an authorized insurer (see items (c) to (f) of Annex C);
- (c) intervention in the affairs of authorized insurers (see items (g) to (j) of Annex C);
- (d) disciplinary sanctions against authorized insurers (see item (k) of Annex C); and
- (e) approval of authorized representative and disciplinary actions relating to Lloyd's (see items (l) and (m) of Annex C).

12. Specified decisions in respect of the insurance intermediaries (**Annex D**) are related to –

- (a) licensing of insurance intermediaries and approval of responsible officers (see items (a) to (f) of Annex D);
- (b) disciplinary sanctions against insurance intermediaries (see item (g) of Annex D); and
- (c) transitional arrangements of licensing and disciplinary sanctions relating to insurance intermediaries (see items (h) to (j) of Annex D).

**(d) Application for review and stay of execution**

13. Section 98 sets out the procedures of application for review

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<sup>3</sup> New section 106 provides that an order of the IAT must be recorded in writing and signed by the chairperson of the IAT.

to the IAT. A person affected by a specified decision may apply to the IAT for a review of the decision within the period ending 21 days after a notice informing the person of the decision has been served. The IAT may, on application, extend the period for application for a review.

14. New section 108(1) provides that the making of an application for review does not operate as a stay of execution of the specified decision concerned. New section 108(2) enables an applicant for a review to apply to the IAT for a stay of execution of the specified decision in relation to the application at any time before the review.

15. New section 114 provides for the time at which a specified decision takes effect. A specified decision takes effect at the time when –

- (i) the person notifies the IIA that the person will not apply for a review within 21-day period;
- (ii) the 21-day period expires and the person does not apply for a review; or
- (iii) the decision is confirmed, varied, or substituted by the IAT; or the application for a review is withdrawn.

#### **(e) Procedures of the IAT**

16. For greater transparency in the administration of justice, section 5 of new Schedule 10 (added by clause 94) provides that each sitting of the IAT must be held in public unless the IAT determines that it is in the interests of justice to hold a sitting or a part of sitting in private. At any sitting of the IAT<sup>4</sup>,

- (a) the chairperson and two ordinary members must be present;
- (b) the chairperson must preside at the sitting; and
- (c) apart from a question of law which is to be determined by the chairperson alone, all other questions must be determined by the majority of votes cast by the chairperson and the ordinary members.

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<sup>4</sup> Except when the chairperson determines a review as the sole member of the IAT under section 8 of new Schedule 10 (see paragraph 17).

17. Sections 6 to 8 of new Schedule 10 provide for procedural flexibility in the handling of appeals by the IAT. Section 6 of new Schedule 10 provides that if the chairperson considers appropriate and the parties agree, preliminary conferences could be held for the purposes of assisting and expediting the conduct of the review. Section 7 of new Schedule 10 provides that the IAT or chairperson may make any consent orders if parties to the review agree to the making of the order and they consent to all terms of the order. Section 8 of new Schedule 10 provides that the chairperson may determine a review (if such an arrangement is agreed by the parties), an application for an extension of time for application for a review, or a stay of execution of a specified decision, as the sole member of the IAT.

**(f) Appeals against the determinations of the IAT**

18. New sections 110 to 113 confer upon a party to a review a right of appeal to the Court of Appeal against the determination of the IAT. New section 110 provides that a party to a review who is dissatisfied with a determination of the IAT may appeal to the Court of Appeal on a question of law, fact, or mixed law and fact. An appeal may only be made with leave granted by the Court of Appeal.

19. New section 111 provides that the Court of Appeal may allow or dismiss an appeal, or vary or set aside the determination or remit the matter to the IAT or the IIA. To avoid any tactical appeals to delay the effect of a decision by an appellant, new section 112 sets out that the lodging of an appeal to the Court of Appeal does not operate as a stay of execution of the IAT's determination concerned. Any party to the review who wishes to have a stay of execution may apply to the Court of Appeal.

**(g) Others**

20. New section 101 provides that evidence, answer or information given by a person in accordance with a requirement or order of the IAT is not admissible in evidence against the person in criminal proceedings, except the criminal proceedings in which the person is

charged with an offence under section 100(2)(a) (i.e. failure to comply with an IAT's order, prohibition, requirement, etc.; see item (a) of Annex B), or under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

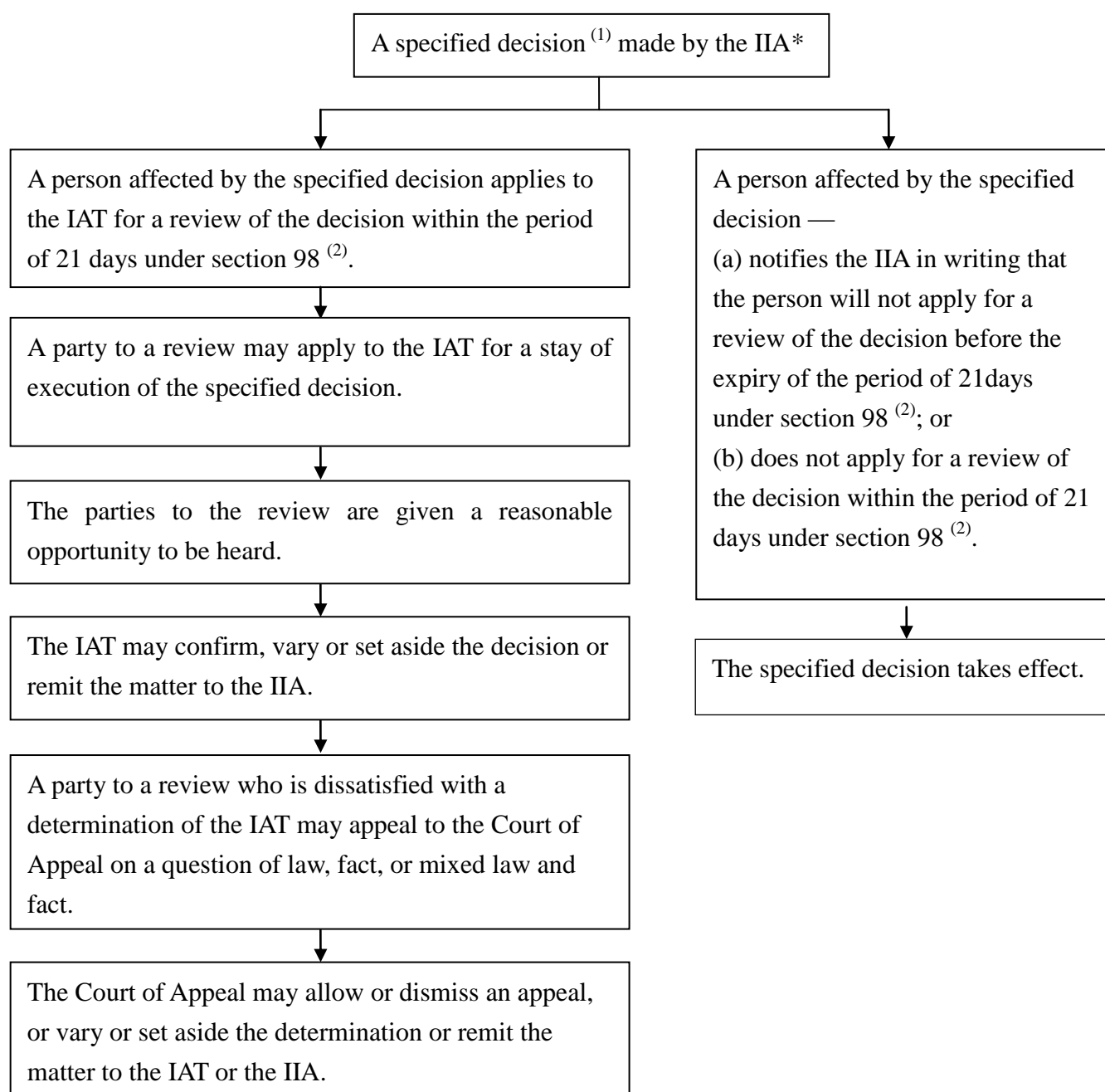
21. New section 103 sets out that new Part XII and new Schedule 10 do not require an authorized institution who acts as the banker or financial advisor of the applicant for a review to disclose information relating to the affairs of its customers other than that applicant.

22. New section 115 empowers the Chief Justice to make rules in respect of various matters, including providing for the award of costs, providing for matters relating to the registration of the orders of the IAT in the Court of First Instance, regulating the procedure for the hearing of the appeals against the determination of the IAT.

**Financial Services and the Treasury Bureau**  
**November 2014**

## Annex A

### Appeal mechanism for a specified decision made by the IIA



#### Notes:

- (1) Part 1 and Part 2 of new Schedule 9 set out specified decisions made in relation to insurers and insurance intermediaries respectively.
  - (2) Under new section 98, a person affected by a specified decision may apply to the IAT for a review of the decision within the period ending 21 days after the notice informing the person of the decision has been served.
- \* Before exercising its disciplinary powers on an insurer or an insurance intermediary (which is a specified decision), the IIA must give the insurer or insurance intermediary concerned a reasonable opportunity to be heard.



**Offences in relation to the IAT  
under new section 100(2)**

As provided in new section 100(2)(a) – (f), a person commits an offence if the person, without reasonable excuse—

- (a) fails to comply with an order, notice, prohibition or requirement of the IAT made, given or imposed under new section 100(1);
- (b) disrupts any sitting of the IAT or otherwise misbehaves during any sitting of the IAT;
- (c) having been required by the IAT under new section 100(1) to attend before the IAT, leaves the place where the person's attendance is so required without the permission of the IAT;
- (d) hinders or deters any person from attending before the IAT, giving evidence or producing any article, record or document, for the purpose of a review;
- (e) threatens, insults or causes any loss to be suffered by any person who has attended before the IAT, on account of that attendance; or
- (f) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the IAT at any time on account of the performance of the chairperson's or member's functions.

**Specified decisions made in relation to insurers  
under Part 1 of new Schedule 9**

As provided in Part 1 of new Schedule 9, specified decisions made in relation to insurers are as follows –

- (a) Refusal to authorize a company to carry on insurance business;
- (b) Imposition, amendment or revocation of a condition on an authorization of a company to carry on insurance business;
- (c) Refusal to approve or revocation of approval of appointment of a controller, director or key person in control functions of an authorized insurer;
- (d) Imposition, amendment or revocation of a condition in relation to the approval of appointment of a controller, director or key person in control functions of an authorized insurer;
- (e) Objection to the proposed appointment / appointment of a controller of an authorized insurer;
- (f) Refusal to approve or revocation of approval of appointment of an actuary of an authorized insurer;
- (g) Imposition of a restriction / requirement on an authorized insurer in relation to effecting or varying contracts of insurance, investments, maintenance of assets in Hong Kong, custody of assets, premium income to be received;
- (h) Imposition of a requirement on an authorized insurer under section 35(1);
- (i) Rescission or variation of a requirement imposed under sections 27 to 35(1);
- (j) Determination of remuneration and expenses to be paid by an authorized insurer to an Advisor / Manager;
- (k) Exercise of power to take disciplinary action against authorized insurers;
- (l) Refusal to approve or revocation of approval of the appointment of an authorized representative of Lloyd's; and
- (m) Exercise of power to take disciplinary action against Lloyd's, etc.

**Specified decisions made in relation to insurance intermediaries  
under Part 2 of new Schedule 9**

As provided in Part 2 of new Schedule 9, specified decisions made in relation to insurance intermediaries are as follows –

- (a) Refusal to grant an insurance agency licence, an individual insurance agent licence, a technical representative (agent) licence, an insurance broker company licence, a technical representative (broker) licence;
- (b) Refusal to approve a responsible officer of a licensed insurance agency or a licensed insurance broker company;
- (c) Imposition, amendment or revocation of a condition in relation to a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC or approval granted under section 64ZE or 64ZF;
- (d) Revocation of the approval granted under section 64ZE or 64ZF;
- (e) Refusal to renew a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC;
- (f) Imposition, amendment or revocation of a condition in relation to a renewal of a licence granted under section 64U, 64W, 64Y, 64ZA or 64ZC;
- (g) Exercise of power to take disciplinary action;
- (h) Revocation or suspension of a licence or approval that is regarded as having been granted under Part 4 of Schedule 11;
- (i) Imposition, amendment or revocation of a condition in relation to a licence or approval that is regarded as having been granted under Part 4 of Schedule 11; and
- (j) Exercise of power to take disciplinary action against, or imposition of a penalty or sanction on, a specified person as defined by section 107 or 111 of Schedule 11.