

立法會
Legislative Council

LC Paper No. CB(1)1052/14-15
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by the Administration)

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Bills Committee on Insurance Companies (Amendment) Bill 2014

**Minutes of the twelfth meeting on
Monday, 9 February 2015, at 4:30 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 James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, 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 YIU Si-wing
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon Cyd HO Sau-lan, JP
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
- 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

Action

I Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)527/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 27 January 2015

LC Paper No. CB(1)527/14-15(02) — Administration's response to
issues raised at the meeting on
27 January 2015)

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:

Inspections and investigations to be conducted by the independent Insurance Authority ("IIA") (under clause 55)

- (a) On the proposed new section 41B(6) of the Insurance Companies Ordinance (Cap. 41) ("ICO") in relation to the appointment of persons as inspectors by the independent Insurance Authority ("IIA"), the Administration was requested to clarify the scope of persons under the phrase "a person, or a person belonging to a class of persons", including whether it covered persons who were not employees of IIA, and whether there would be qualification requirements on such persons.
- (b) On the proposed new section 41D(1) of ICO in relation to the appointment of persons as investigators by IIA, the Administration was requested to clarify the scope of "one or more other persons",

and whether there would be qualification requirements on such persons.

- (c) The proposed new section 41D(2) of ICO provided that "The costs and expenses incurred by an investigator, other than an employee of IIA, may be paid out of moneys provided by the Legislative Council."("LegCo") However, there was no corresponding provision in the new section 41B in relation to the appointment of an inspector. As an inspector appointed under the new section 41B might include persons other than IIA's employees, the Administration was requested to clarify whether IIA would seek additional funding from LegCo on the costs and expenses incurred by an inspector who was not IIA's employee.
- (d) The proposed new sections 41B(8) and 41D(4) of ICO specified different manners of an inspector and an investigator before they exercised their power on persons stipulated in new sections 41B(3) and 41D(6). Under the new section 41B(8), an inspector "is required to produce a copy of the appointment to that person for inspection as soon as practicable". Whereas under the new section 41D(4), an investigator "must produce a copy of the direction or appointment to that person for inspection." The Administration was requested to explain the reasons for imposing different requirements on an inspector and an investigator and the policy considerations involved.

The Financial Secretary ("FS")'s power to request other financial regulators to initiate investigations (under clause 55)

- (e) The proposed new section 41D(1) of ICO provided that IIA "may in writing direct ... employees, or with the consent of FS, appoint ... persons, to investigate the matter". The Administration was requested to provide information on other relevant legislation, including the Securities and Futures Ordinance (Cap. 571), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615), whether they contained provisions empowering FS to request on his own initiative the financial regulator concerned to conduct an investigation. If such power for FS was provided in the relevant legislation, the Administration was requested to consider the need to provide similar provisions in the Bill.

Drafting issue

- (f) The phrase "a person, or a person belonging to a class of persons" in the proposed new section 41B(6) of ICO was cumbersome. The Administration was requested to review the drafting.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meeting would be held on 3 March 2015, at 2:30 pm and 9 March 2015, at 8:30 am respectively.

4. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
30 June 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Twelfth meeting on Monday, 9 February 2015, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000204 – 000316	Chairman	Introductory remarks	
000317 – 000726	Administration	Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 27 January 2015" [LC Paper No. CB(1)527/14-15(02)]	
000727 – 001826	Mr SIN Chung-kai Administration	<p>Mr SIN's views and enquiries about:</p> <p>(a) he might move a Committee Stage amendment on the composition of the independent Insurance Authority ("IIA") to limit the maximum number of non-executive directors with the knowledge of or experience in the insurance industry to not more than two;</p> <p>(b) insurers' compliance with the existing section 16(4) of the Insurance Companies Ordinances (Cap. 41) ("ICO") on the requirement to keep relevant financial records for seven years and the Administration's monitoring work in this regard, and sanctions against non-compliance; and</p> <p>(c) record keeping requirement on insurance intermediaries.</p> <p>The Administration responded as follows:</p> <p>(a) the relevant guideline issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") required auditors to examine whether the insurers had maintained proper records as required by ICO;</p> <p>(b) an insurer failing to maintain proper record would contravene section 16(4) of ICO and the Office of the Commissioner of Insurance ("OCI") could exercise the powers conferred to it under sections 27 to 35 against the insurer as provided in the existing section</p>	.

Time Marker	Speaker	Subject(s)	Action Required
		<p>26(1)(b)(i). The proposed new section 16(5) and (6) of ICO further provided that IIA may require the insurer to provide the relevant records for examination within a specified period and set out the penalty for non-compliance. The controller of the authorized insurer concerned might also be considered by IIA to be no longer a "fit and proper" person;</p> <p>(c) there was no statutory record keeping requirement on insurance intermediaries under the existing self-regulatory regime. Given that an insurance policy was a contract made between an insurer and a policy holder, the insurer would keep the relevant records of the policy. There would be record keeping requirements on insurance intermediaries under Part X of ICO.</p>	
Clause-by-clause examination of the Bill			
001828 – 002709	Chairman Administration	<p><i>Division 2—Inspection and Investigation without Warrant</i></p> <p><u>Clause 55 – Part VA added</u></p> <p><i>Part VA – Further Regulatory Powers on Insurers</i></p> <p><i>Division 1—Preliminary</i></p> <p><i>41A. Interpretation</i></p> <p><i>41B. Power to conduct inspection</i></p> <p><i>41C. Inspector may require answer, etc. to be verified by statutory declaration</i></p> <p><i>41D. Power to conduct investigation</i></p>	
002710 – 003307	Mr SIN Chung-kai Administration Chairman	<p>Mr SIN's views and enquiries as follows:</p> <p>(a) whether "any premises" in the proposed new section 41B(2)(a) of ICO included both registered business premises and residential premises;</p>	

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		<p>(b) the Administration should elaborate the term "reasonable time" in the proposed new section 41B(2); and</p> <p>(c) whether IIA could conduct surprise inspection on insurers.</p> <p>The Administration responded as follows:</p> <p>(a) "any premises" in the proposed new section 41B(2)(a) referred to commercial premises in general and IIA's inspectors were not empowered to enter residential premises unless they possessed warrants issued by magistrates;</p> <p>(b) "reasonable time" in the proposed new section 41B(2) was not confined to office hours;</p> <p>(c) IIA would normally inform the authorized insurer concerned before conducting inspections, but might also conduct surprise inspections as necessary; and</p> <p>(d) the application procedures for magistrate's warrants for IIA's inspection/investigation under the new regulatory regime were consistent with those under the Securities and Futures Ordinance (Cap. 571) ("SFO"), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO").</p>	
003308 – 005102	Mr NG Leung-sing Administration Chairman	<p>Mr NG's enquiries and concerns as follows:</p> <p>(a) whether there would be qualification requirements on inspectors to be appointed by IIA as the proposed new section 41B(6) of ICO seemed to suggest that IIA could appoint any person to be its inspector;</p> <p>(b) whether the costs and expenses incurred by IIA's inspectors other than its employees would be paid out of moneys provided by the Legislative Council ("LegCo"), i.e. the same arrangement for IIA's investigators as</p>	

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		<p>set out in the proposed new section 41D(2); and</p> <p>(c) the proposed new section 41D(2) might hinder the IIA's urgent investigations as obtaining LegCo's funding approval might take a long time.</p> <p>The Administration responded as follows:</p> <p>(a) the considerations for IIA in conducting inspections and investigations were set out in the proposed new sections 41B(1) and 41D(1) respectively;</p> <p>(b) it was likely that routine inspections of IIA would be conducted by its employees. Under exceptional circumstances such as the global financial crisis in 2008-2009, IIA might appoint external parties as its inspectors to handle a significant amount of additional workload. The phrase "a person, or a person belonging to a class of persons" in the proposed new section 41B(6) would facilitate IIA to appoint appropriate parties (such as an auditing firm) in this respect; and</p> <p>(c) IIA would usually appoint its employees as investigators. For complicated cases, IIA might, with the consent of the Financial Secretary ("FS"), appoint outside experts as investigators, like professionals for conducting highly technical tasks e.g. forensic auditing. In such cases, IIA's budget might be insufficient to cover the costs and expenses incurred, and the proposed new section 41D(2) provided a mechanism for IIA to seek funding from LegCo when necessary. It was envisaged that these extremely complicated cases would rarely occur.</p> <p>Some members considered the phrase "a person, or a person belonging to a class of persons" in the proposed new section 41B(6) cumbersome, and requested the Administration to review the drafting.</p>	<p>The Administration to take action as per paragraph 2(f) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
005103 – 012357	Chairman Administration Deputy Chairman Mr SIN Chung-kai	<p>The Chairman enquired about:</p> <ul style="list-style-type: none"> (a) the powers of IIA's inspectors/investigators to require a person to produce records, give explanation, answer questions in relation to inspection/investigation; and (b) the protection offered to the person concerned including the right for the person to remain silent (as he/she could be required to make a statutory declaration to verify the responses and the provision of false information in the statutory declaration was a criminal offence); and (c) similar arrangements in other relevant legislation. <p>Mr SIN's enquiries as follows:</p> <ul style="list-style-type: none"> (a) whether a statutory declaration was a kind of oath; and (b) the Administration should elaborate the scope of "a person whom the inspector has reasonable cause to believe has information relating to, or is in possession of, a business record of the authorized insurer" in the proposed new section 41B(5) of ICO. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) in conducting an inspection/investigation, IIA's inspectors/investigators would normally approach the authorized insurer concerned first. If the authorized insurer did not possess the relevant information, IIA's inspectors/investigators would then approach persons, whom they had reasonable cause to believe, possessed or likely possessed information relevant to the inspection/investigation. If the authorized insurer or the persons claimed that they did not possess the information concerned, IIA's inspectors/investigators "may" require them to make a statutory declaration to verify their answers. Similar arrangements were also provided in other relevant legislation including SFO and MPFSO; 	

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		<p>(b) the proposed new section 41F provided that IIA's inspectors/investigators may apply to the Court of First Instance to inquire into the failure of the person concerned in complying with the requirements imposed by the inspectors/investigators;</p> <p>(c) on the right of the person concerned to remain silent, the proposed new section 41G(6) provided that the abrogation of common law privilege against self-incrimination applied to IIA's investigations. Besides, the new section 41H(2) and (3) provided that the responses given by the person to IIA's investigators were not admissible in evidence against the person in criminal proceedings in a court of law (except for certain offences). A proper balance had been struck in enhancing the inspection and investigation powers of IIA while protecting the right of the persons assisting in the inspection/investigation. Such arrangements were also present in relevant legislation including SFO, MPFSO and AMLO; and</p> <p>(d) under the Oaths and Declarations Ordinance (Cap. 11) and the Crimes Ordinance (Cap. 200), it would be a criminal offence to provide false information in a statutory declaration.</p> <p>The Deputy Chairman's views that the industry would be keen on cooperating with IIA's inspectors/investigators to preserve its licenses and reputation.</p>	
012358 – 012900	ALA7 Administration	<p>At ALA7's request, the Administration was required to take the following actions:</p> <p>(a) on the proposed new section 41B(6) of ICO in relation to the appointment of persons as inspectors by IIA, to clarify the scope of persons under the phrase "a person, or a person belonging to a class of persons", including whether it covered persons who were not employees of IIA, and whether there would be qualification requirements on such persons;</p>	The Administration to take action as per paragraphs 2(a) - 2(d) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) on the proposed new section 41D(1) in relation to the appointment of persons as investigators by IIA, to clarify the scope of "one or more other persons", and whether there would be qualification requirements on such persons;</p> <p>(c) on the proposed new section 41D(2), to clarify whether IIA would seek additional funding from LegCo on the costs and expenses incurred by an inspector who was not IIA's employee; and</p> <p>(d) on the proposed new sections 41B(8) and 41D(4), to explain the reasons for imposing different requirements on an inspector and an investigator before they exercise their power on persons stipulated in the new sections 41B(3) and 41D(6).</p>	
012901 – 014631	Mr SIN Chung-kai Administration DoJ ALA2	<p>Mr SIN's views and enquiries about:</p> <p>(a) provisions in other relevant legislation similar to the proposed new section 41D(1)(b) of ICO;</p> <p>(b) the reasons for using the term "potential policy holders" in the Bill and whether a more precise term should be adopted;</p> <p>(c) the role of FS in the appointment of IIA's investigators; and</p> <p>(d) to what extent the appointment of IIA's investigator would be disclosed.</p> <p>The Administration responded as follows:</p> <p>(a) there were provisions in SFO similar to the proposed new section 41D(1)(b);</p> <p>(b) an insurance policy was a contract made between an insurer and a policy holder. The term "potential policy holders" was adopted to protect consumers in the course of taking out an insurance policy from an insurer (e.g. through insurance intermediaries), and this would allow IIA to investigate insurers concerned under certain circumstances like complaints about</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>alleged misleading information provided by the insurers;</p> <p>(c) IIA could direct its employees to conduct investigation, but prior consent of FS was necessary for appointment of an outside investigator as a check and balance measure. There were similar provisions in other relevant legislation including SFO and AMLO; and</p> <p>(d) IIA's inspections and investigations would be subject to the relevant confidentiality requirements.</p> <p>At Mr SIN's request, the Administration was required to provide information on whether other relevant legislation, including SFO, MPFSO and AMLO, contained provisions empowering FS to request on his own initiative the financial regulator concerned to conduct an investigation, and consider the need to provide similar provisions in the Bill if such power for FS was provided in the relevant legislation.</p> <p>In response to Mr SIN's enquiry about why the Chinese phrase "攸關" instead of "有關" was used in the proposed new section 41D(5)(a)(i) of ICO, the Administration explained that:</p> <p>(a) in the Bill, "攸關..." was used to render the English expression "relevant to ..."; and</p> <p>(b) "攸關" instead of "有關" was used to avoid possible confusion with the use of "有關" to render the English definite article "the" (e.g. as in "有關人士" for "the person") and was in line with the initiative of the Administration to make the drafting of legislation more user-friendly.</p>	<p>The Administration to take action as per paragraph 2(e) of the minutes.</p>
014632 – 015608	Administration Deputy Chairman Mr SIN Chung-kai	<p><i>41E. Investigator may require explanation, etc. to be verified by statutory declaration</i></p> <p><i>41F. Application to Court of First Instance for inquiry into failure</i></p> <p><i>41G. Offences in relation to inspections and investigations</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr SIN's enquiries, the Administration responded as follows:</p> <p>(a) the term "a person" in the proposed new section 41G of ICO could be referring to an individual possessing information relevant to IIA's inspections and investigations; and</p> <p>(b) the proposed levels of penalty for offences set out in the proposed new section 41G had made reference to those in other relevant legislation including SFO, MPFSO and AMLO.</p>	
015609 – 015923	Administration Deputy Chairman	<p><i>41H. Use of incriminating evidence in proceedings</i></p> <p><i>41I. Offences in relation to destruction of records and documents</i></p> <p><i>41J. Order to pay costs of investigation</i></p> <p>In response to the Deputy Chairman's enquiry, the Administration confirmed that the proposed new section 41J of ICO would apply to extremely complicated investigations only and the Administration had provided a written response on the matter relating to issues raised at the meeting of the Bills Committee on 24 November 2014 (LC Paper No. CB(1)332/14-15(03)).</p>	
015924 – 015958	Chairman	Date of next meeting	