

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1049/14-15  
(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 ninth meeting on  
Monday, 22 December 2014, at 10:45 pm  
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 Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon Alan LEONG Kah-kit, SC  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Hon KWOK Wai-keung  
Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** : Hon James TO Kun-sun  
Hon WONG Kwok-kin, SBS  
Hon Paul TSE Wai-chun, JP  
Hon WONG Yuk-man  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, 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**

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)369/14-15(01) — List of follow-up actions arising  
from the discussion at the  
meeting on 9 December 2014

LC Paper No. CB(1)369/14-15(02) — Administration's response to  
issues raised at the meeting on  
9 December 2014)

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)369/14-15(03) — Administration's paper on "Index  
for Clause-by-clause  
Examination"

|                                  |  |
|----------------------------------|--|
| 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**).

Admin Follow-up actions to be taken by the Administration

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

*Power of the independent Insurance Authority ("IIA") to accept gifts*

- (a) To address members' concern about possible abuse of power by IIA under the proposed new section 4B(2)(e) of the Insurance Companies Ordinance (Cap. 41) ("ICO") (under Clause 13) in accepting gifts (接受饋贈), the Administration was requested to:
  - (i) consider a member's suggestion to specify in the provision that the acceptance of gifts was subject to the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201), and
  - (ii) advise the future IIA to devise internal guidelines on the acceptance of gifts by IIA and its staff.

*Process Review Panel*

- (b) As the Bill had not provided for the establishment of a Process Review Panel ("PRP") for IIA, in response to a member, the Administration was requested to consider the written submission from the industry to include provisions in the Bill for the establishment of PRP under the proposed new section 4D of ICO (under Clause 13).

*Engagement of consultants, agents and advisors*

- (c) On the appointment of IIA's staff and consultants, and determination of their remuneration and terms and conditions in the proposed new section 4E of ICO (under Clause 13), members had stressed the need to ensure the proper discharge of these functions by IIA. The Administration was requested to consider members' suggestions to specify clearly in the provisions: (i) that IIA must decide on the above matters according to its "actual needs" and in a "reasonable manner" (i.e. 按該局實際情況，合理地決定報酬、津貼、條款及條件), and (ii) the type of consultants, agents and advisors that IIA might engage.
- (d) In relation to the proposed new section 4E(3) of ICO (under Clause 13), the Administration was requested to provide information on the consultants, agents and advisors engaged by other financial regulators (like the Securities and Futures Commission), including the type and number of such consultants, agents and advisors, and their remuneration, and terms and conditions, etc.

Drafting issues (Chinese text of the Bill)

- (e) In respect of the proposed new sections 4AA(1)(b) and (c) of ICO (under Clause 11), the Administration had agreed to consider the need to add the word "and" between the two subsections concerned.
- (f) In respect of the proposed new section 4AA(5) of ICO (under Clause 11), the Administration had agreed to review the phrase "如有不符合本條的情況出現" to better clarify the purpose of subsection (5).
- (g) In respect of the proposed new section 4D(4) of ICO (under Clause 13), the Administration had agreed to review the provision to clarify the meaning of "某項事宜".

## **II Any other business**

### Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 12 January 2015, at 2:30 pm and 27 January 2015, at 10:45 am.
4. There being no other business, the meeting ended at 12:41 pm.

Council Business Division 1  
Legislative Council Secretariat  
30 June 2015

**Proceedings of the  
Bills Committee on Insurance Companies (Amendment) Bill 2014  
Ninth meeting on Monday, 22 December 2014, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

| <b>Time Marker</b>                              | <b>Speaker</b>   | <b>Subject(s)</b>   | <b>Action Required</b> |
|---|--|---|------------------------|
| 000520 –<br>000610                              | Chairman   | Introductory remarks  |                        |
| 000611 –<br>000918                              | Administration   | Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 9 December 2014" [LC Paper No. CB(1)369/13-14(02)]   |                        |
| 000919 –<br>001247                              | Mr NG Leung-sing<br>Administration<br>Deputy Chairman<br>Chairman          | <p>In response to Mr NG's enquiry about the award of costs by the Insurance Appeals Tribunal ("IAT"), the Administration advised that:</p> <p>(a) IAT would have discretion to determine whether to award costs and the amount of costs; and</p> <p>(b) Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) would be applicable to the award of costs for a review. IAT would take into account the conduct and financial positions of the parties concerned as necessary.</p> <p>The Deputy Chairman welcomed the Administration's agreement to consider including specific provisions in the Bill to allow IAT to determine a review on the basis of written submissions only.</p> |                        |
| <b>Clause-by-clause examination of the Bill</b> |  |   |                        |
| 001248 –<br>002128                              | Administration<br>Assistant Legal Adviser<br>7 ("ALA7")<br>Deputy Chairman | <p><u>Clause 8 – Part IA heading and Division 1 heading added</u></p> <p><b><i>Part IA – Insurance Authority</i></b></p> <p><b><i>Division 1—Establishment and Functions, etc.</i></b></p> <p><u>Clause 9 – Section 4AAA added</u></p> <p><i>4AAA. Establishment of Authority</i></p>   |                        |

| Time Marker        | Speaker                     | Subject(s)   | Action Required  |
|--------------------|-----------------------------|--|--|
|                    |                             | <p><u>Clause 10 – Section 4 amended (Insurance Authority)</u></p> <p><u>Clause 11 – Section 4AA added</u></p> <p><i>4AA. Composition of Authority</i></p> <p>At ALA7's suggestion, the Administration agreed to:</p> <p>(a) in respect of the proposed new section 4AA of the Insurance Companies Ordinance (Cap. 41) ("ICO"), consider the need to add the word "and" between subsections (1)(b) and (1)(c); and</p> <p>(b) in respect of the proposed new section 4AA(5) of ICO, review the phrase "如有不符合本條的情況出現" to better clarify the purpose of subsection (5).</p>   | <p>The Administration to take action as per paragraphs 2(e) and 2(f) of the minutes.</p> |
| 002129 –<br>003543 | Administration<br>Ms Cyd HO | <p><u>Clause 12 – Section 4A amended (functions of Insurance Authority)</u></p> <p><u>Clause 13 – Sections 4B to 4H added</u></p> <p><i>4B. Powers of Authority</i><br/> <i>4C. Industry advisory committees</i><br/> <i>4D. Authority may establish other committees</i></p> <p><i>4A. functions of Insurance Authority</i></p> <p>On the proposed new section 4A(2)(ee) of ICO (which provided that the independent Insurance Authority ("IIA") would assist the Financial Secretary ("FS") in maintaining the financial stability of Hong Kong by taking appropriate measures in relation to the insurance industry), Ms Cyd HO enquired about:</p> <p>(a) the rationale for providing IIA with this function; and</p> <p>(b) details of the implementation, such as whether IIA or FS would take the lead in exercising this function, and how differences between IIA and FS on the measures to be taken would be resolved.</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) given that different financial regulators were established for different financial sectors in Hong Kong, FS had to assume the role of a high-level coordinator among regulators in maintaining the financial stability of Hong Kong especially under exceptional circumstances e.g. the global financial crisis in 2008-2009;</li> <li>(b) the Office of the Commissioner of Insurance ("OCI") was currently performing the function similar to that specified in the proposed new section 4A(2)(ee) and was working jointly with other financial regulators in assisting FS in maintaining Hong Kong's financial stability;</li> <li>(c) in discharging this function, IIA could implement relevant measures on its own initiative or act according to FS's instruction in collaboration with other regulators; and</li> <li>(d) the proposed new section 4A(2)(ee) would allow IIA to fulfill the requirements under the Insurance Core Principles ("ICPs") promulgated by the International Association of Insurance Supervisors ("IAIS").</li> </ul> |                 |
| 003544 –<br>004116 | Mr YIU Si-wing<br>Administration<br>Chairman | <p><i>4C. Industry advisory committees</i><br/><i>4D. Authority may establish other committees</i></p> <p>Mr YIU's enquiries about the composition and operation of the Industry Advisory Committees ("IACs") and other committees to be established by IIA, including the duration of operation and the mechanism for appointing their members, e.g. whether the "six-six principle" would apply (i.e. to avoid appointing a person who had served on a government advisory committee for more than six years; or who was already serving in six advisory committees)</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) the proposed new section 4C of ICO provided that IIA should establish at least two IACs, one for long term business and the other for general business, to advise IIA</li> </ul>  |                 |



| Time<br>Marker     | Speaker                                       | Subject(s)   | Action<br>Required |
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|                    |   | <p>on industry-related issues and policies. IACs would be regarded as "standing advisory committees". The constitution and proceedings of IACs were provided in the new Schedule 1C to ICO;</p> <p>(b) other committees established by IIA under the proposed new section 4D would be ad hoc committees to assist IIA in matters with which it was concerned. It was likely that these committees would engage the industry on topical issues, and by their nature, they would operate for a specific period of time. IIA could appoint any person to be members of such committees; and</p> <p>(c) the "six-six principle" was an internal guideline of the Government for appointment of its advisory bodies.</p>  |                    |
| 004117 –<br>004537 | Deputy Chairman<br>Administration<br>Chairman | <p><i>4C. Industry advisory committees</i></p> <p>The Deputy Chairman asked about measures to ensure that IACs would discuss issues of great importance to the industry.</p> <p>The Administration advised that:</p> <p>(a) members of IACs would consist of IIA members, and other persons to be appointed by FS who had knowledge of or experience in the insurance industry, and the conduct of insurance intermediary activities and consumer affairs; and</p> <p>(b) an IAC must meet at least once every three months. In general, the meeting agenda would be determined by the IAC chairperson, who was expected to take into account views and suggestions from members in making the relevant decisions. To provide flexibility in the operation of IACs, it would be inappropriate to specify the issues that IACs should discuss in the legislation.</p> |                    |

| Time<br>Marker     | Speaker                                      | Subject(s)  | Action<br>Required |
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| 004538 –<br>005424 | Mr YIU Si-wing<br>Administration<br>Chairman | <p><i>4C. Industry advisory committees</i></p> <p>Mr YIU enquired about:</p> <p>(a) whether IACs would be involved in handling complaints against insurance intermediaries; and</p> <p>(b) the composition and duties of the Process Review Panel ("PRP").</p> <p>The Administration advised that:</p> <p>(a) the major duties of IACs were to discuss policies and macro-level issues of concern to the insurance industry, e.g. the proposed Risk-based Capital framework for insurers, and would not handle complaint cases. A party dissatisfied with the disciplinary decision of IIA could lodge an appeal to IAT;</p> <p>(b) PRP was an independent body established by the Chief Executive ("CE") in accordance with relevant provisions in the Interpretation and General Clauses Ordinance (Cap. 1) to review IIA's internal processes and procedures to ensure its regulatory powers were exercised in a fair and consistent manner. Members of PRP would consist of industry practitioners; and</p> <p>(c) separate PRPs had been established for other financial regulators, including the Securities and Futures Commission ("SFC"), and the Mandatory Provident Fund Schemes Authority ("MPFA").</p> <p>As there was no provision in the Bill providing for the establishment and composition of PRP, Mr YIU was concerned about inadequate representation of the industry in PRP, and hence PRP could not effectively monitor the operation of IIA.</p> <p>The Administration clarified that the duty of PRP was not to oversee IIA on behalf of the industry, but to review IIA's exercise of powers as an independent body.</p> |                    |

| Time<br>Marker     | Speaker  | Subject(s)  | Action<br>Required |
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| 005425 –<br>010006 | Mr NG Leung-sing<br>Administration<br>Chairman | <p><i>4B. Powers of Authority</i></p> <p>Mr NG's view that it would be appropriate for IIA to change its Chinese title to "保險業管理局" given that its functions included both regulation and promotion of the development of the insurance industry.</p> <p>The Administration considered that the Chinese title "保險業監管局" was appropriate. It also advised that some financial regulators playing a similar role did not adopt "管理局" in their Chinese titles. For instance, the Chinese title of SFC was "證券及期貨事務監察委員會".</p>  |                    |
| 010007 –<br>010850 | Chairman<br>Administration<br>Ms Cyd HO        | <p><i>4B. Powers of Authority</i></p> <p>In respect of the proposed new section 4B(2)(e) of ICO (which provided for IIA's power to accept gifts), the Chairman enquired:</p> <ul style="list-style-type: none"> <li>(a) whether the provision would contravene the Prevention of Bribery Ordinance (Cap. 201) ("PBO");</li> <li>(b) whether similar provisions were present in the legislation governing other financial regulators; and</li> <li>(c) whether IIA members and staff were subject to PBO.</li> </ul> <p>Ms HO stressed the need for IIA to put in place measures to prevent its members and employees from accepting gifts improperly.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) the proposed new section 4B(2)(e) would apply to IIA as an entity and the purpose was to enable IIA to receive gifts (like from other organizations in exchange activities), or possible donations for IIA's public education activities. Similar provisions were present in the legislation governing other statutory bodies;</li> <li>(b) Clause 104 of the Bill introduced a consequential amendment to add IIA to Schedule 1 to PBO so that IIA would</li> </ul> |                    |

| Time Marker     | Speaker                            | Subject(s)   | Action Required   |
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|                 |                                    | <p>become a "public body" for the purpose of PBO. Any member or employee of IIA solicited or accepted advantage relating to their work in IIA would constitute a "misconduct in public office" and contravene PBO; and</p> <p>(c) currently, OCI had guidelines on the acceptance of gifts and prevention of corruption for its staff. It was envisaged that IIA would consult the Independent Commission Against Corruption when formulating its corruption preventing guidelines.</p> <p>To address members' concern about possible abuse of IIA's power under the proposed new section 4B(2)(e) in accepting gifts, the Administration was requested to:</p> <p>(a) consider Ms HO's suggestion to specify in the provision that the acceptance of gifts was subject to the relevant provisions of PBO; and</p> <p>(b) advise the future IIA to devise internal guidelines on the acceptance of gifts by IIA and its staff.</p> | Administration to take action as per paragraph 2(a) of the minutes.     |
| 010851 – 011052 | ALA7<br>Administration<br>Chairman | In respect of the proposed new section 4D(4) of ICO, the Administration agreed to review the provision to clarify the meaning of "某項事宜".   | The Administration to take action as per paragraph 2(g) of the minutes. |
| 011053 – 011502 | Administration<br>ALA7             | <p><u>Clause 13 – Sections 4B to 4H added</u></p> <p><i>4E. Staff and consultants of Authority</i><br/><i>4F. Delegation of Authority's functions to its members, committees and employees</i></p> <p>In response to ALA7's enquiry, the Administration remarked that the terms "consultant" and "advisor" were both "顧問" in Chinese.</p> <p>The Administration was requested to consider specifying the type of consultants, agents and advisors that IIA might engage in the proposed new section 4E of ICO.</p>   | The Administration to take action as per paragraph 2(c) of the minutes. |

| Time<br>Marker     | Speaker   | Subject(s)  | Action<br>Required |
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|                    |   | The Administration remarked that IIA should be provided with flexibility in engaging suitable consultants, agents and advisors to assist it in discharging its functions.   |                    |
| 011503 –<br>013732 | Mr YIU Si-wing<br>Administration<br>Chairman<br>Ms Cyd HO | <p><i>4E. Staff and consultants of Authority</i></p> <p>Mr YIU's views and enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) the estimated establishment of IIA in the initial stage and the criteria for determining remuneration for staff; and</li> <li>(b) IIA should be required to keep its expenditure within its revenue and avoid over-expansion, otherwise, IIA, being a self-financing body, might need to increase its fees and levies for meeting the huge staff cost.</li> </ul> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) according to a consultancy commissioned in 2009, IIA should have an establishment of about 250 staff at its inception;</li> <li>(b) IIA would be a self-financing body, which was consistent with one of ICPs promulgated by IAIS that insurance regulators should be financially and operationally independent of the government and the industry;</li> <li>(c) IIA would set out its regulatory initiatives and the corresponding manpower plan and estimated staff cost in its corporate plan and annual estimates. The estimates must be approved by FS and the approved estimates must be tabled before the Legislative Council ("LegCo"). IIA would operate in a transparent manner and it would be subject to the audit of the Audit Commission;</li> <li>(d) IIA as a statutory regulator should have flexibility in recruiting suitable staff members. It was also necessary for IIA to engage consultants, agents and advisors to cope with its workload, regulatory challenges and rapid market changes, and</li> </ul> |                    |

| Time Marker        | Speaker                    | Subject(s)   | Action Required   |
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|                    |                            | <p>the implementation of the Risk-based Capital framework for insurers; and</p> <p>(e) any proposed amendments to IIA's fees and levies would be subsidiary legislation subject to the negative vetting procedure of LegCo. The proposed new section 133 of ICO provided a mechanism for the reduction of IIA's levies.</p> <p>At Mr YIU's request, the Administration was required to consider his suggestion to specify clearly in the proposed new section 4E that IIA must decide on the appointment of its staff and consultants, and the determination of their remuneration and terms and conditions according to its "actual needs" and in a "reasonable manner" (i.e. 按該局實際情況，合理地決定報酬、津貼、條款及條件).</p> <p>Ms HO shared the concern about offering favourable remuneration packages for the chief executive officer ("CEO") of IIA and its senior staff. She enquired about the experience of other regulators in engaging consultants, agents and advisors to assist in the performance of their functions, and opined that the Chinese text of the proposed new section 4E should distinguish between the items "consultant" and "advisor".</p> <p>The Chairman remarked that for MPFA, the remuneration of its senior staff had to be approved by FS on the recommendation of the Board.</p> <p>At Ms HO's request, the Administration was required to provide information on the consultants, agents and advisors engaged by other financial regulators (like SFC), including the type and number of such consultants, agents and advisors, and their remuneration, and terms and conditions, etc.</p> | <p>The Administration to take action as per paragraph 2(c) of the minutes.</p> <p>The Administration to take action as per paragraph 2(d) of the minutes.</p> |
| 013733 –<br>014024 | Administration<br>Chairman | <p><u>Clause 13 – Sections 4B to 4H added</u></p> <p><i>4G. Delegation of certain powers of Authority to Monetary Authority</i></p> <p>In response to the Chairman's enquiry, the Administration clarified that IIA's powers to be</p>   |   |

| Time<br>Marker     | Speaker                            | Subject(s)   | Action<br>Required |
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|                    |                                    | delegated to the Monetary Authority (i.e. the Hong Kong Monetary Authority) were the powers of inspection and investigation in relation to regulated activities carried on by banks. There were no similar provisions in the Securities and Futures Ordinance (Cap. 571).  |                    |
| 014025 –<br>014823 | Mr NG Leung-sing<br>Administration | <p>Mr NG declared that he worked in the banking sector.</p> <p><i>4G. Delegation of certain powers of Authority to Monetary Authority</i></p> <p>Mr NG's enquiries and views as follows:</p> <p>(a) the rationale for subjecting the delegation of powers under the proposed new section 4G of ICO to CE in Council instead of FS, and whether FS had any role in the approval process; and</p> <p>(b) the banking industry welcomed the delegation of IIA's inspection and investigation powers to HKMA, which would avoid regulatory overlap.</p> <p>The Administration responded as follows:</p> <p>(a) as members of IIA would be appointed by CE, it would be more appropriate for CE in Council to approve the delegation of IIA's powers to HKMA;</p> <p>(b) the proposed new section 4G(1) explicitly provided that only IIA's powers of inspection and investigation in relation to regulated activities carried on by banks would be delegated to HKMA. This arrangement could achieve regulatory synergy and avoid regulatory overlap between IIA and HKMA; and</p> <p>(c) the proposed new section 4G(5) provided that IIA could concurrently perform the functions delegated to HKMA.</p> |                    |

| Time Marker        | Speaker                     | Subject(s)   | Action Required   |
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| 014824 –<br>015546 | Ms Cyd HO<br>Administration | <p>In response to Ms HO's enquiries, the Administration responded that:</p> <p>(a) the proposed new section 4G(5) of ICO would only be implemented upon liaison between IIA and HKMA to avoid regulatory overlap. It was envisaged that IIA would, similar to the existing practice of OCI, enter into a Memorandum of Understanding with HKMA on the arrangements for the two regulators in exercising the delegated powers; and</p> <p>(b) the term "Monetary Authority" instead of "Hong Kong Monetary Authority" was used in the Bill because the legislation referred to the public officer (e.g. Monetary Authority, Insurance Authority) instead of the relevant regulatory organization.</p> |   |
| 015547 –<br>015623 | Deputy Chairman             | <p><i>Establishment of PRP</i></p> <p>Noting that the Bill had not provided for the establishment of PRP for IIA, the Deputy Chairman requested the Administration to consider the written submission from the industry to include provisions in the Bill for the establishment of PRP under the proposed new section 4D of ICO.</p>   | The Administration to take action as per paragraph 2(b) of the minutes. |
| 015624 –<br>015710 | Administration              | <p><u>Clause 13 – Sections 4B to 4H added</u></p> <p><i>4H. Authority to furnish information</i></p>   |   |
| 015711 –<br>015809 | Chairman                    | Date of next two meetings  |   |