

立法會
Legislative Council

LC Paper No. CB(1)248/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/13/1

Bills Committee on Insurance Companies (Amendment) Bill 2014

**Minutes of the first meeting on
Tuesday, 27 May 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
- Member absent** : Hon WONG Kwok-kin, BBS
- Public officers** : Mr Eddie CHEUNG
Attending Deputy Secretary for Financial Services and the
Treasury (Financial Services) 2

Mr Paul WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (Special Duties)

Ms Annie CHOI, JP
Commissioner of Insurance

Miss Emma WONG
Senior Government Counsel
Department of Justice

Mr Peter SZE
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Hugo CHIU
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Mr Andrew LEUNG, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WONG Ting-kwong was nominated by Mr CHAN Kin-por and the nomination was seconded by Ms Starry LEE. Mr WONG Ting-kwong accepted the nomination. There being no other nomination, Mr WONG Ting-kwong was elected Chairman of the Bills Committee.

Election of Deputy Chairman

3. Members agreed to elect a deputy chairman for the Bills Committee. The Chairman invited nominations for the deputy chairmanship. Mr CHAN Kin-por was nominated by Mr NG Leung-sing and the nomination was seconded by Mr Christopher CHEUNG. Mr CHAN accepted the nomination. There being no other nomination, the Chairman declared that Mr CHAN Kin-por was elected the Deputy Chairman of the Bills Committee.

Disclosure

4. Mr NG Leung-sing said that the bank he worked for was involved in insurance business. Mr CHAN Kin-por said that he was returned by the Functional Constituency of Insurance and worked for a consultancy company on re-insurance.

II Meeting with the Administration

(LC Paper No. CB(1)1494/13-14(01) — Administration's paper on Insurance Companies (Amendment) Bill 2014

LC Paper No. CB(3)581/13-14 — The Bill

File Ref: C2/2/50C — Legislative Council Brief

LC Paper No. LS50/13-14 — Legal Service Division Report

LC Paper No. CB(1)1494/13-14(02) — Background brief on Insurance Companies (Amendment) Bill 2014 prepared by the Legislative Council Secretariat)

Discussion

5. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action to be taken by the Administration

6. The Administration was requested to provide information and response to members' views as follows:

- (a) in respect of conduct regulation of insurance intermediaries, (i) to provide the details of the relevant code of conduct/guidelines to be issued by the independent Insurance Authority ("IIA"), including whether they would be subject to the scrutiny of the Legislative Council; and (ii) to provide the draft code of conduct/guidelines to the Bills Committee;
- (b) on the two Advisory Committees, to provide the details of operation, including expected meeting frequency and consultation/communication with the insurance industry and relevant stakeholders;
- (c) on the composition of IIA, (i) the Administration should ensure that the majority of members would be lay persons; and (ii) the Administration should consider specifying in the Bill the proportion of members from the insurance industry (e.g. intermediaries including companies and individuals) and outside the industry in order to ensure balanced representation of interests;
- (d) in respect of conduct regulation of insurance intermediaries, the Administration should (i) clarify the requirement for insurance intermediaries to act in "the best interest" of their clients; and (ii) provide in the Bill/relevant code of conduct/guidelines the factors IIA would take into account or measures IIA expects intermediaries to take in complying with the requirement;
- (e) on the disciplinary mechanism, the Administration should consider setting up an independent disciplinary committee (comprising members from the insurance industry) to review IIA's disciplinary decisions where further appeals would be handled by the Insurance Appeals Tribunal ("IAT"). This will address concern about the potential huge legal costs involved in IAT proceedings and enable tapping of the experience and expertise accumulated by the three Self-regulatory Organizations in handling appeals;
- (f) as regards the proposed disciplinary fines on misconduct of insurance intermediaries, the Administration should specify the factors IIA would consider in imposing the level of fines, and that the fines to be imposed would not put the intermediaries in financial jeopardy; and

- (g) on the licensing of insurance intermediaries, the Administration should allow an insurance agent, as in the case of insurance brokers, to be the Director of another company.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)1637/13-14 on 18 June 2014.)

II Any other business

Invitation of views

7. Members agreed to post a notice on LegCo's website and write to the 18 District Councils ("DCs") to invite views from the public and DCs on the Bill. Members also decided that the Bills Committee would meet with deputations to receive views on the Bill at the second meeting.

(Post-meeting note: The notice was posted on LegCo website on 30 May 2014 and letters were sent to DCs and relevant organizations on 4 June 2014.)

Date of next meeting

8. The Chairman said that the Bills Committee would hold one to two meetings within the current legislative session, and requested the Clerk to work out the schedule of future meetings.

(Post-meeting note: With the concurrence of the Chairman, the second meeting was scheduled for 24 June 2014 from 2:30 pm to 4:30 pm to meet with deputations, the Administration and the relevant parties. The third meeting was scheduled for 30 June 2014 from 2:30 pm to 4:30 pm. The notices of meetings were issued vide LC Paper No. CB(1)1539/13-14 on 30 May 2014.)

9. There being no other business, the meeting ended at 12:43 pm.

**Proceedings of the Bills Committee on
Insurance Companies (Amendment) Bill 2014
First meeting on Tuesday, 27 May 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000103 – 000307	Mr Andrew LEUNG Mr CHAN Kin-por Mr WONG Ting-kwong Ms Starry LEE Mr Leung-sing Mr Christopher CHEUNG	Election of Chairman and Deputy Chairman	
000308 – 000342	Chairman Mr NG Leung-sing Deputy Chairman	Disclosure	
000343 – 001713	Administration Chairman	Briefing by the Administration on the Insurance Companies (Amendment) Bill 2014 ("the Bill") [LC Paper No. CB(1)1494/13-14(01) powerpoint]	
001714 – 001748	Deputy Chairman Mr SIN Chung-kai	Suggestion to hold a public hearing to receive views on the Bill	
001749 – 002524	Mr SIN Chung-kai Administration Chairman	<p>Mr SIN's views and enquiries as follows:</p> <p>(a) whether the non-executive directors of the independent Insurance Authority ("IIA") who had knowledge of and experience in the insurance industry would be appointed through election among industry practitioners; and</p> <p>(b) there should be more lay persons than industry representatives in IIA and this arrangement should be specified in the Bill.</p> <p>The Administration responded that –</p> <p>(a) Since IIA was a regulatory body, it was inappropriate to select its non-executive directors through election. One of the requirements of the International Association of Insurance Supervisors ("IAIS") was that insurance regulators should be financially and operationally independent of the government and the industry. The proposal in the Bill that at</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>least two directors of IIA should be persons with knowledge of and experience in the insurance industry would provide greater flexibility in the appointment of IIA members;</p> <p>(b) the two industry advisory committees of IIA would consist of industry practitioners and they would be the more appropriate channel for the industry to reflect views;</p> <p>(c) there would be more lay persons than industry representatives in IIA, and this arrangement was in line with IAIS's relevant requirement on insurance regulators. The Administration would consider whether this arrangement should be specified in the Bill.</p> <p>The Chairman opined that the Administration should consider specifying the proportion of lay persons and industry representatives in IIA.</p>	<p>The Administration to take action as required in paragraph 6(c) of the minutes.</p>
002525 – 003910	Mr WONG Yuk-man Administration	<p>Mr WONG's views and enquiries as follows:</p> <p>(a) IIA, being the regulator of the insurance industry, should not take up the function of "promoting market development of the insurance industry";</p> <p>(b) the Administration should consider imposing different levels of pecuniary penalty for corporate and individual insurance intermediaries and specifying in the Bill that the amount of pecuniary penalties should be commensurate with severity of the misconduct; and</p> <p>(c) how the two members of the Insurance Appeals Tribunal ("IAT") would be selected.</p> <p>The Administration responded that:</p> <p>(a) insurance had social values. Promoting the development of the insurance market was in the public interest. IIA would collaborate with the industry in facilitating market development, including maintaining liaison among local and overseas regulators on regulatory issues. The existing Office of the Commissioner of Insurance ("OCI") had also been carrying out similar functions;</p>	

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		<p>(b) on the pecuniary penalty, the proposed amount of \$10,000,000 was the maximum level. IIA when assessing the level of penalty, would take into account the severity of the misconduct. IIA would be statutorily required to publish a guideline, which would set out the relevant factors to be considered in determining the quantum of a fine, before it could impose financial penalties. Apart from the pecuniary penalty, a range of other disciplinary sanctions would also be available to IIA;</p> <p>(c) the Administration had considered the circumstances of the industry and made reference to practices of other regulators in working out the proposed pecuniary penalty.</p> <p>(d) on the composition of IAT, the Administration would appoint a panel of members with different background. For each appeal case, two members would be selected from the panel having regard to the circumstances of the case to assist the Chairman of IAT.</p>	
003911 – 005850	Mr KWOK Wai-keung Administration Chairman	<p>Mr KWOK's views and concerns as follows:</p> <p>(a) IIA should protect the interests of policy holders as well as insurance intermediaries. The latter function of IIA would be conducive to the stability of the insurance industry;</p> <p>(b) there were cases in which the insurance intermediaries were unfairly treated by their employers, including unreasonable withholding of salaries and provident funds of intermediaries. The interests of policy holders would be adversely affected if the rights of insurance intermediaries were not properly protected;</p> <p>(c) members of IIA should include representatives of frontline staff of insurance intermediaries. There should be a clear definition on "persons with knowledge of or experience in the insurance industry"; and</p>	

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		<p>(d) the two statutory IACs were set up according to the types of insurance products (i.e. life insurance and non-life insurance) and could not reflect the views of all insurance intermediaries.</p> <p>The Administration responded that –</p> <p>(a) it was the policy objective of the Bill to strengthen public confidence in the insurance industry by enhancing its stability and preventing default of insurers. IIA would focus on protecting the interests of policy holders in ensuring that insurance intermediaries would act in utmost good faith for their clients;</p> <p>(b) the cases mentioned by Mr KWOK involved disputes between insurers and their agents. The Bill required insurers to maintain good corporate governance, including good management of insurance intermediaries; and</p> <p>(c) the two industry advisory committees would consist of members from the industry (including insurance intermediaries). They would be the appropriate channel for the industry to reflect their views.</p> <p>In response to the Chairman's enquiry about relationship between insurers, insurance intermediary business entities and frontline intermediaries, and how disputes among them were resolved, the Administration advised that -</p> <p>(a) in general, the relationship between a broker company and its technical representatives was one between an employer and an employee, whereas an insurer and an agent would involve a principal/agent contractual relationship;</p> <p>(b) protection for employees under the relevant legislation, including the Employment Ordinance (Cap. 57) would apply if the relationship was one between an employer and an employee. On the other hand, for a tied agent, the relation with the insurer would be a contractual one. The Hong</p>	

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		<p>Kong Federation of Insurers had provided model agency agreements ; and</p> <p>(c) the intermediary system in the insurance industry with both agents and brokers had been in place for years, and was commonly found in many other jurisdictions. Insurance agents had formed relevant trade bodies to protect and promote their interests.</p>	
005851 – 011032	Mr YIU Si-wing Administration Chairman	<p>Mr YIU's views and enquiries as follows :</p> <p>(a) given the new functions of IIA and the expected heavy workload, the number of directors and industry representatives in IIA should be increased to ensure its smooth functioning; and</p> <p>(b) how IIA would handle complaints and appeals against insurance intermediaries, and ensure fairness and impartiality in the process.</p> <p>The Administration responded that:</p> <p>(a) upon receipt of a complaint, IIA would first examine whether there was a prima facie case. IIA would conduct detailed investigation if there were prima facie evidence. It would be impartial in making disciplinary decisions and the process would comply with the rules of natural justice, including providing the subject intermediary an opportunity to be heard and the right to be represented by legal personnel;</p> <p>(b) IIA should be responsible for investigating complaints against intermediaries as confidential information might be involved in the process;</p> <p>(c) investigation and determination of disciplinary sanctions on a case would be handled by different teams of staff of IIA. This arrangement was in line with international practice of establishing "Chinese walls" within a regulator; and</p> <p>(d) IIA's disciplinary decisions were appealable to IAT, which might confirm, vary or set</p>	

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		<p>aside IIA's decisions. An aggrieved party who was not satisfied with a decision of IAT could appeal to the Court of Appeal.</p> <p>Mr YIU suggested that the Administration should consider setting up an independent committee to review IIA's disciplinary decisions so as to enhance credibility of the decisions.</p>	
011033 – 011753	Mr Dennis KWOK Administration Chairman	<p>Mr KWOK's concern about –</p> <ul style="list-style-type: none"> (a) provision of resources for IIA in the long run; and (b) the need to provide the proposed exit package for Insurance Officers currently working in OCI as they could be recruited by IIA. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the funding model of IIA was based on the recommendations of the consultancy study on IIA commissioned in 2009. IIA would adopt an incremental approach in the first five years of its operation in order to achieve the target levels of levy on insurance premiums. The provision of \$500 million was partly to meet IIA's expenses during the interim period and partly as contingency reserve. According to forecast, IIA would be able to break-even in the sixth year after establishment. Changes in IIA's levy rate would be subject to the Legislative Council ("LegCo")'s scrutiny and approval; (b) one of IAIS's requirements was that insurance regulators should be financially and operationally independent of the government and industry. Thus IIA had to recruit its own staff; and (c) the dissolution of OCI would follow government's established policies for abolition of office. Existing staff of OCI could apply for jobs in IIA, and their experience in OCI would be relevant for their applications. 	

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011754 – 013209	Mr Alan LEONG Administration	<p>Mr LEONG's enquiries and request as follows:</p> <ul style="list-style-type: none"> (a) details of consultation with the three industry self-regulatory organizations ("SROs") in the insurance industry on the proposed framework to replace the existing self-regulatory system with a statutory regulatory regime; (b) details of the transitional arrangements for insurance intermediaries; (c) arrangement for outstanding complaints and disciplinary cases not yet handled by OCI after the establishment of IIA; (d) the Administration should provide the draft code of conduct/guidelines for insurance intermediaries to the Bills Committee; and (e) whether future changes to the code would be subject to LegCo's scrutiny. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) it had conducted a number of consultations on the establishment of IIA since 2010. While not all three SROs were positive in their initial feedback, they eventually recognized the need to modernize the regulatory regime of the insurance industry in line with international developments (e.g. the International Monetary Fund recommended under the Financial Sector Assessment Programme in 2003 and 2014 the establishment of IIA in Hong Kong), as well as to facilitate the sustainable development of the industry; (b) each of the three SROs had developed its own set of code of conduct. The Administration was consolidating these codes for IIA's reference to facilitate it to formulate its own code for the industry in future. Without pre-empting IIA's power to issue codes, the Administration could consider providing a draft for reference of the Bills Committee if appropriate; 	

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		<p>(c) there would be transitional arrangements for existing insurance intermediaries (details were set out in slide 22 of the powerpoint);</p> <p>(d) outstanding pre-IIA complaint and disciplinary cases would be processed in accordance with the prevailing codes of conduct at the time of occurrence of the event in the complaint case; and</p> <p>(e) the general principles of the conduct requirements would be set out in the primary legislation. Practices and standards relating to conduct requirements would be set out in rules which were subsidiary legislation subject to LegCo's scrutiny. The code of conduct itself was not subsidiary legislation.</p> <p>The Administration was requested to provide supplementary information to address Mr LEONG's views and enquiries.</p>	<p>The Administration to take action as required in paragraph 6(a) of the minutes.</p>
<p>013210 – 013535</p>	<p>Mr Paul TSE Administration Chairman</p>	<p>Mr TSE enquired about the major concerns raised by the industry on IIA, including the composition of IIA.</p> <p>The Administration responded that –</p> <p>(a) the industry had expressed concerns about replacement of the existing self-regulatory system for insurance intermediaries by a statutory regulatory regime during the initial stage of consultation;</p> <p>(b) to allay industry's concerns, the Administration had conducted and attended a number of forums and consulted the public and industry on the key proposals since 2010. The industry agreed in general that establishment of IIA would help strengthen public confidence in the insurance industry; and</p> <p>(c) the industry had expressed concerns about the composition of IIA. The relevant issues</p>	

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		had been discussed in the earlier part of the meeting.	
013536 – 015533	Deputy Chairman Chairman Administration	<p>At the request of the Deputy Chairman, the Administration agreed to take actions as follows:</p> <ul style="list-style-type: none"> (a) to provide supplementary information on the operation of the two industry advisory committees, including expected meeting frequency and consultation/communication with the insurance industry and relevant stakeholders; (b) on the composition of IIA, to consider specifying in the Bill the proportion of members from the insurance industry (e.g. intermediaries including companies and individuals) and outside the industry in order to ensure balanced representation of interests (e.g. around 25% of IIA members should be from the insurance industry); (c) in respect of conduct regulation of insurance intermediaries, to (i) clarify the requirement for insurance intermediaries to act in "the best interest" of their clients; and (ii) provide in the Bill/relevant codes of conduct/guidelines, the factors IIA would take into account or measures intermediaries were expected to take in complying with the requirement; (d) on the disciplinary mechanism, to consider setting up an independent disciplinary committee (comprising members from the insurance industry) for reviewing IIA's disciplinary decisions where further appeals would be handled by IAT. This would address concern about the possible high legal costs involved in IAT proceedings and enable tapping of the experience and expertise accumulated by the three SROs in handling appeals; (e) as regards the proposed disciplinary fines on misconduct of insurance intermediaries, to specify the factors IIA would consider in imposing the level of fines, and that the fines to be imposed would not put the intermediaries in financial jeopardy; and 	The Administration to take action as required in paragraphs 6(b) to (g) of the minutes.

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		<p>(f) on the licensing of insurance intermediaries, to consider allowing an insurance agent, as in the case of insurance brokers, to be the Director of another company, which could facilitate the conducting of merger and acquisition of insurance intermediary companies.</p> <p>The Administration responded as follows:</p> <p>(a) to facilitate compliance by the industry, there would be guidance notes to elaborate the requirements for insurance intermediaries to act in "the best interests" of their clients; and</p> <p>(b) disciplinary sanctions on insurance intermediaries mainly focused on misconduct concerning sales and after-sales service of insurance products. Misconduct would not result in criminal offences except those explicitly stated in the Bill (such as knowingly or recklessly providing false or misleading information).</p>	
015534 – 015746	Chairman	Invitation of views and date of next meeting	