

立法會
Legislative Council

LC Paper No. CB(1)250/14-15
(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 third meeting on
Monday, 30 June 2014, at 2:30 pm
in Conference Room 2 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 Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, BBS
Hon Alan LEONG Kah-kit, SC
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

Members absent : Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP

- Public officers attending** : Mr Eddie CHEUNG
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)
- Miss Emma WONG
Senior Government Counsel
Department of Justice
- Clerk in attendance** : Ms Connie SZETO
Chief Council Secretary (1)4
- Staff in attendance** : Miss Evelyn LEE
Assistant Legal Adviser 10
- Mr Hugo CHIU
Council Secretary (1)4

Action

I Meeting with the Administration

Discussion on work plan

(LC Paper No. CB(1)1676/13-14(01) — Administration's paper on proposed work plan)

Discussion on new Part IA and new schedules 1B, 1C & 1D to the Bill

(LC Paper No. CB(1)1676/13-14(02) — Administration's paper on "New Part IA and New Schedules 1B, 1C & 1D"

LC Paper No. CB(1)1713/13-14(01) — Administration's paper on "Summary of Public Comments on the Bill and the Administration's Response - Constitution of the Independent Insurance Authority (New Part IA and New Schedules 1B, 1C & 1D)"

Matters arising from previous meetings

(LC Paper No. CB(1)1637/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 27 May 2014

LC Paper No. CB(1)1637/13-14(02) — Administration's response to issues raised at the meeting on 27 May 2014

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

Other relevant papers

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

LC Paper No. CB(1)1636/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

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

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

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to provide the following information:

Work Plan

(a) The Administration was requested to provide a revised work plan in the light of members' view that the Bills Committee should first complete discussion of the policy issues on each of the nine parts of

the Bill as proposed by the Administration, and then examine the Bill clause-by-clause and consider the draft Committee Stage amendments;

Industry Advisory Committees

- (b) Some members expressed concern about including the chairperson and the Chief Executive Officer of the independent Insurance Authority ("IIA") as members of all its Industry Advisory Committees ("IACs"). The Administration was requested to explain the reasons for the proposal, and compare the composition of IAC with that of statutory advisory committees set up by other financial regulators, e.g. the Securities and Futures Commission and the Mandatory Provident Fund Schemes Authority;

Functions and powers of the IIA

- (c) The new section 4A(2)(ee) of the Insurance Companies Ordinance (clause 12(4)) provides IIA with a new function to "assist the Financial Secretary ("FS") in maintaining the financial stability of Hong Kong by taking appropriate measures in relation to the insurance industry". The Administration was requested to (i) elaborate how IIA would discharge this function and the "appropriate measures" it would use to achieve the purpose; and (ii) compare the existing relationship between the Office of the Commissioner of Insurance and FS with that between IIA and FS;
- (d) Regarding the IIA's functions to supervise the insurance intermediaries and regulate their conduct, the Administration was requested to address some members' suggestion of putting in place a mechanism with industry inputs during the investigation and/or disciplinary process for considering sanctions against misconduct of intermediaries; and

Accounting and financial arrangements

- (e) In respect of the proposed injection of \$500 million from the Government for setting up the IIA, some members were concerned that as the IIA would have income from fees and levies, it might accumulate a huge reserve over the years. The Administration was requested to (i) explain how the proposed amount of \$500 million has been worked out; and (ii) provide the projected income and expenditure of the IIA in the initial five years of operation.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)1817/13-14(05) on 18 July 2014.)

III Any other business

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 14 July 2014 at 4:30 pm.
4. There being no other business, the meeting ended at 4:27 pm.

Council Business Division 1
Legislative Council Secretariat
18 November 2014

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Third meeting on Monday, 30 June 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000332 – 000508	Chairman	Introductory remarks	
000509 – 001130	Administration Chairman	<p>Briefing by the Administration on its proposed work plan [LC Paper No. CB(1)1676/13-14(01)]</p> <p>The Administration proposed dividing the Bill into nine parts and the Bills Committee should complete the discussion of policy issues and clause-by-clause examination of the Bill for each part in sequence. The Committee would then consider proposed Committee Stage amendments to the Bill.</p>	
001131 – 002826	Ms Cyd HO Mr SIN Chung-kai Mr YIU Si-wing Mr WONG Kwok-kin Chairman Deputy Chairman Administration	<p>To facilitate members' consideration of the policy issues relating to the Bill in a more comprehensive manner, Ms HO opined that the Bills Committee should follow the normal practice to complete discussion of the policy issues part by part in accordance with the sequence proposed by the Administration first before examining the Bill clause-by-clause.</p> <p>Members shared Ms HO's views in general.</p> <p>Mr YIU remarked that the Administration's proposed approach could enhance efficiency in scrutinizing the Bill as the Bills Committee could complete the discussion of the policy aspects and clause-by-clause examination of the Bill part by part at the same time, and hence helped minimize repetition in discussions.</p> <p>The Administration responded that-</p> <p>(a) the Administration respected members' views on the approach to study the Bill;</p> <p>(b) on the timeframe for establishing the independent Insurance Authority ("IA"), if the Bill was passed by the Legislative Council ("LegCo") in end June 2015, the preparatory work of IA (including the</p>	

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		<p>appointment of directors, recruitment of staff and transfer of the information of the Office of the Commissioner ("OCI") to IIA, etc.) would take about a year to complete having regard to the experiences of establishing other independent regulators like the Competition Commission; and</p> <p>(c) the preparatory work for establishing the statutory licensing regime for insurance intermediaries (including the formulation of guidelines on conduct requirements after consultation with the industry) would take another eight to twelve months to complete. It was thus envisaged that IIA would be fully operational by June 2017.</p> <p>The Administration was requested to provide a revised work plan in the light of members' views above.</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes.</p>
002827 – 003613	Chairman Administration	<p>Briefing by the Administration on the paper entitled "New Part IA and New Schedules 1B, 1C & 1D" [LC Paper No. CB(1)1676/13-14(02)]</p>	
003614 – 004358	Mr KWOK Wai-keung Administration Chairman	<p>Mr KWOK and the Chairman enquired about the Administration's responses to the industry's views that the Bill should specify the proportion of "non-executive directors with knowledge of or experience in the insurance industry" instead of just providing that there must be "at least two" such members in IIA. The suggestion would address the concern that the influence of such directors might be diluted with increase in the total number of directors.</p> <p>The Administration responded that-</p> <p>(a) there would be no ceiling in the number of IIA's directors and the number of "non-executive directors with knowledge of or experience in the insurance industry". The current proposal provided flexibility in appointing the most suitable persons to IIA to perform its statutory functions and meet its actual need;</p>	

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		<p>(b) upon its establishment, IIA would need to tackle a number of technical regulatory issues (including the establishment and implementation of a risk-based capital requirement framework and a Policyholders' Protection Fund, and carrying out risk assessment of insurers' global insurance business). The Government would take into account such operational needs when appointing IIA directors, i.e. persons with relevant knowledge and experience in the actuary and accounting fields; and</p> <p>(c) IIA would be statutorily required to consult the insurance industry on new regulatory requirements. The industry could also reflect its views through the two statutory Industry Advisory Committees ("IACs"), through public consultation and other communication channels.</p>	
004359 – 005424	Mr SIN Chung-kai Administration Chairman	<p>Mr SIN and the Chairman enquired about:</p> <p>(a) the reasons for not providing a ceiling on the number of directors in IIA;</p> <p>(b) why it was provided in the Bill that the Chairperson of IIA would be a member of the two statutory IACs; and</p> <p>(c) the relevant practice of other regulators like the Securities and Futures Commission ("SFC") and the Mandatory Provident Fund Schemes Authority ("MPFA") in the arrangements mentioned in (a) and (b) above.</p> <p>The Administration responded that-</p> <p>(a) upon its establishment, IIA had to tackle a number of technical regulatory issues having regard to the prevailing market conditions. A flexible arrangement would allow the appointment of the most suitable persons to IIA to perform its functions;</p> <p>(b) the governing legislation of financial regulators including SFC, MPFA and the relevant regulators in many jurisdictions,</p>	

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		<p>e.g., the United Kingdom did not have a ceiling on the number of their board members. Some regulators had set a minimum on the number of board members, e.g. MPFA had a minimum of ten board members; and</p> <p>(c) given the important roles of the IACs, the Chairperson and Chief Executive Officer of IIA would be their members. There was no statutory requirement that they should chair the IACs.</p> <p>The Administration was requested to provide supplementary information and compare the composition of the IACs with that of statutory advisory committees set up by other financial regulators, including SFC and MPFA.</p>	<p>The Administration to take action as per paragraph 2(b) of the minutes</p>
<p>005425 – 010419</p>	<p>Mr KWOK Wai-keung Chairman Administration</p>	<p>Mr KWOK's views that-</p> <p>(a) the Administration should undertake that if the total number of directors in IIA was increased, there would be a corresponding increase in the number of non-executive directors with knowledge of and experience in the insurance industry in the Board;</p> <p>(b) while the existing OCI helped in resolving disputes between an insurance agent and an insurer, given that the two parties had no employment relationship, IIA and the Labour Department might not handle such disputes in the future; and</p> <p>(c) as one of IIA's statutory functions would be to promote the general stability of the insurance industry, IIA should strive to protect the interests of insurance intermediaries which would also benefit policyholders. Enhancement in the governance of insurers alone would not ensure fair treatment to insurance intermediaries.</p> <p>The Administration responded that-</p> <p>(a) the Government would appoint the most suitable persons with knowledge of and experience in the insurance industry as</p>	

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		<p>non-executive directors of IIA, having regard to its actual needs and prevailing circumstances;</p> <p>(b) IIA's principal function of "promoting the general stability of the insurance industry" was in relation to the regulation and supervision of the industry. The major objectives were to ensure the financial soundness of insurers and enhance public confidence in the industry. Protection of insurance intermediaries' interests would not be a function of IIA; and</p> <p>(c) where appropriate, IIA would help insurance intermediaries and insurers resolve their disputes as the existing OCI had been doing so. IIA would also require insurers to enhance their corporate governance.</p>	
010420 – 011816	Mr YIU Si-wing Administration	<p>Mr YIU considered that-</p> <p>(a) the proposed disciplinary mechanism, which would be entirely handled by staff of IIA, could not ensure impartiality in the process. An independent committee should be set up to review the disciplinary decisions of IIA before the Insurance Appeals Tribunal ("IAT") hear the appeals against IIA's decisions; and</p> <p>(b) the Travel Industry Council of Hong Kong ("TIC") had established a Consumer Relations Committee ("CRC") (consisted mainly of lay persons) for mediating complaints against travel agencies lodged by clients. Reference should be made to CRC in setting up a similar committee for IIA.</p> <p>The Administration responded that-</p> <p>(a) upon receipt of a complaint (e.g. non-compliance with conduct requirements or not being a "fit and proper person"), IIA would first examine whether there was a prima facie case of the suggested acts of misconduct or a regulatee being not fit and proper. The insurance intermediary</p>	

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		<p>concerned would be given an opportunity to make representation during the process. The investigation report would be passed to another division of IIA for determining the disciplinary action required if the regulatee concerned was proved to be guilty of misconduct or not fit and proper. The relevant intermediary would have an opportunity to be heard before IIA finalized the disciplinary decision. IIA's disciplinary decisions would be impartial and fair. IIA should be allowed to accumulate its experience in handling disciplinary matters;</p> <p>(b) IIA's disciplinary decisions were appealable to IAT, which was a quasi-judicial body independent from IIA; and</p> <p>(c) effectiveness of the suggested review committee was doubtful. It was concerned that the committee would make the appellate mechanism more complicated, become a decision-making body and undermine the regulatory and disciplinary powers of IIA. No similar committees had been set up in other comparable financial regulatory regimes.</p> <p>The Administration was requested to address some members' suggestion of putting in place a mechanism with industry inputs during the investigation and/or disciplinary process for considering sanctions against misconduct of intermediaries.</p>	<p>The Administration to take action as per paragraph 2(d) of the minutes.</p>
<p>011817 – 012606</p>	<p>Ms Cyd HO Administration</p>	<p>In relation to the new section 4A(2)(ee) of the Insurance Companies Ordinance (clause 12(4) of the Bill) (Cap. 41) ("ICO") which provided IIA with a new function to "assist the Financial Secretary ("FS") in maintaining the financial stability of Hong Kong by taking appropriate measures in relation to the insurance industry", Ms HO was concerned about the impact of the new function on IIA's independence. She requested the Administration to elaborate how IIA would discharge this function and what "appropriate measures" it would use to achieve the purpose, and compare the existing</p>	<p>The Administration to take action as per paragraph 2(c) of the minutes.</p>

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		<p>relationship between OCI and FS with that between IIA and FS.</p> <p>The Administration pointed out that IIA would be independent of the Government. Other financial regulators in Hong Kong also carried out similar functions as in the new section 4A(2)(ee) of ICO.</p>	
012607 – 013311	Deputy Chairman Administration	<p>The Deputy Chairman's views as follows:</p> <ul style="list-style-type: none"> (a) the Hong Kong Federation of Insurers considered that at least 25% of IIA members should come from the insurance industry. The proportion of industry representatives should be specified in the Bill, or the Administration should give an undertaking that IIA must have sufficient number of industry representatives to ensure its operation in a professional manner; (b) where necessary, IIA should provide assistance to insurance agents suffering from unfair treatment of insurers; and (c) on the complaint handling and disciplinary mechanisms, the existing self-regulatory regime had operated smoothly for a long time and the industry was concerned about the substantial changes brought by the Bill. The Administration should formulate measures to allay the industry's concerns, including assuring them on IIA's impartiality and considering the suggestion to establish an independent committee for reviewing IIA's disciplinary decisions. <p>The Administration responded that it had been discussing with the industry the issues raised by the Deputy Chairman. It had to strike a proper balance between protecting the public interest and addressing the industry's concerns. It would consider imposing relevant measures to allay the industry's concerns.</p>	
013312 – 014005	Mr YIU Si-wing Administration Chairman	Mr YIU reiterated that the Administration should make reference to TIC's practice in setting up an independent review committee for IIA's disciplinary decisions.	

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		<p>On the proposal for IIA to delegate its powers for appointing inspectors and investigators to the Hong Kong Monetary Authority ("HKMA"), Mr YIU expressed concern that the banking industry was given favourable treatment, and other industries might demand similar treatment.</p> <p>The Administration responded that-</p> <p>(a) under the Banking Ordinance (Cap. 155), HKMA was authorized to conduct inspections and investigations on banks' operations. The delegation of IIA's relevant power to HKMA was appropriate as HKMA was the regulator of the banking industry. The arrangement could prevent banks from subjecting to dual regulation by IIA and HKMA. The delegation of power was subject to the approval of the Chief Executive ("CE") in Council; and</p> <p>(b) IIA would be the sole regulator for granting licences, formulating conduct requirements and making disciplinary decisions.</p> <p>In response to the Chairman's concern that IIA and HKMA might apply different sets of standards in their regulation of insurance intermediary activities, the Administration explained that all insurance intermediaries would be subject to the same set of standards as all conduct requirements and disciplinary decisions would be made by IIA. Moreover, IIA and HKMA had to conduct inspections and investigations in accordance with the requirements developed by IIA.</p>	
014006 – 014106	Mr SIN Chung-kai Administration	<p>On the proposed injection of \$500 million from the Government for setting up IIA, Mr SIN expressed concern that over the years IIA might accumulate a huge reserve as it would have income from fees and levies. He requested the Administration to (a) explain how the proposed amount of \$500 million had been worked out; and (b) provide the projected income and expenditure of IIA in the initial five years of operation.</p>	<p>The Administration to take action as per paragraph 2(e) of the minutes.</p>

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014107 – 014458	Deputy Chairman Mr YIU Si-wing Administration	In response to enquiries, the Administration said that the delegation of IIA's powers of inspection and investigation to HKMA could achieve regulatory synergy. HKMA would not charge IIA for carrying out inspection and investigation on banks' insurance intermediary activities. The approval of CE in Council would be required for such delegation, and IIA might impose conditions on the delegation.	
014459 – 014755	Chairman Administration	Briefing by the Administration on the paper entitled "Summary of Public Comments on the Bill and the Administration's Response - Constitution of the Independent Insurance Authority (New Part IA and New Schedules 1B, 1C & 1D)" [LC Paper No. CB(1)1713/13-14(01)]	
014756 – 014844	Deputy Chairman Administration	In response to the Deputy Chairman's enquiry about the formulation of agenda for meetings of the Industry Advisory Committees ("IACs"), the Administration said that members of the advisory committees might suggest agenda items. The agenda would usually be finalized by the Chairmen of the committees concerned.	
014845 – 015108	Mr YIU Si-wing Administration	<p>Mr YIU asked the Administration to give an undertaking not to impose new fees/levies on the insurance industry other than those set out in the Bill, and consider freezing IIA's licence fees for a certain period of time.</p> <p>The Administration responded that-</p> <ul style="list-style-type: none"> (a) the IIA's funding model was based on the recommendations of the consultancy study commissioned by the Administration; (b) it was envisaged that the levy, the various licence and user fees would account for around 70% and 30% of IIA's income respectively. IIA's account was expected to break-even in the sixth year after its establishment; and (c) licence fees for insurance intermediaries would be waived in the first five years after the establishment of IIA. The waiver did not apply to insurers. 	

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015109 – 015618	Mr KWOK Wai-keung Administration Chairman	<p>Mr KWOK enquired about the arrangements for the IACs, including any ceiling on the number of IACs to be formed, their membership size, selection of members, and channels for reflecting views of industry representatives in IACs.</p> <p>The Administration responded that-</p> <ul style="list-style-type: none"> (a) the new Schedule 1C to ICO specified the constitution and proceedings of IACs; (b) apart from the two respective IACs on long-term business and general business, IIA might, after consulting FS, establish new IACs on any matters regarding the performance of IIA's functions. IIA could also establish consultative committees on topical issues to engage the industry as necessary, e.g. to set up a committee to review the equity of agency agreements signed between insurance agents and insurers; and (c) IIA would be statutorily required to consult the industry on new regulatory measures. 	
015619 – 015746	Chairman	Date of next meeting	