

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1088/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/6/13/1

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

**Eighth meeting on**  
**Tuesday, 9 December 2014, at 2:30 pm**  
**in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon WONG Kwok-kin, SBS  
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 KWOK Wai-keung  
Hon Dennis KWOK  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon James TO Kun-sun  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon YIU Si-wing  
Hon Christopher CHEUNG Wah-fung, SBS, JP
- Public officers attending** : Mr Eddie CHEUNG  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services) 2

Ms Joan HUNG  
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)6

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Action

**I Meeting with the Administration**

Discussion on the Bill

(LC Paper No. CB(1)257/14-15(04) — Administration's paper on  
"Insurance Appeals Tribunal  
(New Part XII and New  
Schedules 9 & 10)"

LC Paper No. CB(1)332/14-15(01) — Administration's paper on  
"Transition and Miscellaneous  
Matters")

Matters arising from previous meetings

(LC Paper No. CB(1)332/14-15(02) — List of follow-up actions arising  
from the discussion at the  
meeting on 24 November 2014

LC Paper No. CB(1)332/14-15(03) — Administration's response to issues raised at the meeting on 24 November 2014)

Other relevant papers

(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

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**).

Follow-up actions to be taken by the Administration

2. The Administration was requested to take the following follow-up actions.

*Insurance Appeals Tribunal*

- (a) The Administration was requested to consider Hong Kong Federation of Insurers' suggestion that the Insurance Appeals Tribunal ("IAT") might review the decisions of the independent Insurance Authority based on written representations only so as to save time and reduce potential legal costs on the parties concerned.
- (b) In the light of a member's suggestion, the Administration would further explain the policy intent in relation to the appellate

mechanism for reviewing IAT's decisions under the proposed new sections 110 and 113 of the Insurance Companies Ordinance (Cap. 41) ("ICO") (under Clause 84).

- (c) In respect of the proposed new section 113 of ICO, the Administration would provide details on section 50 of the High Court Ordinance (Cap. 4).
- (d) Noting that the Administrative Appeal Board did not have the power to award costs on the parties to a review and to address members' concern about the potential huge legal costs associated with the appeals handled by IAT, the Administration was requested to consider specifying fixed costs for straight-forward and uncomplicated appeal cases to be payable by the parties.

*Drafting issues*

- (e) In respect of definitions for the terms "regulated activity", "material decision" and "regulated advice" set out in the revised section 2(1) of ICO (under clause 5(14)), the Administration had agreed to review the drafting to specify clearly that the references to the terms were section 3A subsections (a), (b) and (c) respectively.

**II Any other business**

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 22 December 2014, at 10:45 am and 12 January 2015, at 2:30 pm respectively.

4. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1  
Legislative Council Secretariat  
9 July 2015

**Proceedings of the  
Bills Committee on Insurance Companies (Amendment) Bill 2014  
Eighth meeting on Tuesday, 9 December 2014, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

| Time Marker        | Speaker  | Subject(s)   | Action Required |
|--------------------|--|--|-----------------|
| 000438 –<br>000539 | Chairman   | Introductory remarks   |                 |
| 000540 –<br>001203 | Administration   | <p>Briefing by the Administration on the paper "Insurance Appeals Tribunal (New Part XII and New Schedules 9 &amp; 10)" [LC Paper No. CB(1)257/14-15(04)]</p> <p><i>(Post-meeting note: The powerpoint presentation materials (LC Paper No. CB(1)342/14-15(01)) (Chinese version only) were issued to Members by a Lotus Notes e-mail on 9 December 2014.)</i></p>   |                 |
| 001204 –<br>001349 | Mr SIN Chung-kai<br>Administration   | <p>In response to Mr SIN's enquiries on the composition and work of Insurance Appeals Tribunal ("IAT") the Administration responded that:</p> <p>(a) the chairperson and panel members of IAT would be appointed by the Chief Executive ("CE");</p> <p>(b) CE might establish additional tribunals for any reviews if necessary in order to expedite handling of reviews; and</p> <p>(c) Part 1 and Part 2 of the proposed new Schedule 9 to the Insurance Companies Ordinance (Cap. 41) ("ICO") set out the specified decisions of the independent Insurance Authority ("IIA") in relation to insurers and insurance intermediaries respectively that could be reviewed by IAT.</p> |                 |
| 001350 –<br>003748 | Deputy Chairman<br>Administration<br>Mr NG Leung-sing<br>Mr SIN Chung-kai<br>Chairman<br>Mr WONG Yuk-man | <p><u>IAT's legal cost</u></p> <p>The Deputy Chairman's views that:</p> <p>(a) the industry was concerned about the huge potential legal costs which might be involved in the IAT proceedings ("legal costs"); and</p>   |                 |

| <b>Time Marker</b> | <b>Speaker</b> | <b>Subject(s)</b>   | <b>Action Required</b> |
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|                    |                | <p>(b) whether the Administration would consider the industry's suggestions of setting a ceiling (e.g. \$20,000) on legal costs to be awarded by IAT per case, and allowing IAT to determine on reviews based on written representations from parties only.</p> <p>Mr Wong's views and enquiries as follows:</p> <p>(a) the Administration should consider the industry's suggestion of setting a ceiling on legal costs to be awarded by IAT per case, particularly for insurance intermediaries who were individuals;</p> <p>(b) whether members of the public could observe the proceedings of a sitting of IAT; and</p> <p>(c) whether there would be a mechanism for lodging complaints against the chairperson of IAT, and if so, whether substantiated complaints would be grounds taken by the Court of Appeal for considering appeal against IAT's determinations.</p> <p>The Administration responded that:</p> <p>(a) in general, legal costs would mainly include fees for legal representatives. A party to a review of IAT was not obliged to appoint legal representatives to present him/her on the case. As such, the legal cost arising from an appeal might not be necessarily high;</p> <p>(b) IAT had discretion to determine whether to award costs and the sum concerned to any parties to a review having regard to Order 62 of the Rules of the High Court (sub. leg. A of Cap. 4) ("Order 62"). This was a fair arrangement for all parties concerned to prevent abuse of the appellate mechanism. The arrangement on cost awards was consistent with that for reviewing the decisions of other financial regulators;</p> <p>(c) in awarding costs to the parties, IAT might consider the financial positions of the parties concerned as necessary. It would</p> |                        |

| Time Marker | Speaker | Subject(s)   | Action Required  |
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|             |         | <p>be inappropriate to specify a ceiling on legal costs to be awarded by IAT in the legislation as this would reduce the flexibility for IAT;</p> <p>(d) the chairperson of IAT could decide the procedures in handling a review. IAT might consider cases through written representations submitted by parties. There were provisions in the Bill providing that IAT should make its determinations promptly;</p> <p>(e) sittings of IAT would generally be held in public and members of the public could observe the proceedings; and</p> <p>(f) IAT's chairperson would be a judge, a former judge or a person qualified to be appointed as a High Court judge, and a determination of IAT could be a subject of appeal.</p> <p>At the Deputy Chairman's request, the Administration was required to consider Hong Kong Federation of Insurers' suggestion that IAT might review the decisions of IIA based on written representations only.</p> <p><u>Appeal against IAT's determinations</u></p> <p>Referring to section 5(3)(c) of the proposed new Schedule 10 to ICO which provided that "apart from a question of law which is to be determined by the chairperson alone, ...", Mr NG enquired about:</p> <p>(a) the objective criteria for determining if a matter was a question of law; and</p> <p>(b) checks and balances against IAT's chairperson in making a decision in (a) above.</p> <p>The Administration responded that:</p> <p>(a) the Bill had not specified the criteria for determining if a matter was a question of law. IAT's chairperson who was a judge, a former judge or a person qualified to be</p> | <p>The Administration to take action as per paragraph 2(a) of the minutes.</p> |

| Time Marker        | Speaker  | Subject(s)   | Action Required  |
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|                    |  | <p>appointed as a High Court judge would have sufficient legal knowledge and experience in making a decision on the matter; and</p> <p>(b) if a party to a review was dissatisfied with the decision of IAT, for instance the chairperson had acted improperly in determining whether a matter was a question of law, it could appeal to the Court of Appeal against IAT's decision as provided in the proposed new section 110 of ICO.</p> <p>Mr SIN's enquiries as to whether the appeal against IAT's decisions to the Court of Appeal would be final.</p> <p>The Administration responded that:</p> <p>(a) IAT was required to notify the parties to a review its determination on the review and the reasons concerned ; and</p> <p>(b) the proposed new section 113 of ICO provided that subject to section 50 of the High Court Ordinance (Cap. 4) and section 110 of ICO, IAT's determination was final and was not subject to appeal.</p> <p>At Mr SIN's request, the Administration was required to:</p> <p>(a) further explain the policy intent in relation to the appellate mechanism for reviewing IAT's decision under the proposed new sections 110 and 113 of ICO (under Clause 84); and</p> <p>(b) provide details on section 50 of the High Court Ordinance (Cap. 4).</p> | <p>The Administration to take action as per paragraphs 2(b) and 2(c) of the minutes.</p> |
| 003749 –<br>010031 | Deputy Chairman<br>Administration<br>Mr Alan LEONG<br>Mr SIN Chung-kai<br>Administration | <p><u>IAT's legal costs</u></p> <p>The Deputy Chairman's views and enquiries about:</p> <p>(a) the appointment of panel members of IAT and whether members would have knowledge of the insurance industry;</p> <p>(b) the factors to be considered by IAT in awarding costs to parties to a review and</p>   |  |



| <b>Time Marker</b> | <b>Speaker</b> | <b>Subject(s)</b>  | <b>Action Required</b> |
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|                    |                | <p>whether the Administration would consider setting out objective criteria for IAT in considering award of costs;</p> <p>(c) the Administration should make reference to the arrangement of the Administrative Appeals Board, which was not provided with the power to award costs to the parties concerned; and</p> <p>(d) insurance intermediaries should not be discouraged from making appeals to IAT due to concern about huge potential legal costs.</p> <p>The Administration responded that:</p> <p>(a) CE would appoint members to form a panel for IAT. The Administration's policy objective was to include professionals and representatives of the industry as panel members taking into account that IAT's reviews would involve technical and complicated issues. In each review, the Secretary for Financial Services and the Treasury ("SFST") would, on the recommendation of IAT's chairperson, appoint two panel members as ordinary members to form the Tribunal with the chairperson;</p> <p>(b) IAT had discretion to determine whether to award costs and the sum awarded having regard to Order 62. This arrangement was consistent with the appellate mechanisms in other regulatory regimes, as well as the system under the existing self-regulatory regime of the insurance industry in considering costs for reviews. Such arrangement would help prevent abuse of the appellate mechanism; and</p> <p>(c) it would be impossible to set out exhaustively factors which IAT would take into account in considering the award of costs. Rule 5 of Order 62 had set out the factors to be considered in general. IAT had discretion in making the decision having regard to the circumstances pertaining to a case.</p> |                        |

| Time Marker                | Speaker   | Subject(s)   | Action Required  |
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|                            |   | <p>Mr LEONG's views and suggestions that:</p> <ul style="list-style-type: none"> <li>(a) he had raised similar concerns about legal costs to be awarded by IAT;</li> <li>(b) the Administration could make reference to the relevant practices of the High Court and the District Courts and consider specifying fixed costs for some straight-forward and uncomplicated appeal cases; and</li> <li>(c) the industry could consider setting up a fund (to be financed by, say, the registration fees of insurance intermediaries) to which insurance intermediaries could make application for recovery of legal costs awarded by IAT.</li> </ul> <p>The Deputy Chairman urged the Administration to consider Mr LEONG's suggestion, and said that he would discuss Mr LEONG's suggestion of setting up a fund for recovery of legal costs awarded by IAT with the industry.</p> <p>In response to the Deputy Chairman's further enquiry, the Administration responded that the policy objective was that an application for a stay of IIA's decisions should be processed promptly and impartially. Section 8 of the proposed new Schedule 10 to ICO provided that the chairperson of IAT might determine an application for a stay of execution of a specified decision as the sole member of IAT.</p> <p>The Administration was requested to consider the suggestion of specifying fixed costs to be payable by parties to a review for straight-forward and uncomplicated appeal cases in order to address members' concern about the potential huge legal costs to be awarded by IAT.</p> | <p>The Administration to take action as per paragraph 2(d) of the minutes.</p> |
| <p>010032 –<br/>010921</p> | <p>Mr SIN Chung-kai<br/>Administration<br/>Chairman<br/>Deputy Chairman</p> | <p><u>IAT's legal costs</u></p> <p>Mr SIN's views that the Administration could consider specifying a scale of fees for some straight-forward and uncomplicated appeal cases involving insurance intermediaries who were individuals.</p>  |  |

| Time Marker     | Speaker   | Subject(s)   | Action Required |
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|                 |   | <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) IAT was an independent quasi-judicial body and it would be inappropriate to specify in the legislation the level of costs to be awarded by IAT; and</li> <li>(b) IAT's chairperson could hold a preliminary conference with parties to a review to discuss relevant issues including legal costs.</li> </ul> <p>The Chairman believed that IAT would, under common law, award costs having regard to the relevant precedents. The proposed appellate mechanism should be allowed to operate for some time before the Administration conducted a review having regard to the relevant experience. He agreed that the Administration should address members' and industry's concern about the award of legal costs by IAT.</p> <p>In response to the Chairman's enquiries, the Administration advised that:</p> <ul style="list-style-type: none"> <li>(a) CE could establish additional tribunals if there were a large number of review cases, and appoint more than one IAT chairpersons if necessary. The roles and powers of each tribunal would be identical; and</li> <li>(b) a sitting of IAT would be held in private if IAT determined that it was in the interests of justice to hold the sitting or part of it in private.</li> </ul> |                 |
| 010922 – 012142 | Chairman Administration                         | Briefing by the Administration on the paper "Transition and Miscellaneous Matters" [LC Paper No. CB(1)332/14-15(01)]   |                 |
| 012143 – 013215 | Mr SIN Chung-kai Administration Deputy Chairman | <p><u>Transitional arrangements and recruitment of IIA staff</u></p> <p>Mr SIN's enquiries about:</p> <ul style="list-style-type: none"> <li>(a) details in implementing the third stage of the transition from the Office of the Commissioner of Insurance ("OCI") to IIA (i.e. commencement of the new licensing regime for insurance intermediaries); and</li> </ul>  |                 |

| Time Marker | Speaker | Subject(s)  | Action Required |
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|             |         | <p>(b) recruitment of staff of OCI and the three self-regulatory organizations ("SROs") by IIA.</p> <p>The Deputy Chairman's enquiries about:</p> <p>(a) the transitional arrangements between IIA and the existing SROs; and</p> <p>(b) arrangements for existing staff of the three SROs upon their dissolution.</p> <p>The Administration responded that:</p> <p>(a) provisions in the Bill would commence in phases and SFST would make relevant commencement notices as appropriate;</p> <p>(b) IIA would recruit its staff from the market, and staff of OCI and the existing SROs could apply for jobs in IIA. It was believed that they would have an advantage in the application owing to their relevant experience;</p> <p>(c) the Financial Services and the Treasury Bureau had set up the Working Group on Transition comprising representatives from the three SROs, insurance intermediaries and insurers to discuss various transitional issues to ensure smooth transition to the new regulatory regime;</p> <p>(d) IIA would take over the regulation of insurance intermediaries from the three SROs in the third stage of the transition, and the Working Group on Transition was discussing the details; and</p> <p>(e) pre-existing insurance intermediaries were not required to sit for the relevant examinations for obtaining new licences under the new licensing regime, and both the existing and the new regulatory regimes had continuing professional development requirements for insurance intermediaries.</p> <p>The Deputy Chairman's view that IIA should consider recruiting existing staff of the three SROs if they possessed the required</p> |                 |

| Time Marker                                     | Speaker                            | Subject(s)  | Action Required  |
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|   |                                    | qualifications and experience to ensure smooth transition of the regulatory powers and expertise of OCI and the three SROs to IIA.  |  |
| 013216 –<br>013425                              | Chairman<br>Administration         | Briefing by the Administration on its response to issues raised at the meeting on 24 November 2014<br>[LC Paper No. CB(1)332/14-15(03)]   |  |
| <b>Clause-by-clause examination of the Bill</b> |                                    |   |  |
| 013426 –<br>015439                              | Chairman<br>Administration<br>ALA7 | <p>Members agreed to commence clause-by-clause examination on the Bill based on the Chinese text of the Bill.</p> <p>The Administration remarked that to facilitate members in scrutinizing the Bill it would provide a table mapping clauses of the Bill with the relevant policy issues and previous papers provided by the Administration to the Bills Committee.</p> <p><b>Part 1</b></p> <p><b>Preliminary</b></p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p><b>Part 2</b></p> <p><b>Amendments to Insurance Companies Ordinance (Cap. 41)</b></p> <p><u>Clause 3 – Long title substituted</u></p> <p><u>Clause 4 – Section 1 amended (short title)</u></p> <p><u>Clause 5 – Section 2 amended (interpretation)</u></p> <p>In response to ALA7's views, the Administration agreed to revise the definitions of "regulated activity", "material decision" and "regulated advice" in the revised section 2(1) of ICO (under clause 5(14)) to specify clearly that the references to the terms were section 3A(a), (b) and (c) respectively.</p> | <p>The Administration to take action as per paragraph 2(e) of the minutes.</p> |

| <b>Time Marker</b> | <b>Speaker</b> | <b>Subject(s)</b>  | <b>Action Required</b> |
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|                    |                | <u>Clause 6 – Section 3 amended (classes of insurance business)</u><br><br><u>Clause 7 – Section 3A added</u><br><br><i>3A. Regulated activity, material decision and regulated advice</i> |                        |
| 015440 –<br>015526 | Chairman       | Dates of next two meetings   |                        |

Council Business Division 1  
Legislative Council Secretariat  
9 July 2015