

立法會
Legislative Council

LC Paper No. CB(1)1197/14-15
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by the Administration)

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Bills Committee on Insurance Companies (Amendment) Bill 2014

**Minutes of the sixteenth meeting on
Friday, 10 April 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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon WONG Kwok-kin, SBS
Hon WONG Yuk-man
Hon KWOK Wai-keung
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

Mr Adrian LAM
Acting 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 meetings

(LC Paper No. CB(1)717/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 24 March 2015

LC Paper No. CB(1)717/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 24 March 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:

Conduct requirements for licensed insurance intermediaries
(under clause 84)

- (a) The proposed new section 89(a) of the Insurance Companies Ordinance (Cap. 41) ("ICO") provided that "when carrying on a regulated activity, a licensed insurance intermediary must act ... in the best interests of the policy holder concerned or the potential policy holder concerned ..." ("the best interests requirement"). Members noted that the industry was mainly concerned about (i) the implications of specifying the best interests requirement in the

legislation, including the possibility of creating new causes of legal action against insurance intermediaries and insurance companies; (ii) the current approach in the Bill which applied the same best interests requirement to insurance brokers and insurance agents despite the different nature and responsibilities expected of the two kinds of intermediaries; and (iii) the best interests requirement might conflict with the agency agreements entered into between insurers and insurance agents. The Administration was requested to:

- (i) provide a written response to the submission of Hong Kong Federation of Insurers on the industry's concern about the proposed new section 89(a), and consider measures to address the concerns with reference to legislation and practices of other jurisdictions; and
- (ii) provide information on the legislation and practices of other jurisdictions in applying the "best interests requirement" to insurance intermediaries for enhancing the protection of policy holders, including the prevailing international standard or practice (if any) in imposing the "best interests requirement" on insurance intermediaries, whether insurance brokers and insurance agents were subject to the same set or different sets of "best interests requirement", and whether the requirement was provided in legislation or guidelines/codes published by the regulators concerned.

Chinese rendition of the term "insurer"

- (b) The Chinese renditions of the terms "insurer" and "licensed insurance broker company" in ICO were "保險人" and "持牌保險經紀公司" respectively. Given that both terms referred to "公司", members were concerned that the Chinese renditions might cause confusion to readers. The Administration was requested to review the terms and consider members' suggestion to change the Chinese rendition of "insurer" from "保險人" to "保險公司".

Chinese rendition of certain accounting-relating terms

- (c) In view of a member's comment that the Chinese renditions used by the Hong Kong Institute of Certified Public Accountants ("HKICPA") for certain accounting-related terms such as "profit and loss account", "income and expenditure account" and "balance sheet" might be different from those in the Bill, the Administration

was requested to liaise with HKICPA and examine the need of aligning the Chinese renditions of the terms concerned.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 14 April 2015, at 4:30 pm and 20 April 2015, at 10:45 am respectively.

4. There being no other business, the meeting ended at 10:26 am.

Council Business Division 1
Legislative Council Secretariat
24 August 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Sixteenth meeting on Friday, 10 April 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000808 – 000944	Chairman	Introductory remarks	
000945 – 001646	Administration Assistant Legal Adviser 7 ("ALA7")	<p>Briefing by the Administration on the paper "Administration's response to issues raised at the meeting on 24 March 2015" [LC Paper No. CB(1)717/14-15(02)]</p> <p>ALA7 remarked that the proposed new section 64ZS(a) of the Insurance Companies Ordinance (Cap. 41)("ICO") would, under the current drafting, cover an agreement, transaction or arrangement entered into or arranged by a licensed insurance intermediary regardless of whether it was relating to its insurance business. She said that members might consider whether the Bill should distinguish the arrangements for insurance-related and non-insurance related agreements, transactions or arrangements.</p> <p>The Administration responded that it would be an offence for an insurance intermediary to continue with its regulated activities after revocation or suspension of its licence. The protection for policy holders might be compromised if the Bill specified that an insurance policy would be void if the licence of the insurance intermediary concerned was revoked or suspended.</p>	
Clause-by-clause examination of the Bill			
001647 – 002347	Administration Deputy Chairman Mr NG Leung-sing Chairman	<p><i>64ZZM. Use of incriminating evidence in proceedings</i></p> <p><i>64ZZN. Offences in relation to destruction of records and documents</i></p> <p><i>64ZZO. Order to pay costs of investigation</i></p> <p>The Administration confirmed the Deputy Chairman's understanding that the proposed new section 64ZZO of ICO would apply only when</p>	

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		<p>the results of an investigation had led to conviction for the relevant offence by the court.</p> <p>Responding to Mr NG's enquires about the principles/criteria for determining the costs under the proposed new section 64ZZO of ICO, the Administration advised that:</p> <p>(a) the court, rather than the independent Insurance Authority ("IIA"), would determine the amount of costs of investigation to be paid by the relevant parties, if any; and</p> <p>(b) it was unlikely that the proposed new section 64ZZO of ICO would increase the litigation fees of the parties concerned.</p>	
002348 – 002802	Mr SIN Chung-kai Administration Chairman	<p><i>Subdivision 2—Magistrate's Warrants</i></p> <p><i>64ZZP. Magistrate's warrants to enter premises, etc.</i></p> <p><i>64ZZQ. Removal of records and documents under section 64ZZP</i></p> <p><i>Subdivision 3—Miscellaneous</i></p> <p><i>64ZZR. Lien claimed on records or documents</i></p> <p>Responding to Mr SIN's enquiry about the meaning of the term "lien" in the proposed new section 64ZZR of ICO, the Administration said that if a person claimed a lien on a record or document, he/she still had interests in the record or document despite the need to produce it to IIA's inspectors or investigators. The Administration also advised that there was no conflict between the proposed new section 64ZZR and section 64ZZP(7) of ICO as the latter only governed the powers of the Police in the disposal of property which came into the possession of IIA during its investigation.</p>	
002803 – 003241	Administration Mr SIN Chung-kai	<p><i>64ZZS. Production of information in information systems, etc.</i></p> <p><i>64ZZT. Inspection of records or documents seized, etc.</i></p>	

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		<p><i>Division 5—Miscellaneous</i></p> <p><u>Clause 72 – Sections 65, 66 and 67 repealed</u></p> <p>Responding to Mr SIN's enquiries about the existing sections 65, 66 and 67 of ICO to be repealed, the Administration advised that:</p> <ul style="list-style-type: none"> (a) the repealed provisions, except those that had become obsolete, would be replaced by new provisions with textual amendments in the Bill; (b) the existing section 67 of ICO (on code of practice) was repealed because under the new regulatory regime, the relevant codes of conduct and guidelines would be made by IIA instead of the existing three Self-Regulatory Organizations ("SROs"); and (c) the three SROs could still issue non-statutory guidelines under the new regulatory regime, which would be complied with by the insurance intermediaries on a voluntary basis. Compliance or non-compliance with such guidelines would not have implication for the licensing status of the insurance intermediaries. 	
003242 004059	Mr SIN Chung-kai Administration Chairman Deputy Chairman	<p><u>Clause 73 – Section 68 amended (insurance agent's relationship with insurer)</u></p> <p><u>Clause 74 – Section 68A added</u></p> <p><i>68A. Validity of agency agreements</i></p> <p><u>Clause 75 – Sections 69 and 70 repealed</u></p> <p><u>Clause 76 – Section 71 substituted</u></p> <p><i>71. Licensed insurance broker company's client monies</i></p> <p><u>Clause 77 – Section 72 amended (appointment of auditor)</u></p> <p>The Chinese renditions of the terms "insurer" and "licensed insurance broker company" in ICO were "保險人" and "持牌保險經紀公司" respectively. Given that both terms referred to "</p>	The Administration to take action as per paragraph 2(b) of

Time Marker	Speaker	Subject(s)	Action Required
		公司", the Deputy Chairman and Mr SIN were concerned that the Chinese renditions might cause confusion to readers. The Administration was requested to review the terms and consider members' suggestion to change the Chinese rendition of "insurer" from "保險人" to "保險公司".	the minutes
004100 – 004244	Administration Mr NG Leung-sing	<p><u>Clause 78 – Section 73 substituted</u></p> <p><i>73. Audit of licensed insurance broker company, etc.</i></p> <p>Mr NG remarked that the Chinese renditions used by the Hong Kong Institute of Certified Public Accountants ("HKICPA") for certain accounting-related terms such as "profit and loss account", "income and expenditure account" and "balance sheet" might be different from those in the Bill.</p> <p>The Administration was requested to liaise with HKICPA and examine the need of aligning the Chinese renditions of the terms concerned.</p>	The Administration to take action as per paragraph 2(c) of the minutes
004245 – 004522	Administration Mr SIN Chung-kai	<p><u>Clause 79 – Section 74 amended (powers of Insurance Authority to require production, etc.)</u></p> <p>Responding to Mr SIN's enquiry, the Administration advised that the phrase "insurance intermediaries" covered both insurance agents and insurance brokers.</p>	
004523 – 005706	Mr SIN Chung-kai Administration Chairman	<p><u>Clause 80 – Section 75 repealed (withdrawal of authorization or approval)</u></p> <p><u>Clause 81 – Section 76 substituted</u></p> <p><i>76. Authority may petition for winding up or bankruptcy of licensed insurance intermediary</i></p> <p><u>Clause 82 – Section 77 repealed (offences)</u></p> <p><u>Clause 83 – Section 78 amended (exemptions)</u></p> <p><u>Clause 84 – Parts XI to XIV added</u></p>	

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		<p><i>Part XI – Disciplinary Actions and Conduct Requirements for Licensed Insurance Intermediaries and Certain Officers</i></p> <p><i>Division 1—Preliminary</i></p> <p><i>79. Interpretation</i></p> <p>Mr SIN's views and enquiries as follows:</p> <ul style="list-style-type: none"> (a) the Administration should explain the scope of "regulated person" in paragraph (d) and (e) in the proposed new section 79(1) of ICO; (b) the scope of the term might be so broad that a person might not be aware that he/she was caught by the definition under the new regulatory regime; and (c) whether staff members of banks engaging in regulated activities needed to obtain licences under the new regulatory regime. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) a licensed insurance agency/broker company was a business entity and had management staff. The purpose of using the term "regulated person" in paragraph (1)(d) and (e) was to include persons concerned in the management of the regulated activities conducted by a licensed insurance agency/broker company so that these persons could be subject to the regulation of the new regulatory regime; (b) the scope of the term was considered appropriate. It was unlikely that the management staff concerned would be unaware of the fact that they were covered by the new regulatory regime; and (c) staff members of banks who engaged in insurance business of the banks and performed the same duties as representatives of licensed intermediaries were required to obtain a licence under the new regulatory regime. 	

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005707 – 010916	Administration Mr SIN Chung-kai Mr YIU Si-wing Deputy Chairman	<p><i>Division 2—Powers of Authority</i></p> <p><i>80. Disciplinary action in respect of regulated persons</i></p> <p><i>81.Procedural requirements in respect of exercise of powers under section 80</i></p> <p>Responding to Mr SIN's enquiry, the Administration said that an aggrieved person could appeal to the Insurance Appeals Tribunal against a disciplinary decision made by IIA.</p> <p>As insurance products sold by travel agents were relatively simple, Mr YIU enquired whether the disciplinary actions applied to travel agents would be the same as those applied to licensed insurance intermediaries.</p> <p>The Administration responded as follows:</p> <p>(a) IIA would exercise its disciplinary powers on all types of insurance intermediaries in a consistent manner; and</p> <p>(b) in deciding the disciplinary actions to be imposed on insurance intermediaries, IIA would consider the nature and severity of the misconduct instead of the types of insurance products sold by the licensees.</p> <p>The Deputy Chairman's enquiries as follows:</p> <p>(a) whether IIA would, in deciding disciplinary actions, make reference to the practices of the existing SROs, including conducting hearings and allowing cross-examination; and</p> <p>(b) whether IIA would consult an Expert Panel before making a disciplinary decision which involved severe sanctions.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed new section 81 of ICO set out the procedural requirements for IIA to exercise its disciplinary powers under the new section 80; and</p>	

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		<p>(b) two of the existing three SROs had incorporated procedures for conducting hearings and cross-examination in their disciplinary proceedings. The Administration maintained an open mind on whether IIA should adopt cross-examination in its disciplinary procedures. IIA could liaise with the industry on the issue and specify the relevant arrangements in its guidelines as necessary. The Working Group on Transition would follow up on the issue.</p>	
010917 – 011807	Administration	<p><i>82. Guidelines for exercise of power to impose pecuniary penalty under section 80</i></p> <p><i>83. General provisions relating to exercise of disciplinary powers</i></p> <p><i>84. Order for payment of pecuniary penalty</i></p> <p><i>Division 3—Consequences of Revocation or Suspension under Division 2</i></p> <p><i>85. Effect of suspension under section 80</i></p> <p><i>86. Revocation or suspension of licence does not avoid or affect agreement, etc.</i></p> <p><i>87. Requirement to transfer records on revocation or suspension of licence</i></p> <p><i>88. Permission to carry on business operations on revocation or suspension of licence</i></p>	
011808 – 013300	Deputy Chairman Chairman Administration Ms Cyd HO	<p><i>Division 4—Conduct Requirements, etc.</i></p> <p><i>89. Conduct requirements for licensed insurance intermediaries</i></p> <p>The Deputy Chairman tabled a submission prepared by the Hong Kong Federation of Insurers ("HKFI") relaying the industry's concern about specifying conduct requirements in the proposed new section 89 of ICO, especially the "best interests requirement" in subsection (a).</p> <p>Members noted that the industry was mainly concerned about (i) the implications of specifying conduct requirements in the legislation, including the possibility of creating new causes of legal</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>action against insurance intermediaries and insurance companies; (ii) the current approach in the Bill applying the same best interests requirement to insurance brokers and insurance agents despite the different nature and responsibilities expected of the two kinds of intermediaries; and (iii) the "best interests requirement" might conflict with the agency agreements entered into between insurers and insurance agents.</p> <p>The Administration was requested to provide a written response to HKFI's submission, and consider measures to address the concerns of members and the industry with reference to legislation and practices of other jurisdictions.</p> <p>The Administration also responded as follows:</p> <p>(a) an important objective of both the existing self-regulatory regime and the new regulatory regime was to protect the interests of policy holders. The conduct requirements for insurance intermediaries would strengthen public's confidence in the insurance industry, and hence promote healthy development of the industry;</p> <p>(b) the Bill had specified the broad and general principles as enshrined in the conduct requirements. IIA would make subsidiary legislation and develop non-statutory guidelines/codes on the details of the requirements to facilitate compliance by insurance intermediaries;</p> <p>(c) an insurance policy was a complex contract between an insurer and a policy holder. It was necessary to protect policy holders due to the problems of information asymmetry and possible conflict of interests. The conduct requirements set out in the proposed new section 89 of ICO were in line with the requirements included in the relevant Insurance Core Principles ("ICPs") of the International Association of Insurance Supervisors ("IAIS"); and</p> <p>(d) the Administration had reservation on the industry's suggestion of removing the</p>	<p>The Administration to take action as per paragraph 2(a)(i) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>provision on conduct requirements from the Bill but would continue to work with the industry to develop clear guidelines and resolve issues of mutual concern.</p> <p>The Deputy Chairman's views that:</p> <p>(a) the industry did not dispute the need to enhance protection of the interests of policy holders but considered that a proper balance should be struck between this objective and maintaining viability and sustainable development of the industry; and</p> <p>(b) some LegCo Members, including Hon Dennis KWOK, shared the industry's views that the "best interests requirement" in the proposed new section 89(a) of ICO should be reviewed having regard to HKFI's submission.</p>	
013301 – 015330	Mr SIN Chung-kai Mr Alan LEONG Administration Deputy Chairman	<p>Given that the roles of insurance agents and insurance brokers were different in nature, Mr SIN enquired whether comparable legislation of other jurisdictions also applied the same conduct requirements to insurance agents and insurance brokers. He opined that the Bill should be on par with the prevailing international standards.</p> <p>Mr LEONG agreed that the proposed "best interests requirement" would enhance protection of policy holders' interests. He however shared members' concern about applying the same set of conduct requirements to insurance agents and insurance brokers. He considered that the Administration should address the concerns of the industry, including whether the proposed new section 89 of ICO would give rise to new causes of legal action.</p> <p>The Deputy Chairman concurred that insurance agents and insurance brokers should not be subject to the same set of conduct requirements.</p> <p>At the request of Mr SIN and Mr LEONG, the Administration was required to provide information on the legislation and practices of other jurisdictions in applying the "best interests requirement" to insurance intermediaries for enhancing protection of policy holders, including the prevailing international standard or practice</p>	The Administration to take action as per paragraph 2(a)(ii) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>(if any) in imposing the "best interests requirement" on insurance intermediaries, whether insurance brokers and insurance agents were subject to the same set or different sets of "best interests requirement", and whether the requirement was provided in legislation or guidelines/codes published by the regulators concerned.</p> <p>The Administration responded as follows:</p> <p>(a) reference had been made to the regulatory regime for intermediaries under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) in drafting the provision on conduct requirements in the Bill. The Mandatory Provident Fund Schemes Authority had issued guidelines for the industry to illustrate the implementation details;</p> <p>(b) the Administration had made reference to practices of other jurisdictions and the prevailing international standards (including those adopted by G20, IAIS and the European Union) in drafting the Bill. Different practices were adopted by different jurisdictions. For instance, in Australia, the Australian Corporations Act 2001 had specified the "best interests requirement", yet there had not been any cases whereby the requirement was used as a cause of legal action. Canada and the UK adopted different approaches to regulate the conduct of insurance agents and insurance brokers and the best interests requirements were set out in non-statutory guidelines; and</p> <p>(c) the Administration would continue to liaise with the industry in allaying its concerns.</p>	
015331 – 015659	Chairman Deputy Chairman	<p>The Chairman remarked that insurance agents should be subject to the regulation of the new regulatory regime and considered it appropriate to include the "best interests requirement" in the Bill. He pointed out that there were complaints against insurance intermediaries acting without regard to the interests of policy holders but agreed that a proper balance should be struck between addressing the industry's concern and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		protecting the interests of policy holders. The Deputy Chairman opined that though there were complaints against insurance intermediaries, the number was not significant noting the fact that over one million insurance policies were sold annually. He said that the industry accepted other general principles of conduct requirements such as acting prudently.	
015700 – 015733	Chairman	Dates of next two meetings	

Council Business Division 1
Legislative Council Secretariat
24 August 2015