

香港保險中介人商會
意見書
反對建議成立獨立保險業監管局

	要點	論據	建議
1	這是一個粗疏的建議。設計方法是見步行步，難以改善香港長期可持續發展的金融監管制度。	<p>該建議並沒有提供一個未來香港整體可持續發展的金融監管制度。也沒有提供獨立保監局的具體細節，未來的結構，規則和規例，及如可配合整體可持續發展金融監管制度。</p> <p>該建議是飽受重複的弊端，缺乏一個集成的設計。香港大學法學院所設立的亞洲國際金融法研究院 (Asian Institute of International Financial Law) 於2009年亦指出，http://law.lexisnexis.com/webcenters/hk/Hong-Kong-Lawyer-/The-Global-Credit-Crisis-Implications-for-Financial-Regulation-in-Hong-Kong “香港的監管制度缺乏一個綜合的，有目的的設計，從全球信貸危機中看到的情況，是充滿漏洞和一片混亂。” ... “香港現行的發展制度是見步行步，從部門，法律，結構來看，可見到許多矩陣式的混亂，漏洞，和矛盾。</p>	<p>在缺乏全面規劃的監管制度情況下。現行的保險業監管制度需要作多方面的改善，但並不需要作急劇的突變。</p> <p>以下是一些建議：</p> <ol style="list-style-type: none"> 1) 提供一個全面長期可持續發展的金融監管制度規劃，包括銀行，證券和保險業； 2) 改善現行保險業監管制度，而不是重建一個新系統 “獨立保險業監管局”。這方法是沒有大刀闊斧改革的缺點。此外，它更安全，高效，和有效的。
2	缺乏透明度的建議。顧問報告的研究細節和方法沒有披露。	<p>沒有詳細披露選擇顧問機構 “羅兵咸永道會計師事務所” 的選擇標準，研究細節及研究的方法。市場上有一種普遍的說法，保監局過去提供了不少業務機會給羅兵咸永道會計師事務所。故此在行政長官表明有意將保監獨立之後，這個顧問爲了迎合行政長官的心意，便提供了一個有偏見和傾斜的研究報</p>	<p>以下是一些建議：</p> <ol style="list-style-type: none"> 1) 提供完整的顧問提交的報告； 2) 提供選擇顧問的標準，經過，和其他候選人的名單；

		告。	3) 提供在開展研究前，曾向顧問發出的指示及簡介。
3	該建議提供不實和誤導性信息。	例如：(第16頁 5.6) “由於該界別有兩個自律規管機構，外界可能會以為這兩個機構會為競相招攬會員而在執行紀律時傾向採取較寬鬆的態度。”這樣的說法，只會出於一個保險業門外漢口中。在現實中，大多數經紀人都知道，這兩個自我監管機構，一直在不斷加強其控制和監管。更為恰當的說法是經紀人自我監管機構，競相加強其監督和監管。我們觀察到，有很多類似的不實指控出現在建議書中，誤導公眾。	以下是一些建議： 1) 顧問應熟悉保險業； 2) 顧問公司應作出明確和客觀的陳述。
4	建議書是以小說形式表達內容，似講故事，沒有提供足夠的實質內容及資料。	例如：(第19頁 6.3) “事實上，在大部分已發展的市場，例如英國、澳洲和新加坡，其保險業的監管機構都是獨立組織。”保險業中，很多人在問，為何不可用一個列表，列出G-20國或G-30國的獨立情況呢。為什麼不講出美國的情況？有許多例子似講故事，並沒有提供足夠的實質內容的情況出現，如(第16頁 5.6) “在其他主要國際金融中心，保險中介人皆由獨立於行業的監管機構直接規管。”	以下是一些建議： 1) 提供一個競爭優勢的比較分析G-20或G-30，及鄰近地區的情況； 2) 提供美國的詳細情況； 3) 提供現時國家或地區之間的排名。
5	該建議的重點是時髦的，及和世界接軌。這並不是執行機構的核心職能，進行審慎監督，監管市場行爲。	看起來，走向獨立，是時尚的。然而，這並不是一個令人信服的理由，因為每個地區都有具體的差異。香港應根據其自身的歷史演變，金融體制，政治體制和傳統，以及金融部門的規模，採取適當的建議。根據智經研究中心的研究報告， http://www.bauhinia.org/ESA-Bauhinia-Part2-Report.pdf the 香港金融服務行業的競爭力，取決於許多因素，如	以下是一些建議： 1) 提供詳細的不獨立的後果，如：會否影響信用評級，國際保險監督官協會的會員資格，及受到制裁； 2) 應著眼於增強競爭力，管理

		<p>低稅制度，強法治，廉潔的政府，沒有外匯管制，對資本流動沒有任何限制，地理位置，當地的管理技能等。這些因素和時髦沒有關係。</p> <p>有一種普遍的看法，一些國際組織，如國際貨幣基金組織或國際保險監督官協會(IAIS)等，有意通過香港特區政府，影響中國的規管制度。這種現象，在影響中國的貨幣政策尤其明顯。</p> <p><i>備註：一些政府官員曾告訴我們，一些國內監管機構，例如中國保監會，在接見國際組織，如國際貨幣基金組織或國際保險監督官協會前，會要求香港特區政府預先提供補習課程，才接受會面。</i></p> <p>較諷刺的是，”獨立”金管局及證監會比“未獨立”的保監局，在金融海嘯後，受到更多更狠的批評。看來，金融海嘯的邪惡根源，是監管水平不足，而不是獨立與否的規則和規管架構。</p>	<p>和監督的因素，而不僅僅是一個時髦的願望，符合國際保險監管的原則；</p> <p>3) 加強核心的活動功能和進行審慎業務監管；</p> <p>4) 行使足夠的監督權力。</p>
6	<p>給消費者一種錯覺，加強監管的代價，是微不足道。</p>	<p>大多數客戶會感覺到，0.1%的徵費並沒有直接影響他們。事實上，徵費主要是影響到保險公司和保險中介人的經營成本。因此，這一項建議，給消費者一種錯覺，加強監管的代價，是微不足道，很自然消費者便有來者不拒，超需求的情況出現。有一個趨勢是，消費者對監管服務，是來者不拒的，因為監管和監督服務，一般都不是通過一個市場紀律進程發展出來的，而是由監管機構施加的。在這種情況下，客戶的自然反應，將是過分要求加強監管。再加上有規避風險傾向的監管者，過分規管的出</p>	<p>以下是建議：</p> <p>1) 放棄徵費制度，因為它會影響保險公司和保險中介人的經營費用，影響業界就業。</p>

		現，幾乎是不可避免的，亦再沒有適度調控超過供應的方法了。這將會創建一個過份的獨立保監局，令整個行業失去競爭優勢和運營效率，影響業界就業，業務，及經濟發展。	
7	徵費制度會削弱保險業的運營效率和競爭力。	<p>A. 一些客戶，保險中介人，或保險公司的地區辦事處，為了避免支付高徵費，可能會將他們部份保險單於海外安排。 （這種類型的業務可能會佔整體保費 20%） 例子：</p> <ul style="list-style-type: none"> • 本地大型項目保單 • 國際客戶為各地區安排的總保單 • 保險公司區域辦事處安排的再保險單 • 高資產客戶一次過整付保費的保單 <p>B. 有許多低保費的保單，如旅遊，家務助理，家居，貨物，基本人壽保單等。為許多這些保單計算和處理瑣碎的徵費，將是非常繁瑣，嚴重影響保險業的工作效率。 （這種類型的業務可能佔總保單數目80%）</p>	<p>以下是建議：</p> <ol style="list-style-type: none"> 1) 放棄徵費制度，因為它會影響到保險業的競爭力和運作效率； 2) 提供其他國家詳細的徵費運作形式以供參考。
8	這建議影響保險業的穩定性。	監管制度的穩定性和效率，要顧及供應和需求兩方的處境。保險中介人的權益亦應受到尊重。顯然，今次的建議書並沒有充份諮詢業界，特別是保險中介人的意見。	<p>以下是建議：</p> <ol style="list-style-type: none"> 1) 應充分進行協商，妥善諮詢。
9	建議的規管架構被認為是支離破碎，令人費解。	（18頁 5.14）一直以來聽到許多嘲笑和批評建議書內，有關監督銀行銷售保險產品的金管局與保監局的曖昧關係。建議的規管架構是極其混亂，保監局	<p>以下是一些建議：</p> <ol style="list-style-type: none"> 1) 保監局應直接監督銀行銷售

		<p>將放軟手腳監督銀行。金管局看起來聲稱會使用其極其嚴厲的家規，其實自身是暗藏有極大的“監管俘獲”風險（有關監管俘獲定議，請參閱附件）。</p> <p>許多銀行保險產品的銷售，往往在高壓力的環境進行。客戶可能原本打算走進一家銀行作定期存款，走出門時卻已轉買了投資相連保險產品，從未有時間適當閱讀或了解產品和有關說明書。</p> <p>銀行業務和證券活動，在銀行是有一個隔離的銷售點。但銷售投資連結保險活動，卻沒有一個隔離的銷售點。</p>	<p>保險產品；</p> <p>2) 銀行業務和投資連結保險活動，在銀行內應當有一個隔離銷售點。</p>
10	令人咋舌的員工獎金機制。	<p>（21頁6.8）建議並沒有提供詳細的獎勵機制。然而，它是一個令保險從業員不安的獎勵機制，令人聯想到，尤如向警察提供獎金，鼓勵他們積極地捕捉那些違規行為者。</p>	<p>以下是建議：</p> <p>1) 這種類型的獎勵計劃，應加以避免。</p>
11	為什麼不考慮方案 1，優化自律規管機構？	<p>（17頁 5.11）自律規管機構，存於許多行業，如會計，法律，和醫生等。目前的制度是有效的，故此沒有理由選擇方案 2，去取消自律規管機構。如選擇方案2，將危害自律精神，令業界永遠失去了自律精神的專門知識，及自律的集體經驗。</p>	<p>以下是建議：</p> <p>1) 保監局應加強監督自律規管機構；</p> <p>2) 三個自律規管機構應該合併為一；</p> <p>3) 自律規管機構的紀律處分，是要高度透明的；</p> <p>4) 在制定規則，法規，程序，委託及授權，等事項時，應當得到保監局同意；</p>

			<p>5) 委任董事會成員，特別是獨立董事，應獲保監局的同意；</p> <p>6) 自律規管機構應自重，要加強與海外，類似的自律規管機構交流，增強經驗，如加拿大安大略省註冊保險經紀人協會http://www.ribo.com/</p>
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何柏源 - 會長
港保險中介人商會
2010年9月30日

監管俘獲

獨立後的監管機構，在政治上的考慮較為自由。獨立的監管機構，將受到受監理之業界機構極大影響。更甚者，受監理之機構會“捕捉”監管機構，進而利用監管機構之職權，追求私人機構之利益。其結果，獨立的監管機構，勢將逐漸為受監理之機構所掌握，監理之內容與規劃亦將優先考慮受監理機構之利益。

<http://kelty.org/epit/documents/dan/Dan-Comment-EK3.doc>

Regulatory Capture: Ebru Kayaalp

What does regulatory capture mean?¹ In the *Economist*, it is defined as such:

“Gamekeeper turns poacher or, at least, helps poacher. The theory of regulatory capture was set out by Richard Posner, an economist and lawyer at the University of Chicago, who argued that “Regulation is not about the public interest at all, but is a process, by which interest groups seek to promote their private interest ... Over time, regulatory agencies come to be dominated by the industries regulated.” Most economists are less extreme, arguing that regulation often does good but is always at RISK of being captured by the regulated firms.”

Richard Posner’s approach to regulation exactly echoes Chicago School’s traditional attitude to market economy. The Chicago School of Economics became famous with the theories of Milton Friedman, who had been influenced by the ideas of Hayek. Friedman and his colleagues in Chicago support the deregulation of market, free trade and retreat of state intervention. It was an assault on the macroeconomic assumptions of Keynes, which ended up as a thoroughgoing critique of antitrust law, administrative regulation, tax policy, trade and monetary theory. In brief, they support the theory of a competitive market as a regulatory system. Elsewhere Posner wrote that “The evils of natural monopoly are exaggerated, the effectiveness of regulation in controlling them is highly questionable, and regulation costs a great deal.”²

According to the Chicago School of Economics, governments do not accidentally create monopoly in industries. Rather, they too often regulate at the insistence, and for the benefit of interest groups who turn regulation to their own ends. For them administrative regulation serves the regulated entities rather than the consumers.

We can simply define ‘regulatory capture’ as the capture of ‘regulators’ by the regulated³. ‘Capture’ means that responsible authorities act to protect the same illegal practices that they are charged with ‘policing’. ‘Regulator’ is the class of professionals and authorities within corporations, organizations or jurisdictions having formal administrative and legislative responsibilities for maintaining accountability within those units. Examples of the ‘regulator’ class might include auditors and accountants, lawyers and police, medical practitioners and nurses, government and private industry ‘watchdog’ authorities, researchers and scientists. The ‘captors’ are supposed to be ‘regulated’. They might include major industries, important customers, large corporations, political associations, professional elites, community leaders, and organizations.

There are many examples of ‘regulatory capture’ in different sectors, such as medicine and banking. An example might be given in e-voting system as well: As the *Los Angeles Times* reported on Nov. 10, former California Secretary of State Bill Jones is now a paid consultant to Sequoia. As secretary of state until 2003, he regulated the company's voting related services; now he works for them. Or

¹ My aim here is not to map out the genealogy of the concept “regulatory capture.” However, I think that it is necessary to cite some of the basic usages of this concept to shed light on how Wallach uses it in a different meaning as it has been originally used in economics and law.

² One of his law students tells the story of Posner, as a part-time professor at the University of Chicago Law School, coming into the first day of class and writing the word “Justice” on the blackboard. He then turned and said to his class that he did not want to hear that word in his course. Posner's approach is not a deliberative, but a cost-benefit analysis of law. This information is taken from Ralph Nader’s article “Microsoft Mediation,” *In the Public Interest*, November 22, 1999.

³ This definition is taken from the article “Regulatory Capture: Causes and Effects”, by G.MacMahon at www.iipe.org/conference2002/papers/McMahon.pdf

Diebold employs Deborah Seiler, who was chief of elections under California Secretary of State March Fong Eu⁴.

In the interview, Dan Wallach first uses the concept “regulatory capture” while arguing that check and balances should come from the independent testing authorities. He then carries the argument to a different level. He suggests that people (regulators) are setting their own standards and defining their own terms. The standards they have are weak standards. “The people who certify them don’t *know* what they are doing.” “Election officials don’t understand computer security, they don’t understand computer security, they don’t understand computers. They don’t *know* what computer *is*” (emphases are mine) (1727-34). Therefore, he shifts his criticism from “independent testing” to “expertise testing”. In other words, he criticizes the lack of knowledge of officials about the computers rather than the “objective”, “independent” or “self-interest” oriented testing.

If the problem here is defined in terms of “regulatory capture”, it should not matter whether the officials have adequate knowledge about computer or not. Even if they know *everything* about the computers, they can still manipulate this knowledge simply for their interests. And it would be easier if they know more about computers, which simply gives them power to manipulate the others.

Interestingly while Wallach was explaining the case of Avi Rubin (who was on a technical advisory board and who was claimed to have a potential conflict of interest in his criticism of Diebold,) Wallach simply supports him by suggesting that Rubin “had no financial benefit (2104)”. Wallach never mentions the concept of “regulatory capture” in this case. Instead, he says that “We hear a lot that [we have a conflict of interest]. What we don’t hear is how many of these election officials were given campaign donations by members of the election industry, like Diebold (2109-10).” I believe that Wallach’s attitude cannot be simply explained as a contradiction. It signifies more than that.

First of all there is no normative situation in his description. His argument depends mainly on the motivations of the actors. When he uses terms such as ‘independent test’, ‘conflict of interest’, ‘self-interest’, he does not mention the concept of ‘regulatory capture.’ For Wallach these concepts (self-interest and regulatory capture) refer to different problems. For example, just being in the advisory board of a company is not necessarily bad if the guy is a “good guy.” Wallach appears to be much more focused on the knowledge of people in defining “regulatory capture.”

Second, Wallach’s explanation of “regulatory capture” diverges from the original meaning of concept radically. There is nothing wrong with it, but it is necessary to note that when his usage of the word is deconstructed it raises an interesting point about regulation. As I mentioned before, his understanding of the concept is more about not *knowing* the computers. Therefore, what he proposes is to leave this task to the *experts* in this area. Therefore, what he criticizes is not the attempt of *regulation* itself (as Chicago School criticizes) or the “self-interested” motivations of actors (he criticizes this in a different context) but the regulations done by *non-experts*. Nevertheless, regulation of the experts, as I mentioned before, might be corrupt and be defined as “regulatory capture” as well. Therefore, the trouble for Wallach is not the regulation but the regulation -whether self-interested or not- done by the non-experts. This is similar to the way arguments about objectivism and “truth” are combined and mixed in many cases as if they were mutually exclusive, and how subjectivism always comes with the idea of ‘ignorance’ and the non-scientific. Does regulatory capture mean regulation by the experts? Or does it also mean deregulation in computer science as originally defined by economists?

⁴ It is Diebold's president, Bush contributor Walden O'Dell, who stated in an Aug. 14 fund-raising letter to Ohio Republicans: "I am committed to helping Ohio deliver its electoral votes to the president next year." O'Dell has since stated that he regrets the wording in the letter: "I can see it now, but I never imagined that people could say that just because you've got a political favorite that you might commit this treasonous felony atrocity to change the outcome of an election." See www.diebold.com/whatsnews/inthenews/executive.htm.