

立法會
Legislative Council

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Bills Committee on Insurance Companies (Amendment) Bill 2014

**Minutes of the fourteenth meeting on
Monday, 9 March 2015, at 8:30 am
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 James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
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

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)

Matters arising from previous meeting

- (LC Paper No. CB(1)614/14-15(01) — List of follow-up actions arising from the discussion at the meeting on 3 March 2015

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:

Restrictions of licensed insurance intermediaries in the proposed new sections 64I, 64J and 64K of the Insurance Companies Ordinance (Cap. 41) ("ICO") (under clause 71)

- (a) Further to members' views expressed at the meeting on 3 March 2015 on the proposed new sections 64I, 64J and 64K, the Administration was requested to consider the different views raised by members as follows:
- (i) the sections should avoid imposing too many restrictions prohibiting a person from acting as a director and/or a shareholder of more than one licensed insurance agency or licensed insurance broker company at the same time in the light of existing practices of insurance intermediaries and the views expressed by the industry; and
 - (ii) to address concern about possible conflict of interests of insurance intermediaries, while a person could be a shareholder of more than one licensed insurance agency or licensed insurance broker company at the same time, he/she could only

be a director of one licensed insurance agency or licensed insurance broker company at the same time.

- (b) The Administration was requested to:
- (i) update members on its discussions with the industry and the Hong Kong Federation of Insurers on matters relating to the proposed new sections 64I, 64J and 64K; and
 - (ii) consider refining the drafting of the proposed new sections 64J and 64K regarding the phrase "any matter that relates to a regulated activity" (關乎...受規管活動的任何事宜) and replacing it with "a regulated activity" (受規管活動) given that the scope of the latter phrase was more well-defined.

Duty to notify IIA of appointment in the proposed new section 64Q of ICO (under clause 71)

- (c) The proposed new section 64Q required an authorized insurer, a licensed insurance agency, and a licensed insurance broker company to inform the independent Insurance Authority ("IIA") at least one month before their intended appointment of a licensed insurance agency, a licensed individual insurance agent, a licensed technical representative (agent), or a licensed technical representative (broker), as appropriate. The period would allow IIA to vet the appointment. Members were concerned that the provisions had not specified the timeframe for IIA in furnishing replies to the parties concerned. The Administration was requested to:
- (i) consider members' suggestions to include in the provisions the timeframe (say one month) for IIA to complete the vetting process, and the requirement for IIA to inform the parties concerned of the progress should it be unable to complete the vetting by the specified timeframe; or to provide IIA's performance pledges in this regard in its future guidelines;
 - (ii) provide information on the relevant practices of the existing self-regulatory regime for insurance intermediaries and other relevant financial regulatory regimes; and
 - (iii) update members on the progress of its discussion with the industry on the matter.

Validity period of licences granted by IIA in the proposed new sections 64V, 64X, 64Z, 64ZB and 64ZD of ICO (under clause 71)

- (d) Under the proposed new sections 64V, 64X, 64Z, 64ZB and 64ZD, IIA could grant licences to insurance agencies, individual insurance agents, technical representatives (agent), insurance broker companies, and technical representatives (broker) with a validity period of three years or in a particular case, another period determined by IIA. There was concern that the provisions might provide IIA with wide discretion in determining the period of licences. The Administration was requested to:
- (i) provide information on the usual validity period of intermediary licences under the existing self-regulatory regime for insurance intermediaries; and
 - (ii) review the provisions having regard to the validity period of intermediary licences granted by the Securities and Futures Commission.

Suspension of the licences of insurance agencies and insurance broker companies without responsible officers in the proposed new sections 64ZN and 64ZO of ICO (under clause 71)

- (e) The purposes of the proposed new sections 64ZN(1) and 64ZO(1) were to provide IIA with flexibility in suspending the licences of insurance agencies and insurance broker companies without responsible officers. Members were concerned that the present drafting was unclear and difficult to comprehend. For instance, the term "event" in the phrase "The Authority...may suspend the licence ... for a period, or until the occurrence of an event, specified by the Authority" (保監局...可暫時吊銷牌照...或直至保監局指明的事件發生為止) was not well-defined. The Administration was requested to:
- (i) explain the policy behind these provisions; and
 - (ii) consider refining the drafting with reference to similar provisions in the Securities and Futures Ordinance (Cap. 571) and the Mandatory Provident Fund Schemes Ordinance (Cap. 485), and a member's suggestion of changing the Chinese text to "在某段時限內符合保監局的要求".

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meeting would be held on 24 March 2015, at 10:45 am and 14 April 2015, at 4:30 pm respectively.
4. There being no other business, the meeting ended at 10:32 am.

Council Business Division 1
Legislative Council Secretariat
11 August 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Fourteenth meeting on Monday, 9 March 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000740 – 000947	Chairman	Introductory remarks	
Clause-by-clause examination of the Bill			
000948 – 002807	Deputy Chairman Chairman Administration Mr SIN Chung-kai	<p><u>Clause 71</u></p> <p><i>Division 2—Restrictions</i></p> <p><i>64K. Restrictions in relation to personnel of licensed insurance broker companies</i></p> <p>In respect of the restrictions of licensed insurance intermediaries set out in the proposed new sections 64I, 64J and 64K of the Insurance Companies Ordinance (Cap. 41) ("ICO"), the Administration was requested to consider the following views:</p> <p>(a) the Deputy Chairman's view that the sections should avoid imposing too many restrictions prohibiting a person from acting as a director and/or a shareholder of more than one licensed insurance agency or licensed insurance broker company at the same time in the light of existing practices of insurance intermediaries and the views expressed by the industry; and</p> <p>(b) Mr SIN's view that to address concern about potential conflict of interests of insurance intermediaries, while a person could be a <u>shareholder of more than one licensed insurance agency or licensed insurance broker company</u> at the same time, he/she could only be a <u>director of one licensed insurance agency or licensed insurance broker company</u> at the same time. Moreover, the restriction that a director of an insurance agency or insurance broker company "must not deal with any matter relates to a regulated activity" of the agency or the broker company would be difficult to enforce.</p>	The Administration to take action as per paragraph 2(a) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration explained that:</p> <ul style="list-style-type: none"> (a) there would be no restriction on the director of an insurance agency or insurance broker company to involve in matters of another agency or broker company not relating to any regulated activity, e.g. administration and recruitment; (b) IIA would elaborate the requirements under the proposed new sections 64J and 64K in codes and guidelines with illustrative examples; and (c) there were regulatory requirements in the United Kingdom and Singapore that common directorship in insurance intermediaries should not give rise to conflict of interests. <p>The Deputy Chairman remarked that the industry had not yet fully agreed to the Administration's proposed arrangements under the new sections of 64J and 64K and would continue to discuss with the Administration.</p> <p>The Administration was requested to:</p> <ul style="list-style-type: none"> (a) update members on its discussions with the industry and the Hong Kong Federation of Insurers on matters relating to the proposed new sections 64J and 64K; and (b) consider the Deputy Chairman's suggestion of improving the drafting of the proposed new sections 64J and 64K regarding the phrase "any matter that relates to a regulated activity" (關乎...受規管活動的任何事宜) and replacing it with "a regulated activity" (受規管活動) given that the scope of the latter phrase was more well-defined. 	<p>The Administration to take action as per paragraph 2(b) of the minutes</p>
002808 – 003813	Mr SIN Chung-kai Administration	<p><i>64L. Restrictions in relation to licensed technical representatives (agent)</i></p> <p><i>64M. Restrictions in relation to licensed technical representatives (broker)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr SIN asked if an authorized insurer established two subsidiaries providing insurance intermediary services for two different types of insurance business, whether an employee of one subsidiary could represent the other subsidiary in business if he/she had the relevant qualifications.</p> <p>The Administration replied in the negative and pointed out that the proposed new section 64L(1) of ICO would prevent a person from being a licensed technical representative (agent) of more than one insurance agency.</p>	
003814 – 004246	Mr SIN Chung-kai Administration Chairman	<p><i>64N. Contracts of insurance made through persons other than licensed insurance intermediaries, etc.</i></p> <p>In response to members' enquires on subsections (3) and (4) of the proposed new section 64N of ICO, the Administration advised that if an authorized insurer entered into an insurance contract with a policy holder through an unlicensed insurance intermediary, the policy holder could decide whether the insurance contract concerned should continue to be enforceable against the authorized insurer or be void. If a policy holder chose to void the policy, he/she was entitled to recover the premium paid for the policy.</p> <p>The Chairman remarked that the independent Insurance Authority ("IIA")'s guidelines should set out such arrangements clearly.</p>	
004247 – 004837	Administration Mr SIN Chung-kai Chairman	<p><i>Division 3—Licensing</i></p> <p><i>Subdivision 1—Register and Maintenance of Register</i></p> <p><i>64O. Register of licensed insurance intermediaries</i></p> <p>In response to the Chairman's enquiries, the Administration advised that:</p> <p>(a) the Office of the Privacy Commissioner for Personal Data had been consulted on the information to be covered in the register of licensed insurance intermediaries ("the Register") under the proposed new section</p>	

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		<p>64O of ICO; and</p> <p>(b) the public could access the Register free of charge on the Internet and could print or download the online version.</p> <p>Responding to Mr SIN's enquiry, the Administration confirmed that the public could obtain a copy of the relevant entry in the Register for the purposes set out in the proposed new section 64O(4) by paying a fee, and the copy would cover all information relating to the entry set out in the new section 64O(1).</p>	
004838 – 005759	Ms Cyd HO Mr SIN Chung Kai Administration Chairman	<p><i>64P. Duty to notify Authority of change in particulars</i></p> <p>In response to Ms HO's enquiries, the Administration advised that:</p> <p>(a) the Register would contain the records of every disciplinary action (including revocation and suspension of licence) taken by IIA against a licensed insurance intermediary or a responsible officer ("RO") in the last five years, and the period of suspension if a suspension was involved; and</p> <p>(b) IIA would update the Register on a regular basis.</p> <p>In response to Mr SIN's enquiry about the reasons for setting five years in respect of keeping records of disciplinary actions and the relevant period in comparable Ordinances, the Administration advised that:</p> <p>(a) reference had been made to the relevant practices of the existing self-regulatory regime. The same arrangement was also adopted in the regulatory regimes under the Securities and Futures Ordinance (Cap. 571) ("SFO") and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"); and</p> <p>(b) the requirement for banks and authorized insurers to keep business records for seven years was not directly comparable to the</p>	

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		<p>keeping of disciplinary records. Disciplinary records would have an impact on the reputation and reliability of the person concerned.</p> <p>The Chairman remarked that the industry had conveyed to him its concern about the long retention period of disciplinary records in the Register and believed that the Administration had struck a balance between protecting the public's right to know and addressing the industry's concern.</p>	
005800 – 011742	Chairman Administration Ms Cyd HO Deputy Chairman Mr SIN Chung-kai	<p><i>64Q. Duty to notify Authority of appointment</i></p> <p>The proposed new section 64Q of ICO required an authorized insurer, a licensed insurance agency, and a licensed insurance broker company to inform IIA <u>at least one month before</u> their intended appointment of a licensed insurance agency, a licensed individual insurance agent, a licensed technical representative (agent), or a licensed technical representative (broker), as appropriate. The period would allow IIA to vet the appointment. The Chairman, the Deputy Chairman, Mr SIN and Ms HO were concerned that the provisions had not specified the timeframe for IIA in furnishing replies to the parties concerned.</p> <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) the notification period was counted in calendar days; (b) the Working Group on Transition (set up by the Administration with the industry and three Self-Regulatory Organizations ("SROs")) were still discussing the notification periods under the proposed new sections 64Q and 64R; and (c) the timeframe for processing proposed appointments might take longer as currently required by the three SROs as IIA might need to seek information from other regulatory bodies concerned. <p>The Administration was requested to:</p>	The Administration to

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) consider members' suggestions to include in the provisions the timeframe (say, one month) for IIA to complete the vetting process, and the requirement for IIA to inform the parties concerned of the progress should it be unable to complete the vetting by the specified timeframe; or to include IIA's performance pledges in this regard in its guidelines;</p> <p>(b) provide the relevant practices of the existing self-regulatory regime for insurance intermediaries and other relevant financial regulatory regimes; and</p> <p>(c) update members on the progress of its discussion with the industry on the matter.</p>	<p>take action as per paragraph 2(c) of the minutes</p>
<p>011743 – 012139</p>	<p>Administration Ms Cyd HO Chairman</p>	<p><i>64R. Duty to notify Authority of termination of appointment</i></p> <p><i>64S. Application for varying lines of business</i></p> <p>Ms HO and the Chairman enquired about the timeframe for a licensed insurance intermediary to apply for varying its lines of business under the proposed new section 64S of ICO.</p> <p>The Administration advised that the issue was much more complex in nature than the appointments under the proposed new section 64Q, and thus no requirement on the timeframe for notification was specified.</p>	
<p>012140 – 013007</p>	<p>Deputy Chairman Administration Chairman Mr SIN Chung-kai</p>	<p><i>64T. Duty to notify Authority of cessation of carrying on of regulated activities by licensed insurance broker companies</i></p> <p><i>Subdivision 2—First Application</i></p> <p><i>64U. Grant of licence—insurance agency</i></p> <p><i>64V. Validity of insurance agency licence</i></p> <p>On the Deputy Chairman's enquiry about IIA's process in vetting applications under the new regulatory regime, the Administration advised that similar to the existing practice of the self-regulatory regime, IIA would examine whether an applicant was a fit and proper person</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>having regard to his/her education background and work experience, records of disciplinary actions, and financial status. The application requirements would be similar under the new regulatory regime.</p> <p>The Chairman enquired whether IIA would consider an applicant's disciplinary record in other relevant regulatory regimes. The Administration replied in the affirmative and advised that the same practice was adopted in other financial services regulatory regimes.</p>	
<p>013008 – 013941</p>	<p>Mr SIN Chung-kai Administration Chairman</p>	<p><i>64W. Grant of licence—individual insurance agent</i></p> <p><i>64X. Validity of individual insurance agent licence</i></p> <p><i>64Y. Grant of licence—technical representative (agent)</i></p> <p><i>64Z. Validity of technical representative (agent) licence</i></p> <p><i>64ZA. Grant of licence—insurance broker company</i></p> <p><i>64ZB. Validity of insurance broker company licence</i></p> <p><i>64ZC. Grant of licence—technical representative (broker)</i></p> <p><i>64ZD. Validity of technical representative (broker) licence</i></p> <p><i>64ZE. Approval of responsible officers of licensed insurance agencies</i></p> <p><i>64ZF. Approval of responsible officers of licensed insurance broker companies</i></p> <p><i>64ZG. Authority may impose conditions on granting licence or approval</i></p> <p>Under the proposed new sections 64V, 64X, 64Z, 64ZB and 64ZD of ICO, IIA could grant licences to insurance agencies, individual insurance agents, technical representatives (agent),</p>	<p>The Administration to take action as per paragraph 2(d) of</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>insurance broker companies and technical representatives (broker) with a validity period of three years, or in a particular case, another period determined by IIA. Mr SIN was concerned that the provisions might provide IIA with wide discretion in determining the period of licences. The Administration was requested to:</p> <p>(a) provide information on the usual validity period of registration under the existing self-regulatory regime for insurance intermediaries; and</p> <p>(b) review the provisions having regard to the validity period of intermediary licences granted by the Securities and Futures Commission.</p>	the minutes
013942 – 020234	Mr WONG Yuk-man Administration Chairman Deputy Chairman	<p><i>Subdivision 3—Revocation and Suspension on Non-disciplinary Grounds</i></p> <p><i>64ZH. Licensed insurance agency no longer appointed by authorized insurer</i></p> <p><i>64ZI. Licensed individual insurance agent no longer appointed by authorized insurer</i></p> <p><i>64ZJ. Revocation and suspension of technical representative (agent) licence</i></p> <p><i>64ZK. Revocation and suspension of technical representative (broker) licence</i></p> <p><i>64ZL. Revocation of approval of responsible officer of licensed insurance agency</i></p> <p><i>64ZM. Revocation of approval of responsible officer of licensed insurance broker company</i></p> <p><i>64ZN. Licensed insurance agencies without responsible officers</i></p> <p>The purposes of the proposed new sections 64ZN(1) and 64ZO(1) of ICO were to provide IIA with flexibility in suspending the licences of insurance agencies and insurance broker companies without ROs. The Chairman, the Deputy Chairman and Mr WONG were concerned that the present drafting was unclear and difficult to comprehend. For instance, the</p>	The Administration to take action as per paragraph 2(e) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>term "event" ("指明的事件") in the phrase "The Authority...may suspend the licence ... for a period, or until the occurrence of an event, specified by the Authority" (保監局...可暫時吊銷牌照...或直至保監局指明的事件發生為止) was not well-defined. The Administration was requested to:</p> <p>(a) explain the policy behind these provisions; and</p> <p>(b) consider refining the drafting with reference to similar provisions in SFO and MPFSO, and the Deputy Chairman's suggestion of changing the Chinese text to "在某段時限內符合保監局的要求".</p> <p>The Administration confirmed the Deputy Chairman's understanding that IIA "may" but not "must" suspend the licence of a licensed insurance agency under the proposed new sections 64ZN(1) and 64ZO(1).</p>	
020236 – 020255	Chairman	Date of next meeting	