

立法會
Legislative Council

LC Paper No. CB(1)1053/14-15
(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 thirteenth meeting on
Tuesday, 3 March 2015, 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 Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
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)593/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 9 February 2015

LC Paper No. CB(1)593/14-15(02) — Administration's response to
issues raised at the meeting on
9 February 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:

Exempted persons (section 51 of the Insurance Companies Ordinance (Cap. 41) ("ICO")) (under clause 63)

- (a) Noting that the Administration had not conducted a review under the present legislative exercise on the exemptions provided to persons in the existing section 51, the Administration was requested to take note of a member's views that the future independent Insurance Authority ("IIA") should review the need to continue the exemption, in particular having regard to maintaining the integrity of the regulatory regime and minimizing possible abuse of the exemption provision.

Secrecy (section 53A of ICO) (under clause 64)

- (b) The proposed amended subsection (1AA) and new subsection (1AAB) of section 53A set out the entities to be subject to the secrecy provision in section 53A(1). The Administration was requested to: (i) explain the purpose of setting out the covered entities in two separate subsections; (ii) explain the reasons for not providing explicitly that members of the Industry Advisory Committees and other committees established by IIA would be covered; and (iii) examine comparable provisions in other ordinances in considering the need to improve the present drafting of the provisions.

Disclosure of information (section 53B of ICO) (under clause 65)

- (c) The proposed amended section 53B(1A) and the new subsection (1B) provided that IIA might disclose to overseas regulatory authorities information on matters relating to the affairs of an insurers or a licensed insurance intermediary (except the affairs of any individual policy holder). The Administration was requested to respond to a member's suggestion that IIA, in addition to considering the conditions set out in section 53B(1)(b), should only disclose information to overseas regulatory authorities which had entered into bilateral or multilateral information exchange agreements with IIA.

Licensing regime for insurance intermediaries (under clause 71)

- (d) *Definition of "controller" in the proposed new section 64F of ICO*
The definition of "controller" in relation to a partnership and a company had adopted a threshold of 15% in respect of (i) the control of the capital or profits (for a partnership) and issued share capital (for a company); and (ii) the exercise of voting rights. The Administration was requested to explain the reasons for using the 15% threshold in the definition, and examine the relevant thresholds adopted for in relation to "controller" in other legislation.
- (e) *Restrictions of licensed insurance intermediaries in the proposed new sections 64I, 64J and 64K of ICO*
New section 64I provided that a licensed insurance agency or licensed individual insurance agent must not be appointed by more than the maximum number of authorized insurers that were prescribed in rules made under section 127 (i.e. subsidiary legislation to be made by IIA). New sections 64J and 64K further set out the restrictions applicable to the personnel of licensed

insurance agencies and licensed insurance broker companies. Members noted that while sections 64J and 64K allowed a person to be a director for more than one licensed insurance agencies and licensed insurance broker companies, he/she could only deal with matters which related to a regulated activity of one insurance agency or a broker company. The Administration was requested to: (i) address members' concern about the difficulties in enforcing the restrictions in sections 64J and 64K, as directors of an insurance agency or a broker company were required to participate in the decision making process in relation to the conduct of regulated activities of the entity concerned; and (ii) provide information on the requirement or practice in this regard in other jurisdictions.

Drafting issue

- (f) In the proposed amendments to section 53C(2) of ICO (under clause 66), in the light of comments of the Legal Adviser to the Bills Committee, the Administration had agreed to consider replacing the phrase "1(b), (1A) and (1B)" with "1(b), (1A)(b) and (1B)(b)".

II Any other business

Date of next meeting

- 3. The Chairman reminded members that the next two meeting would be held on 9 March 2015, at 8:30 am and 24 March 2015, at 10:45 am respectively.
- 4. There being no other business, the meeting ended at 4:31 pm.

Council Business Division 1
Legislative Council Secretariat
30 June 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Thirteenth meeting on Tuesday, 3 March 2015, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000558 – 000636	Chairman	Introductory remarks	
000637 – 001824	Administration Chairman Mr SIN Chung-kai	<p>Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 9 February 2015" [LC Paper No. CB(1)593/14-15(02)]</p> <p>In response to Mr SIN's enquiry, the Administration confirmed that it would introduce Committee Stage amendments ("CSAs") to:</p> <p>(a) the proposed new sections 13A(11) and 13AC(11) of the Insurance Companies Ordinance (Cap. 41) ("ICO") to impose a daily fine for both an insurer and relevant individual for a continuing offence; and</p> <p>(b) the proposed new section 13AE(11) so that an insurer would be liable to a daily fine for the continuing offence on appointing a key person in control functions without IIA's approval.</p>	
Clause-by-clause examination of the Bill			
001825 – 003401	Administration Mr SIN Chung-kai Chairman Deputy Chairman	<p><u>Clause 55 – Part VA added</u></p> <p><i>Part VA – Further Regulatory Powers on Insurers</i></p> <p><i>Division 3—Magistrate's Warrants</i></p> <p><i>41K. Magistrate's warrants to enter premises, etc.</i></p> <p><i>41L. Removal of records and documents under section 41K</i></p> <p><i>Division 4—Miscellaneous</i></p> <p><i>41M. Lien claimed on records or documents</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>41N. Production of information in information systems, etc.</i></p> <p><i>41O. Inspection of records or documents seized, etc.</i></p> <p><i>41P. Disciplinary actions in respect of authorized insurers</i></p> <p>Mr SIN enquired about the requirement for IIA to disclose its disciplinary decisions on authorized insurers under the proposed new section 41P(2) and (3) of ICO.</p> <p>The Administration responded that:</p> <p>(a) the proposed new section 41P(3) provided that if IIA had exercised its power under subsection (1), it "may" disclose ("可向" instead of "須向" in the Chinese text) to the public the details of its decisions, the reasons and any material facts relating to the case. The authorized insurer concerned could not request IIA to withhold such information on confidentiality grounds;</p> <p>(b) the policy objective was that IIA should disclose to the public its disciplinary actions on authorized insurers for the sake of transparency. IIA would have regard to factors such as possible impact on the insurance market and interests of policy holders concerned in determining the disclosure; and</p> <p>(c) similar disclosure arrangements were provided in the Securities and Futures Ordinance (Cap. 571);</p>	
003402 – 004859	Administration	<p><i>41Q. Procedural requirements in respect of exercise of powers under section 41P</i></p> <p><i>41R. Guidelines for exercise of power to impose pecuniary penalty under section 41P</i></p> <p><i>41S. General provisions relating to exercise of disciplinary powers</i></p> <p><i>41T. Order for payment of pecuniary penalty</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>41U. Effect of suspension under section 41P</i></p> <p><i>41V. Revocation or suspension does not avoid or affect agreement, etc.</i></p> <p><i>41W. Requirement to transfer records on revocation or suspension</i></p> <p><u>Clause 56 – Section 49B amended (notice of commencement of liquidation, etc. and of appointment of liquidator, etc.)</u></p> <p><u>Clause 57 – Section 50A amended (requirement on solvency margin)</u></p> <p><u>Clause 58 – Section 50B amended (fit and proper management)</u></p> <p><u>Clause 59 – Section 50C amended (reporting requirements)</u></p> <p><u>Clause 60 – Section 50D amended (local assets)</u></p> <p><u>Clause 61 – Section 50E substituted</u></p> <p><i>50E. Part X applies to Lloyd's</i></p> <p><u>Clause 62 – Section 50G added</u></p> <p><i>50G. Further regulatory powers</i></p> <p><u>Clause 63 – Section 51 amended (exempted persons)</u></p> <p>On the Deputy Chairman's enquiry about the need to retain the exemptions provided to persons in the existing section 51 of ICO, the Administration explained that such exemptions had been provided due to historical reasons. While the Administration had not conducted a review under the present legislative exercise on such exemptions, it was aware that there were still persons or organizations in Hong Kong conducting the activities covered by section 51.</p> <p>The Deputy Chairman considered that IIA should review the need to continue the exemption in section 51, in particular having regard to the need to maintain integrity of the regulatory regime and minimize possible abuse</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>of the exemption.</p> <p>The Administration took note of the view.</p>	
004900 – 005554	Administration Mr SIN Chung-kai	<p><u>Clause 64 – Section 53A amended (secrecy)</u></p> <p>The proposed amended subsection (1AA) and new subsection (1AAB) of section 53A of ICO set out the entities to be subject to the secrecy provision in section 53A(1). At Mr SIN's request, the Administration was requested to:</p> <p>(a) explain the purpose of setting out the covered entities in two separate subsections;</p> <p>(b) explain the reasons for not providing explicitly that members of the Industry Advisory Committees and other committees established by IIA would be covered; and</p> <p>(c) examine comparable provisions in other ordinances in considering the need to improve the present drafting of the provisions.</p>	The Administration to take action as per paragraph 2(b) of the minutes
005555 – 013104	Mr NG Leung-sing Administration Mr SIN Chung Kai Mr Alan LEONG Chairman	<p><u>Clause 64 – Section 53A amended (secrecy)</u></p> <p>The amended section 53A(3) of ICO provided exemption from the secrecy obligation under section 53A(1).</p> <p>In response to Mr NG's enquiries, the Administration advised that the word "Tribunal" in the proposed new subsection (3)(ea) referred to the Insurance Appeals Tribunal ("IAT"). It was unnecessary to specify explicitly the Chairperson and members of IAT in the provision as IAT would comprise a Chairperson and two members only, and the current drafting would not result in the inadvertent disclosure of information to an irrelevant party.</p> <p>Mr SIN and Mr LEONG were concerned that the proposed new section 53A(7) of ICO would be redundant. The Administration advised that:</p> <p>(a) section 53A would apply to both the existing Insurance Authority ("IA") (i.e. the Commissioner of Insurance) and the future IIA. However, IA and IIA would be governed by the existing ICO and the ICO to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>be amended by the Bill respectively. Thus, the proposed new section 53A(7) was necessary; and</p> <p>(b) there were no other provisions in the Bill similar to section 53A(7) as only section 53A would apply to both the existing IA and the future IIA.</p> <p><u>Clause 65 – Section 53B amended (disclosure of information)</u></p> <p>In response to the Chairman's enquiry about disclosure or exchange of information between IA and the future IIA with their counterparts in other jurisdictions, the Administration advised that:</p> <p>(a) under the International Association of Insurance Supervisors' Insurance Core Principles relating to information disclosure, the legislation for the insurance supervisory authority of a jurisdiction should contain provisions on disclosure of information similar to section 53B; and</p> <p>(b) the existing IA and the future IIA would from time to time enter into relevant multilateral or bilateral agreements with their counterparts in other jurisdictions covering matters like collaboration and cooperation in investigation and enforcement actions, and disclosure or exchange of information. Before entering into such agreements, IA and IIA would consider, among other things, whether the jurisdictions concerned had sufficient mechanisms to ensure confidentiality of the information disclosed.</p> <p>Mr SIN's views and enquiries as follows:</p> <p>(a) section 53B of ICO should include provisions to limit the disclosure of information by IIA to its counterparts in other jurisdictions, e.g. a list of authorities to which IIA could disclose information;</p> <p>(b) whether there would be reciprocal arrangements for those authorities which had requested IIA to disclose information to provide information to IIA upon the latter's</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>request;</p> <p>(c) whether the authorities with which IIA would sign relevant multilateral agreements and/or bilateral agreements would be obliged to disclose information requested by IIA; and</p> <p>(d) the arrangements for IIA to disclose information to counterparts in other jurisdictions which had not signed any relevant multilateral agreements and/or bilateral agreements with Hong Kong.</p> <p>The Administration responded as follows:</p> <p>(a) the amended section 53B(1)(a) had limited the types of authority to which IIA could disclose information;</p> <p>(b) section 53B(2) prohibited the disclosure of information relating to any individual policy holder of an insurer;</p> <p>(c) if the existing IA or the future IIA was requested by its counterpart in other jurisdictions to disclose information but they had not signed any relevant multilateral agreements and/or bilateral agreements with Hong Kong, IA/IIA would consider the matters set out in the amended section 53B(1)(b) before disclosing the information, which included whether the counterpart had adequate secrecy provisions in place to protect the information concerned, whether the disclosure of information would be desirable with regard to the interests of policy holders or in the public interest, and whether the disclosure would assist the counterpart in the performance of its functions, etc.;</p> <p>(d) past experience of IA revealed that its counterparts in other jurisdictions that had signed the relevant multilateral agreements and/or bilateral agreements with Hong Kong were willing to disclose information requested by IA; and</p> <p>(e) it would be inflexible if the disclosure of information to authorities in other jurisdictions must have signed multilateral</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>agreements and/or bilateral agreements with Hong Kong because timely disclosure or exchange of information among authorities was essential for undertaking investigations and enforcement actions.</p> <p>The Administration was requested to respond to Mr SIN's suggestion that IIA, in addition to considering the conditions set out in section 53B(1)(b), should only disclose information to overseas regulatory authorities which had entered into bilateral or multilateral information exchange agreements with IIA.</p> <p>The Chairman remarked that flexibility should be provided to IIA in disclosing information to relevant authorities in other jurisdictions.</p>	<p>The Administration to take action as per paragraph 2(c) of the minutes</p>
<p>013105 – 013754</p>	<p>ALA7 Administration Mr SIN Chung-kai Chairman</p>	<p><u>Clause 66 – Section 53C amended (examination by external authorities)</u></p> <p>In the proposed amendments to section 53C(2) of ICO, in the light of ALA7's comments, the Administration had agreed to consider replacing the phrase "1(b), (1A) and (1B)" with "1(b), (1A)(b) and (1B)(b)"</p> <p>In response to enquiries by Mr SIN and the Chairman, the Administration advised that:</p> <p>(a) the new subsections (1A) and (1B) of section 53C only permitted the insurance supervisory authority in another jurisdiction to examine the books, accounts and transactions of a licensed insurance agency/broker company in Hong Kong. This would not result in allowing law enforcement work by overseas regulators in Hong Kong;</p> <p>(b) prior approval of IIA was necessary for the insurance supervisory authority of another jurisdiction to examine the books, accounts and transactions of a licensed insurance agency/broker company in Hong Kong; and</p> <p>(c) IIA could make similar request to its counterparts in other jurisdictions.</p>	<p>The Administration to take action as per paragraph 2(f) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
013755 – 014415	Administration Mr SIN Chung-kai Chairman	<p><u>Clause 67 – Section 53D amended (communication by prescribed person with Insurance Authority)</u></p> <p><u>Clause 68 – Section 53E amended (prescribed person to send report directly to Insurance Authority in certain cases)</u></p> <p><u>Clause 69 – Section 53F added</u></p> <p><i>53F. Prescribed person to send report directly to Authority in certain cases relating to licensed insurance broker companies, etc.</i></p> <p><u>Clause 70 – Part IX repealed (supplementary and transitional)</u></p> <p><u>Clause 71 – Part X, Divisions 1 to 4, and Division 5 heading added</u></p> <p><i>Division 1—Preliminary</i></p> <p><i>64F. Interpretation of Part X</i></p> <p>Under the proposed new section 64F of ICO, the definition of "controller" in relation to a partnership and a company had adopted a threshold of 15% for (i) the control of the capital or profits (for a partnership) and issued share capital (for a company); and (ii) the exercise of voting rights. Upon Mr SIN's request, The Administration agreed to explain the reasons for using the 15% threshold in the definition, and examine the relevant thresholds in relation to "controller" in other legislation.</p>	The Administration to take action as per paragraph 2(d) of the minutes
014416 – 015026	Administration Mr SIN Chung-kai Chairman	<p><i>Division 2—Restrictions</i></p> <p><i>64G. Restrictions on carrying on regulated activities</i></p> <p>Mr SIN enquired whether an authorized insurer requiring an unlicensed insurance intermediary to conduct regulated activities would be subject to any sanctions.</p> <p>The Administration responded that:</p> <p>(a) under the Interpretation and General Clauses Ordinance (Cap. 1), the term "person" in the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>proposed new section 64G of ICO covered both a person and a business entity; and</p> <p>(b) it was a criminal offence for an unlicensed insurance intermediary to conduct regulated activities. The authorized insurer which had aided or abetted in the commission of the offence also had criminal liability.</p>	
015027 – 020039	Administration Mr SIN Chung-kai Chairman	<p><i>64H. Application of section 64G in relation to marketing insurance services outside Hong Kong</i></p> <p><i>64I. Restrictions in relation to number of authorized insurers of each licensed insurance agency, etc.</i></p> <p><i>64J. Restrictions in relation to personnel of licensed insurance agencies</i></p> <p><i>64K. Restrictions in relation to personnel of licensed insurance broker companies</i></p> <p>The proposed new section 64I of ICO provided that a licensed insurance agency or licensed individual insurance agent must not be appointed by more than the maximum number of authorized insurers that were prescribed in rules made under section 127 (i.e. subsidiary legislation to be made by IIA). The proposed new sections 64J and 64K of ICO further set out the restrictions applicable to the personnel of licensed insurance agencies and licensed insurance broker companies.</p> <p>Mr SIN noted that while sections 64J and 64K allowed a person to be a director for <u>more than one</u> licensed insurance agency and licensed insurance broker company, he/she could only deal with matters which related to a regulated activity of <u>one</u> insurance agency or a broker company. He enquired about:</p> <p>(a) whether there would be difficulties in enforcing the restrictions in sections 64J and 64K, as directors of an insurance agency or a broker company were required to participate in the decision making process in relation to the conduct of regulated activities of the entity concerned; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the relevant requirement or practice in this regard in other jurisdictions.</p> <p>The Administration explained that the directors concerned would be allowed to participate in other business of the insurance agency or a broker company, e.g. administrative and recruitment matters.</p> <p>The Administration agreed to provide information in response to Mr SIN's enquiries above.</p>	<p>The Administration to take action as per paragraph 2(e) of the minutes</p>
020040 – 020114	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
30 June 2015