

立法會
Legislative Council

LC Paper No. CB(1)1198/14-15
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by the Administration)

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Bills Committee on Insurance Companies (Amendment) Bill 2014

**Minutes of the seventeenth meeting on
Tuesday, 14 April 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon James TO Kun-sun
Hon WONG Kwok-kin, SBS
Hon Steven HO Chun-yin
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)729/14-15(01) — Letter dated 31 March 2015 from
Legal Service Division to the
Administration

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:

Costs to be awarded by the Insurance Appeals Tribunal ("IAT") (under clause 84)

- (a) The proposed new section 104 of the Insurance Companies Ordinance (Cap. 41) ("ICO") provided that IAT might award costs to a party to a review but did not specify how such costs were to be paid. In the light of comment by the Legal Adviser to the Bills Committee that section 206(2) of the Securities and Futures Ordinance (Cap. 571) ("SFO"), which was similar to the new section 104 of ICO, provided that "Any costs awarded under this section are a charge on the general revenue.", the Administration was requested to review the new section 104 and consider adopting the provision in section 260(2) of SFO.

Appellate mechanism for reviewing IAT's decisions (under clause 84)

- (b) Members noted that notwithstanding the provision in the proposed new section 113 of ICO, under the common law a party might appeal to the Court of Final Appeal on a judgment of the Court of Appeal in respect of an IAT's review of a specified decision made by the independent Insurance Authority ("IIA"). The

Administration was requested to provide details of the relevant cases concerned.

Appointment of members and proceedings of IAT (the proposed new Schedule 10 to ICO added by clause 94)

- (c) *Arrangements for an IAT's review in progress if the chairperson or an ordinary member of the IAT resigned*

The proposed new Schedule 10 to ICO contained provisions relating to appointment of members and procedures of IAT. There were no provisions on the arrangements for a review in progress when the chairperson or an ordinary member of the IAT resigned from office, including the Chief Executive would appoint a new chairperson, the Secretary for Financial Services and the Treasury would appoint a new ordinary member, and a new IAT would be formed to review the relevant specified decision of IIA afresh. The Administration was requested to consider specifying the aforementioned arrangements in the Bill, including whether such arrangements should be set out in the principal provisions or in the new Schedule 10.

- (d) *Discretion of an IAT in determining whether a sitting should be held in private*

Section 5(6) of the proposed new Schedule 10 to ICO provided that an IAT might determine "on its own initiative or on the application of any party to the review ... that in the interests of justice a sitting, or a part of the sitting, must be held in private." Members were concerned that the provision might give an IAT wide discretion to hold a sitting in private, and suggested that the provision should include criteria that the IAT should take into account in making the decision on holding a sitting in private. The Administration was requested to address members' concern.

- (e) *Provisions for the operation of IAT*

The proposed new Part XII of ICO provides for IAT while the proposed new Schedule 10 to ICO contained provisions concerning appointment of members and procedures of an IAT. In response to a member's enquiries, the Administration was requested to explain: (i) the reasons for setting out the procedures of an IAT in the new Schedule 10 instead of in the new Part XII; and (ii) the mechanism for amending the new Schedule 10.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 20 April 2015, at 10:45 am and 7 May 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
24 August 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Seventeenth meeting on Tuesday, 14 April 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000149 – 000520	Chairman	The Chairman remarked that the Legal Adviser to the Bills Committee ("ALA7") had sent a letter to the Administration on certain legal and drafting issues relating to the Bill on 31 March 2015 [LC Paper No. CB(1)729/14-15(01)]. The Administration was requested to provide a written response to the letter in due course, and ALA7 could raise her concerns when the Bills Committee discussed the relevant clauses.	
Clause-by-clause examination of the Bill			
000521 – 000917	Administration Mr SIN Chung-kai	<p><i>90. Conduct requirements for licensed insurance agencies and their responsible officers</i></p> <p>Mr SIN enquired about the difference between a licensed insurance agency and a licensed technical representative (agent).</p> <p>The Administration advised that:</p> <p>(a) an insurance agent might be a company (in the form of a partnership, sole proprietorship, or corporate entity) like a bank, or an individual like a tied agent. Under the new regulatory regime, a tied agent would be licensed as an individual insurance agent whereas an insurance agency's employee carrying on regulated activities would be licensed as a technical representative (agent); and</p> <p>(b) all employees of a licensed insurance agency engaging in regulated activities had to be licensed under the new regulatory regime.</p>	
000918 – 001930	Administration Mr SIN Chung-kai Mr NG Leung-sing	<p><i>91. Conduct requirements for licensed insurance broker companies and their responsible officers</i></p> <p><i>92. Rules on conduct requirements for licensed insurance intermediaries</i></p> <p>Mr NG enquired whether IIA would issue guidelines on rules to be made under the</p>	

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		<p>proposed new section 92(2)(a) of Insurance Companies Ordinance (Cap. 41)("ICO") concerning prohibition on the use of misleading advertisement by a licensed insurance intermediary.</p> <p>The Administration responded that all rules prescribed under the proposed new section 92 of ICO would be subsidiary legislation and IIA would be required under the proposed new section 130 of ICO to publish draft rules for public consultation. IIA would issue guidelines on the implementation details of the rules when necessary.</p> <p>Mr SIN's views and enquiries as follows:</p> <ul style="list-style-type: none"> (a) the Administration should illustrate by examples the rule to be made under the proposed new section 92(2)(h) of ICO which required "a licensed insurance intermediary not to effect a transaction in specified circumstances"; (b) whether the new regulatory regime would continue to require audio recording for the sale of insurance products; (c) whether IIA would regulate the malpractice of insurance intermediaries which printed important information in documents in very small font size; and (d) whether IIA could regulate the sale of insurance products through the Internet. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) under the existing self-regulatory regime, the Hong Kong Federation of Insurers ("HKFI") had issued guidelines specifying that transactions should not be effected under certain situations. For instance, a policy should not be effected without the signature of the policy holder concerned. The proposed new section 92(2)(h) of ICO would cover similar issues; (b) the proposed new section 92(2)(d) of ICO required a licensed insurance intermediary to take specified steps before providing 	

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		<p>information or advice to its client. This provision could cover the requirement of audio recording during the sale process of insurance products; and</p> <p>(c) insurance intermediaries would be subject to conduct requirements (the proposed new section 89 of ICO) in carrying out regulated activities, including acting honestly and fairly and not misleading their clients. This requirement could deter the deliberate use of small font size in important documents relating to the insurance policy; and</p> <p>(d) under the proposed new section 92 of ICO, IIA could prescribe rules governing the various steps in the sale of insurance products and through various means. This provision could cover regulating the sale of insurance products through the Internet.</p>	
001931 – 004117	Deputy Chairman Administration Chairman Mr SIN Chung-kai	<p><i>92. Rules on conduct requirements for licensed insurance intermediaries</i></p> <p><i>93. Codes of conduct for licensed insurance intermediaries</i></p> <p>The Deputy Chairman's views and enquiries as follows:</p> <p>(a) whether the rule on the disclosure of commission by a licensed insurance intermediary under the proposed new section 92(2)(f) of ICO would apply to Investment-Linked Assurance Schemes ("ILAS") products only; and</p> <p>(b) given that the Office of the Commissioner of Insurance ("OCI") had consulted the industry extensively in formulating the requirement of disclosing commission for ILAS products, IIA should conduct extensive consultation if it considered extending the disclosure requirement to non-ILAS products.</p> <p>The Administration responded as follows:</p> <p>(a) when considering whether to extend the rule on disclosure of commission to other insurance products, IIA would need to have</p>	

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		<p>regard to the prevailing market situations and the nature of the products concerned. The Administration currently had no intention to extend the commission disclosure requirement to non-ILAS products; and</p> <p>(b) IIA was statutorily required to consult the public on new rules under the proposed new section 92 of ICO.</p> <p><i>Consultation of the Expert Panel on IIA's disciplinary decisions</i></p> <p>The Deputy Chairman relayed the industry's request for IIA to consult the Expert Panel before making significant disciplinary decisions, and for IIA to explain the reasons if it did not take on board the views of the Expert Panel.</p> <p>Mr SIN asked whether there were provisions in the Bill requiring IIA to consult the Expert Panel before making its disciplinary decisions. He considered it important for IIA to make disciplinary decisions independently and in an impartial manner. If IIA was required to consult the Expert Panel, the requirement should be explicitly provided in the Bill.</p> <p>The Administration responded as follows:</p> <p>(a) consultation with the Expert Panel was not a statutory requirement in IIA's disciplinary procedures. IIA would be an independent regulator. Before making its disciplinary decision, IIA should have already conducted a thorough investigation into the case concerned;</p> <p>(b) the proposal for IIA to consult the Expert Panel as and when necessary was to address the industry's concern raised during the 2012 consultation that IIA might not possess the necessary knowledge and expertise on some complex insurance contracts. As such, consultation with the Expert Panel could enable IIA to fill its knowledge gap. The Administration considered it inappropriate to specify in the Bill the circumstances under which IIA would consult the Expert Panel as such consultation should be on a need basis</p>	

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		<p>and the circumstances to be specified could not be exhaustive. The severity of an IIA's disciplinary decision was not an appropriate criterion for determining whether IIA should consult the Expert Panel; and</p> <p>(c) IIA would not disclose the identities of the parties involved during the consultation process with the Expert Panel.</p> <p>The Deputy Chairman clarified that the role of the Expert Panel was only to give advice on a disciplinary case concerned, and would not dictate IIA's disciplinary decisions. Consultation with the Expert Panel would allay industry's concern, and hence could reduce the chance of the insurance intermediary making an appeal to the Insurance Appeals Tribunal ("IAT") of which the proceedings could involve huge litigation costs. He remarked that the issue was among the various outstanding issues to be pursued by the industry with the Administration.</p>	
004118 – 004534	Administration Mr SIN Chung-kai Mr NG Leung-sing Deputy Chairman	<p><i>Part XII – Insurance Appeals Tribunal</i></p> <p><i>94. Interpretation</i></p> <p><i>95. Establishment of Tribunal</i></p> <p><i>96. Composition of Tribunal</i></p> <p>In response to enquiries by Mr SIN and Mr NG, the Administration replied as follows:</p> <p>(a) more than one IAT could operate concurrently;</p> <p>(b) the fees for the chairperson and members of an IAT would be paid by the Government and IAT would be a quasi-judicial body independent of IIA.</p>	
004535 – 005316	Administration Mr WONG Yuk-man	<p><i>97. Schedule 10 has effect in relation to Tribunal</i></p> <p><i>98. Applications for review of specified decisions</i></p> <p><i>99. Determination of review by Tribunal</i></p> <p>Mr WONG's comment that the Chinese text of the proposed new section 99(2) of ICO was clumsy.</p>	

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		<p>The Administration explained that the reference "指明決定" in the provision was a defined term and should not be removed arbitrarily, and it had reservation on the suggestion to remove an object after the phrase "取代".</p> <p>In the light of Mr WONG's comment, the Administration agreed to consider adding the word "或" between "更改" and "取代" in the first sentence of the Chinese text of the proposed new section 99(3) of ICO.</p>	
005317 – 010644	Administration Mr SIN Chung-kai Deputy Chairman ALA7	<p><i>100. Powers of Tribunal</i></p> <p><i>101. Use of incriminating evidence given for the purpose of review</i></p> <p><i>102. Contempt dealt with by Tribunal</i></p> <p><i>103. Privileged information</i></p> <p><i>104. Costs</i></p> <p>Responding to Mr SIN's enquiries regarding the proposed new section 104 of ICO, the Administration advised that:</p> <p>(a) under the proposed new section 104(3) of ICO, IAT had to award costs in accordance with Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) ("Order 62");</p> <p>(b) Order 62 set out the matters that the court had to take into account when it considered awarding costs to the parties concerned. There was no requirement for the court to consider the amount of fees for legal representatives when awarding costs to parties; and</p> <p>(c) the purpose of the new section 104 of ICO was to prevent abuse of the appellate mechanism.</p> <p>The Deputy Chairman relayed the industry's concern that appeals made to IAT might involve huge litigation costs and sought the Administration's view on the industry's suggestion of setting a ceiling on the costs to be awarded by IAT.</p>	

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		<p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) IAT was given the discretion to award costs and the purpose was to prevent abuse of the appellate mechanism. This objective would be compromised if a ceiling was to be imposed on the costs to be awarded by IAT; (b) it was not mandatory for a party to a review to hire legal representatives for the review, and so the cost involved in a review might not be necessarily high; (c) in exercising its discretion to award costs, IAT would take into account relevant factors, including the financial positions of the parties concerned; and (d) the rules of the existing Appeals Tribunal of HKFI also stated that the Tribunal might appoint a counsel to award costs according to the High Court order. <p>ALA7 pointed out that the proposed new section 104 of ICO provided that IAT might award costs to a party to a review but did not specify how such costs were to be paid. In the light of her comment that section 206(2) of the Securities and Futures Ordinance (Cap. 571) ("SFO"), which was similar to the new section 104 of ICO, provided that "Any costs awarded under this section are a charge on the general revenue", the Administration was requested to review the new section 104 and consider adopting the provision in section 260(2) of SFO.</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes</p>
<p>010645 – 010944</p>	<p>Mr NG Leung-sing Administration Chairman</p>	<p><i>105. Notification of Tribunal determinations</i></p> <p><i>106. Form and proof of orders of Tribunal.</i></p> <p><i>107. Orders of Tribunal may be registered in Court of First Instance</i></p> <p><i>108. Application for stay of execution of specified decisions</i></p> <p><i>109. Applications for stay of execution of determinations of Tribunal</i></p> <p>Responding to Mr NG's enquiry, the Administration advised that if IAT granted a stay</p>	

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		of execution of an IIA's specified decision, the chairperson of IAT could determine the duration of the stay.	
010945 – 012132	Administration Mr WONG Yuk-man Chairman Mr Paul TSE	<p><i>110. Appeal to Court of Appeal</i></p> <p>Discussion on the use of "該方" in the Chinese text of the proposed new section 110(1) of ICO.</p> <p>In response to Mr TSE's enquiries, the Administration advised that:</p> <p>(a) the proposed new section 110(1)(a) to 110(1)(c) of ICO provided that an appeal to the Court of Appeal could be made on a question of law or a question of fact, or both;</p> <p>(b) the Court of Appeal usually handled appeals relating to a question of law. However, an appeal on the determination of an IAT's review might also relate to a question of fact or a question of mixed law and fact; and</p> <p>(c) the drafting of the proposed new section 110(1)(a) to 110(1)(c) of ICO was consistent with the relevant provisions in SFO and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO").</p>	
012133 – 012358	Administration Mr SIN Chung-kai Chairman	<p><i>111. Powers of Court of Appeal</i></p> <p><i>112. No stay of execution of Tribunal's determination on appeal</i></p> <p>Responding to Mr SIN's enquiry, the Administration advised that the Court of Appeal would not order any stay of execution of IAT's determination unless it had granted a leave to appeal.</p>	
012359 – 012920	Administration Mr SIN Chung-kai Chairman Mr Paul TSE	<p><i>113. No other right of appeal</i></p> <p>Mr TSE's concern that the proposed new section 113 of ICO might prevent further appeal to the Court of Final Appeal.</p> <p>The Administration explained that notwithstanding the proposed new section 113 of ICO, under common law, a party might appeal to</p>	

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		<p>the Court of Final Appeal on a judgment of the Court of Appeal in respect of an IAT's review of a specified decision made by IIA.</p> <p>At Mr TSE's request, the Administration was required to provide details of the relevant cases concerned.</p> <p>The Administration advised that a party could apply for leave to appeal to the Court of Final Appeal (instead of the Court of Appeal) direct on IAT's determination on a review. However, it was unlikely that the Court of Final Appeal would grant a leave for such a "leapfrog" appeal under normal circumstances.</p>	<p>The Administration to take action as per paragraph 2(b) of the minutes</p>
<p>012921 – 014701</p>	<p>Administration Mr SIN Chung-kai Mr Paul TSE Chairman ALA7</p>	<p><i>114. Time when specified decisions take effect</i></p> <p><i>115. Power of Chief Justice to make rules</i></p> <p><i>Schedule 9 Specified Decisions (added by clause 94)</i></p> <p><i>Schedule 10 Appointment of Members and Proceedings of Tribunal, etc. (added by clause 94)</i></p> <p>Responding to Mr SIN's enquiry about the arrangements for an IAT's review in progress when the chairperson or an ordinary member of the IAT resigned from office, the Administration advised that:</p> <p>(a) the Chief Executive ("CE") would appoint a new chairperson;</p> <p>(b) the Secretary for Financial Services and the Treasury would appoint a new ordinary member; and</p> <p>(c) a new IAT would be formed to review the relevant specified decision of IIA afresh.</p> <p>As the Bill did not include any provisions on the aforementioned arrangements, the Administration was requested to consider specifying such arrangements in the Bill, including whether such arrangements should be set out in the principal provisions or in the new Schedule 10.</p>	<p>The Administration to take action as per paragraph 2(c) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Noting that reference had been made to the relevant Schedule in SFO in formulating the proposed new Schedule 10 to ICO, Mr SIN remarked that if amendments were to be introduced to the new Schedule 10 in the Bill, the Administration might need to consider whether similar amendments were necessary for the relevant Schedule in SFO in order to maintain consistency.</p> <p>On section 3(7)(b) of the proposed new Schedule 10 to ICO which provided for the power of CE to remove the chairperson of IAT from office on the grounds of "misconduct", Mr SIN expressed concern about the scope of misconduct and asked if the Bill should specify objective criteria in this regard.</p> <p>The Administration advised that the term "misconduct" was not defined in Part XII of the Bill, and the ordinary meaning of the term would be adopted.</p> <p>The Chairman enquired whether the term "misconduct" was also used in other legislation. Mr TSE remarked that the term appeared in a number of legislation and the codes of practice of several professional bodies.</p> <p>Mr TSE and Mr SIN considered that the scope of the term "misconduct" was rather broad.</p> <p>Responding to Mr TSE's enquiry, the Administration advised that section 3(8) of the proposed new Schedule 10 to ICO provided for the extension of the normal term of office of an IAT's chairperson (i.e. three years) for the purpose of completing a review, and the provision should not apply when CE removed an IAT's chairperson from office under section 3(7) of Schedule 10.</p>	
014702 – 020423	Administration Mr Paul TSE Mr SIN Chung-kai Chairman Mr Alan LEONG	<p><i>Schedule 10 Appointment of Members and Proceedings of Tribunal, etc.</i></p> <p>Mr TSE enquired about the Administration's policy for IAT to hold its sitting in private.</p> <p>Mr SIN was concerned that the chairperson of IAT might have wide discretion in deciding whether to hold a sitting in private.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded as follows:</p> <p>(a) the Administration's policy was to provide the chairperson of IAT with discretion in deciding whether a sitting should be held in private. It was envisaged that IAT's sitting would in general be held in public (under section 5(5) of the proposed new Schedule 10) except as provided under section 5(6) of the proposed new Schedule 10 (i.e. IAT, on its own initiative or upon application by any party to a review, determined that a sitting must be held in private). As provided under section 5(6) of the proposed new Schedule 10, the decision to hold a sitting in private should be made in the interests of justice; and</p> <p>(b) the insurance sector was part of Hong Kong's financial market. It might be necessary for an IAT sitting be held in private if the matters involved might affect the financial stability of Hong Kong. The provision would provide operational flexibility to IAT. The chairperson of IAT would determine whether a sitting should be held in private having regard to the circumstances pertaining to a review.</p> <p>Mr LEONG's views and enquiries as follows:</p> <p>(a) section 3(2)(c) of the proposed new Schedule 10 to ICO specified that the chairperson of an IAT must be eligible for appointment as a judge of the High Court. Currently, judges of the High Court also had the discretion to order a sitting to be held in private;</p> <p>(b) the Administration might consider whether the Bill should specify the criteria which the IAT chairperson must take into account when determining whether to hold a sitting in private;</p> <p>(c) the reasons for specifying the matters relating to the appointment of members and proceedings of an IAT in a Schedule instead of the principal provisions of the Bill; and</p> <p>(d) the mechanism for amending the new Schedule 10.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration was requested to address Mr SIN and Mr TSE's concern that section 5(6) of the proposed new Schedule 10 to ICO might give an IAT wide discretion to hold a sitting in private, and consider Mr LEONG's suggestion that the provision should include criteria that the IAT should take into account in making the decision on holding a sitting in private.</p> <p>At Mr LEONG's request, the Administration was also required to explain:</p> <p>(a) the reasons for setting out the procedures of an IAT in the new Schedule 10 to ICO instead of in the new Part XII of ICO; and</p> <p>(b) the mechanism for amending the new Schedule 10.</p>	<p>The Administration to take action as per paragraph 2(d) of the minutes</p> <p>The Administration to take action as per paragraph 2(e) of the minutes</p>
020424 – 020445	Chairman	Dates of next two meetings	