

立法會
Legislative Council

LC Paper No. CB(1)1199/14-15
(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 eighteenth meeting on
Monday, 20 April 2015, at 10:45 am
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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, 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 Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP

Members absent : Hon James TO Kun-sun
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Steven HO Chun-yin
Hon KWOK Wai-keung

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:

Offences relating to misleading statements, etc. and false information (under clause 84)

- (a) The proposed new section 117 of the Insurance Companies Ordinance (Cap. 41) ("ICO") provided for offences relating to provision of misleading statements and false information inducing other persons to enter into insurance contracts, or in documents required under ICO. As there were similar offence provisions in the Trade Descriptions Ordinance (Cap. 362) ("TDO"), the Administration was requested to clarify in respect of an offence relating to provision of misleading statements and false information in the insurance sector:
- (i) whether the relevant offence provisions under TDO or the new section 117 of ICO would apply; and
 - (ii) the respective parties responsible for enforcing the relevant offence provisions under ICO and TDO.

Restriction on the use of certain terms and representations associated with insurance business (under clause 84)

- (b) The proposed new section 118 of ICO restricted the use of the terms "insurance" and "assurance" and expressions or characters of the terms in the description or name when a person was carrying on business in or from Hong Kong, unless with written consent of the independent Insurance Authority ("IIA"). Contravention of the provision would be an offence with maximum penalty of \$200,000 and imprisonment for two years. Members had expressed concern about the stringent restriction in the new section 118 which might cover various businesses and sectors. The Administration was requested to:
 - (i) explain the policy objective of the new section 118 and clarify the scope of application, i.e. whether it included business activities of all sectors and not limited to the regulated activities under ICO; and
 - (ii) provide information on relevant cases handled by the Office of the Commissioner of Insurance involving misuse of the above terms and associated expressions or characters.

Offences by bodies corporate and partners (under clause 84)

- (c) The proposed new section 122(4) and (5) of ICO provided that an offence under ICO committed by a body corporate or a partner of a partnership "is presumed to have been committed with the consent or connivance of, or to be attributable to neglect or omission on the part of" any other person, if it had been proved that, at the time the offence was committed, the other person was concerned in the management of the body corporate or the management of the partnership. Some members were concerned that the excessive scope of the provision might create enormous burden on the management of insurers and insurance intermediaries and increase the compliance costs of the insurance industry given that the Bill had already included specific offence provisions against misconduct of the key personnel of insurers and insurance intermediaries (e.g. controllers and responsible officers). On the other hand, some members had stressed the need for the Bill to provide sufficient sanctions against breaches of requirements under ICO and misconduct of insurers and insurance intermediaries. The Administration was requested to:

- (i) explain the policy objectives and considerations in drafting the relevant offence provisions in ICO; and
- (ii) examine the need of amending the provisions having regard to members' views.

Use of "lay prosecutors" by IIA (under clause 84)

- (d) The proposed new section 124(3) of ICO allowed an employee of IIA who was not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159) to act as the prosecutor (i.e. "lay prosecutors") when IIA prosecuted an offence summarily in its own name. Some members were concerned that this arrangement was not in line with the Government policy to phase out lay prosecutors, and might undermine the professional standard of IIA's prosecution work. The Administration was requested to:
 - (i) explain the considerations for providing the new section 124(3);
 - (ii) consider measures (e.g. requiring IIA to assign in-house lawyers to take up its prosecution work) to address members' concerns; and
 - (iii) consider deleting the new section 124(3).

Status of IIA's codes and guidelines in court proceedings (under clause 84)

- (e) Under the proposed new section 131(4) and (5) of ICO, if a person failed to comply with the provisions set out in IIA's codes or guidelines, it did not render the person liable to any judicial or other proceedings. However, such codes or guidelines were admissible in evidence. Some members considered that the purposes and operation of the new section 131(4) and (5) were unclear, and the new section 131(5) might have the effect of shifting the burden of proof from the prosecution to the defendant. The Administration was requested to:
 - (i) elaborate the purposes of the new section 131(4) and (5), and explain the operation of the provisions, including how the court was expected to take into account the compliance or non-compliance of the relevant codes and guidelines if it

was of the opinion that the codes and guidelines were relevant to a question arising in the proceedings; and

- (ii) clarify whether the new section 131(5) would have the effect of shifting the burden of proof from the prosecution to the defendant. In other words, non-compliance with IIA's codes and guidelines would become evidence for any proceedings under ICO before a court, thus it was necessary for the defendant to prove that he/she had not breached the codes and guidelines.

Drafting issue

- (f) A member had observed that the expression "大律師" was used in the Chinese text of the proposed new sections 121(1)(a) and 124(3) of ICO, whereas the expressions "counsel" and "barrister" were used in the English text of the two provisions respectively. The member suggested that the expression "barrister" should be adopted for the English text of the Bill as it was the official term used by the Hong Kong Bar Association. The Administration was requested to consider the member's suggestion and review the relevant provisions in the Bill to maintain consistency in the use of the expression.

II Any other business

Date of next meeting

- 3. The Chairman reminded members that the next two meetings would be held on 7 May 2015, at 8:30 am and 11 May 2015, at 10:45 am respectively.
- 4. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
24 August 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Eighteenth meeting on Monday, 20 April 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

| Time Marker | Speaker | Subject(s) | Action Required |
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| 000419 – 000529 | Chairman | Introductory remarks | |
| Clause-by-clause examination of the Bill | | | |
| 000530 – 000844 | Administration Mr NG Leung-sing | <p><i>Part XIII – Miscellaneous</i></p> <p><i>Division 1—Immunity</i></p> <p><i>116. Immunity</i></p> <p>Mr NG enquired whether the English and Chinese text for the expression "an act omitted to be done" ("沒有作出任何行為") in the proposed new section 116(1) of the Insurance Companies Ordinance (Cap. 41) ("ICO") were consistent with each other. The Administration replied in the affirmative.</p> | |
| 000845 – 001149 | Administration Mr YIU Si-wing Chairman | <p><i>Division 2—Other Offences and Supplementary Provisions on Offences</i></p> <p><i>Subdivision 1—Other Offences</i></p> <p><i>117. Misleading statements, etc. and false information</i></p> <p>The proposed new section 117 of ICO provided for offences relating to the provision of misleading statements and false information when inducing other persons to enter into insurance contracts, or in documents required under ICO. Mr YIU noted that there were similar offence provisions in the Trade Descriptions Ordinance (Cap. 362) ("TDO"). At Mr YIU's request, the Administration was required to clarify:</p> <p>(a) whether the relevant offence provisions under TDO or the new section 117 of ICO would apply to an offence relating to the provision of misleading statements and false information in the insurance sector; and</p> | The Administration to take action as per paragraph 2(a) of the minutes |

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| | | (b) the respective parties responsible for enforcing the relevant offence provisions under ICO and TDO. | |
| 001150 - 004535 | Mr Alan LEONG Administration Chairman Ms Cyd HO Mr YIU Si-wing Mr Paul TSE Assistant Legal Adviser 7 ("ALA7") | <p><i>118. Restriction on use of certain terms and representations associated with insurance business</i></p> <p><i>119. Person not to disclose information obtained in the course of inspection, investigation or disciplinary action</i></p> <p><i>120. Notification of cessation of place of business in Hong Kong</i></p> <p>The proposed new section 118 of ICO restricted the use of the terms "insurance" and "assurance" and expressions or characters of the terms in the description or name when a person was carrying on business in or from Hong Kong, unless with written consent of the independent Insurance Authority ("IIA"). Contravention of the provision would be an offence with maximum penalty of \$200,000 and imprisonment for two years.</p> <p>Mr LEONG's views and enquiries as follows:</p> <p>(a) under the proposed new section 118 of ICO, whether a party could, without obtaining IIA's consent, use the terms "insurance" or "assurance" for non-business activities (like using the terms in the title of a song or a film), or for non-insurance related business;</p> <p>(b) whether the terms "regulated activity", "material decision" and "regulated advice" as defined in the proposed new section 3A of ICO could be used in the proposed new section 118 of ICO to clarify the scope of the section; and</p> <p>(c) whether the presentation in the proposed new section 118(1)(b), (c) and (d) of ICO (which set out the individual character of the Chinese expression "保險" or individual letters of the terms "insurance" and "assurance" for the purposes of prohibiting the use of the words or words associated with the individual letters) was present in other legislation.</p> | |

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| | | <p>Ms HO's enquiries and views as follows:</p> <ul style="list-style-type: none"> (a) whether a company could use the terms "insurance" and "assurance" in its company name; (b) whether the Companies Registry ("CR") was aware of the restrictions imposed under the proposed new section 118 of ICO and would alert registrants of companies to such restrictions; (c) details of the misuse of the terms "insurance" and "assurance" and "保險" by entities handled by the Office of the Commissioner of Insurance ("OCI") before. <p>The Chairman enquired whether any prosecution had been made on the misuse of the terms and Chinese expression above before.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) the proposed new section 118 of ICO applied to an entity carrying on business in or from Hong Kong only. The use of the terms "insurance" and "assurance" and "保險" in non-business activities, such as using the terms in the title of a song or a film, would be allowed; (b) the proposed new section 118(1)(b), (c) and (d) of ICO mirrored the existing section 56A, which was present in ICO since its enactment in 1983; (c) the policy objective of the proposed new section 118 of ICO was to prevent an unlicensed entity from misleading the public to believe that it was an authorized insurer or a licensed insurance intermediary. The provision applied to all kinds of business activities regardless of whether the activities were related to insurance or not. A company must obtain the prior written consent of IIA before it could use the terms "insurance" and "assurance" or "保險" in its company name; (d) CR would not draw the attention of registrants to the restrictions imposed under the proposed | |

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| | | <p>new section 118 of ICO. "Ignorance of the law" should not be an excuse for breaking the law; and</p> <p>(e) there were cases on the misuse of the terms "insurance" and "assurance" and OCI had investigated into the cases. OCI would forward a case to the Police for follow-up if necessary, and the Department of Justices ("DoJ") would decide whether to institute prosecution; and</p> <p>(f) the terms "regulated activity", "material decision" and "regulated advice" used in the proposed new section 3A of ICO applied to insurance intermediaries. The proposed new section 118 of ICO would cover all entities as it was not limited to insurance intermediaries.</p> <p>Mr YIU's enquiries and views as follows:</p> <p>(a) whether a company which manufactured safes or sold safes ("保險箱") would be allowed to use the expression "保險" in the Chinese name of the company under the proposed new section 118 of ICO; and</p> <p>(b) the company referred in (a) above might not be aware of the restrictions imposed under the proposed new section 118 of ICO, and hence would not apply for IIA's consent for using the term "保險" in its company name.</p> <p>The Administration responded as follows:</p> <p>(a) OCI had not come across any cases where companies, which were not in the insurance sector, had used the Chinese expression "保險" in their company names; and</p> <p>(b) it was believed that IIA would consider the circumstances of each individual case in considering whether to take enforcement action under the proposed new section 118 of ICO.</p> <p>Mr TSE considered the requirements and sanctions imposed under the proposed new section 118 of ICO onerous and enquired about precedent cases handled by OCI.</p> | |

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| | | <p>In the light of members' concern about the stringent restriction in the proposed new section 118 of ICO which might cover various businesses and sectors, the Administration was requested to:</p> <p>(a) explain the policy objective of the new section 118 and clarify the scope of application, i.e. whether it included business activities of all sectors and not limited to the regulated activities under ICO; and</p> <p>(b) provide information on relevant cases handled by OCI involving misuse of the terms and associated expressions or characters set out in the new section 118.</p> <p><i>Subdivision 2—Supplementary Provisions of Offences</i></p> <p><i>121. Exceptions to sections 64G and 118</i></p> <p>The Administration remarked that it would move a Committee Stage amendment to extend the coverage of exceptions under the proposed new section 121 of ICO having regard to the views of the industry.</p> <p>ALA7 enquired whether amendments made by the Financial Secretary ("FS") under the proposed new section 121(5) of ICO (on exceptions to sections 64G and 118 of ICO) were subsidiary legislation. She said that members might consider whether it was appropriate for the amendments to be made in the form of subsidiary legislation given that the issues involved might have important consequences.</p> <p>The Administration confirmed that amendments made by FS under the proposed new section 121(5) of ICO were subsidiary legislation and pointed out that IIA was statutorily required to consult the public when formulating the relevant subsidiary legislation.</p> | <p>The Administration to take action as per paragraph 2(b) of the minutes</p> |
| 004536 – 011454 | <p>Mr SIN Chung-kai Deputy Chairman Administration Mr Paul TSE Mr NG Leung-sing Mr WONG Yuk-man</p> | <p><i>122. Offences by bodies corporate and partners</i></p> <p>The proposed new section 122(4) and (5) of ICO provided that an offence under ICO committed by a body corporate or a partner of a partnership "is presumed to have been committed with the consent or connivance of, or to be attributable to</p> | |

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| | | <p>neglect or omission on the part of" any other person, if it had been proved that, at the time the offence was committed, the other person was concerned in the management of the body corporate or the management of the partnership.</p> <p>The Deputy Chairman was concerned that the extensive scope of the provision might create enormous burden on the management of insurers and insurance intermediaries, thus increasing the compliance costs of the insurance industry. He considered the provision unnecessary given that the Bill had already included specific offence provisions against misconduct of the key personnel of insurers and insurance intermediaries (e.g. controllers and responsible officers ("ROs")). He urged the Administration to strike a proper balance among the interests of various stakeholders in drafting the provision, and consider deleting the provision if similar requirements were not present in other financial regulatory regimes.</p> <p>Mr TSE concurred that the scope of the provision was extensive and might be overly stringent.</p> <p>Mr SIN's views and enquiries as follows:</p> <p>(a) under the regulatory regime for banks, the management staff of banks were required to take proactive measures to prevent the occurrence of misconduct. However, such requirements were not provided in the Bill. Hence, he considered the coverage of the proposed new section 122 of ICO appropriate; and</p> <p>(b) the Bill should provide sufficient sanctions to deter insurers and insurance intermediaries from committing misconduct. The requirements of ICO should also be consistent with those under other relevant legislation including the Securities and Futures Ordinance (Cap. 571) ("SFO") and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPSFO").</p> <p>In the light of members' views above, the Administration was requested to:</p> <p>(a) explain the policy objectives and considerations in drafting the relevant offence</p> | <p>The Administration to take action as per paragraph 2(c) of the minutes</p> |

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| | | <p>provisions in the proposed new section 122 of ICO; and</p> <p>(b) examine the need of amending the provisions (particularly section 122(4) and (5) of ICO).</p> <p>The Administration also responded as follows:</p> <p>(a) positive requirements were imposed on the key personnel (e.g. controllers and ROs) of insurers and insurance intermediaries under the new regulatory regime;</p> <p>(b) provisions similar to the proposed new section 122(4) and (5) of ICO were present in the Lifts and Escalators Ordinance (Cap. 618) ("LEO") and the Competition Ordinance (Cap. 619) ("CO");</p> <p>(c) in drafting the proposed new section 122(4) and (5) of ICO, the Administration had made reference to other relevant legislation including MPFSO, and already struck a proper balance among the relevant stakeholders; and</p> <p>(d) the proposed new section 122 of ICO applied to both insurers and insurance intermediaries and some of them were large companies. The Administration had to ensure that a person in the management of an entity could not evade the liabilities of wrongdoings of the entity which were the result of his/her consent or connivance, or due to his/her negligence or omission, by hiding himself/herself behind the corporate veil.</p> <p>The Deputy Chairman's remarked that LEO and CO, which were not directly relevant to the financial services industry, were not appropriate examples for comparison.</p> <p>Responding to Mr SIN's enquiries, the Administration advised that the phrase "member of the body corporate" in the proposed new section 122(4) of ICO usually referred to shareholders of the body corporate.</p> <p>Responding to Mr WONG's enquiry, the Administration confirmed that the Chinese term " 涉事人 " in the proposed new section 122(4) of</p> | |

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| | | ICO was a defined term covering "a controller, director, manager, company secretary or member of the body corporate or any other person". | |
| 011455 – 012918 | Mr WONG Yuk-man Administration Chairman Mr Dennis KWOK Mr SIN Chung-kai Mr Paul TSE Mr NG Leung-sing | <p><i>123. Time limit for proceedings for offences</i></p> <p>Mr WONG enquired about the rationale for specifying the time limit for proceedings for offences in the proposed new section 123(a) and (b) of ICO to three years and six years respectively.</p> <p>Mr KWOK enquired whether the proposed time limits were decided having regard to the relevant requirements stipulated in the Limitation Ordinance (Cap. 347).</p> <p>Mr SIN was concerned that the proposed time limits might be inadequate as IIA's investigation for some cases might take very long time.</p> <p>Mr TSE enquired if the proposed time limits had taken into account the relatively long time for policy holders to discover offences committed by insurers and/or insurance intermediaries, and the general requirement under the Bill for insurers and insurance intermediaries to keep documents for seven years. He considered the proposed time limits appropriate, and if IIA needed longer time to undertake investigation, it could apply for a holding charge.</p> <p>The Administration responded as follows:</p> <p>(a) under the existing ICO, criminal proceedings for an offence must be commenced within two years after the offence was discovered. Past experience had revealed that investigation for some complex cases had taken more than two years to complete. The Bill therefore proposed to extend the time limits;</p> <p>(b) IIA would initiate the relevant proceedings as soon as practicable. The proposed time limits were consistent with those for offences of similar nature stipulated in other relevant legislation; and</p> <p>(c) as regards complaints lodged by policy holders against their insurers/insurance intermediaries, IIA would not set a time limit</p> | |

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| | | on non-compliance/misconduct suspected to have been committed by the insurers/insurance intermediaries concerned. | |
| 012919 – 014303 | Mr Dennis KWOK Administration Mr Paul TSE Ms Cyd HO Mr WONG Yuk-man Chairman | <p><i>124. Prosecution of offences by Authority</i></p> <p>The proposed new section 124(3) of ICO allowed an employee of IIA who was not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159) to act as the prosecutor (i.e. "lay prosecutors") when IIA prosecuted an offence summarily in its own name. Mr KWOK, Mr TSE and Ms HO were concerned that this arrangement was not in line with the Government policy to phase out lay prosecutors, and might undermine the professional standard of IIA's prosecution work. The Administration was requested to:</p> <ul style="list-style-type: none"> (a) explain the considerations for providing the proposed new section 124(3); (b) consider measures (e.g. requiring IIA to assign in-house lawyers to take up its prosecution work as suggested by Mr KWOK) to address members' concerns; and (c) consider deleting the proposed new section 124(3). <p>Mr TSE declared that he was a legal practitioner. He agreed with members' view above.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) the use of "lay prosecutors" would provide IIA with flexibility in handling relatively straight-forward cases and, hence enhance efficiency in its prosecution work; and (b) the Administration had liaised with the Director of Public Prosecutions ("DPP") on the division of work between DPP and IIA, and agreed that IIA would, upon its establishment, sign a Memorandum of Understanding with DPP setting out the necessary arrangements. <p>Responding to Mr WONG's enquiry, the Administration explained that the purpose of the proposed new section 124(4) of ICO was to</p> | The Administration to take action as per paragraph 2(d) of the minutes |

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| | | reflect the requirement under Article 63 of the Basic Law that "The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference". | |
| 014304 – 015259 | Administration Ms Cyd HO Mr Paul TSE | <p><i>Division 3—Services</i></p> <p><i>125. Service of notices, etc.</i></p> <p><i>Division 4—Regulations and Rules, etc.</i></p> <p><i>126. Chief Executive in Council may make regulations</i></p> <p><i>127. Authority may make rules</i></p> <p>Responding to Ms HO's enquiry about the purpose of the proposed new section 126(3)(c) of ICO, the Administration explained that the industry had set up a number of organizations engaging in underwriting business in the past. While such organizations had run off and would no longer accept new applications for insurance policy, they had to continue to maintain operation to meet their liabilities. The proposed new section 126(3)(c) aimed to give flexibility in IIA's operation so that it could grant fee waivers to such organizations.</p> <p>Mr TSE was concerned whether the sanctions specified in the proposed new section 126(7)(a) of ICO (i.e. an offence convicted on indictment) would be consistent with the new section 124(2) (i.e. the requirement for the crime to be tried before a magistrate summarily).</p> <p>The Administration responded as follows:</p> <p>(a) the penalty specified under the proposed new section 126(7) of ICO was the maximum penalty which had taken into account the circumstances that the offences committed by some large insurers might be serious. The actual penalty would be determined having regard to the circumstances of an individual case; and</p> <p>(b) the proposed new section 124(2) of ICO only applied to prosecutions made in the name of IIA. For more serious cases, the prosecution</p> | |

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| | | <p>would be instituted by DoJ.</p> <p>Responding to Ms HO's enquiry, the Administration advised that rules made by IIA under the proposed new section 127 of ICO would be subsidiary legislation subject to the negative vetting by the Legislative Council.</p> | |
| 015300 – 020444 | Administration Mr Alan LEONG Mr Paul TSE ALA7 | <p><i>128. Relaxation of rules under section 127(1)(a)</i></p> <p><i>129. Rules may limit effect of Ordinance</i></p> <p><i>130. Authority must publish draft rules</i></p> <p><i>131. Codes or guidelines on functions of Authority, etc.</i></p> <p>Under the proposed new section 131(4) and (5) of ICO, if a person failed to comply with the provisions set out in IIA's codes or guidelines, it did not render the person liable to any judicial or other proceedings. However, such codes or guidelines were admissible in evidence. Mr LEONG and Mr TSE considered that the purposes and operation of the new section 131(4) and (5) were unclear, and the new section 131(5) might have the effect of shifting the burden of proof from the prosecution to the defendant. The Administration was requested to:</p> <p>(a) elaborate the purposes of the new section 131(4) and (5), and explain the operation of the provisions, including how the court was expected to take into account the compliance or non-compliance of the relevant codes and guidelines if it was of the opinion that the codes and guidelines were relevant to a question arising in the proceedings; and</p> <p>(b) clarify whether the new section 131(5) would have the effect of shifting the burden of proof from the prosecution to the defendant. In other words, non-compliance with IIA's codes and guidelines would become evidence for any proceedings under ICO before a court, thus it was necessary for the defendant to prove that he/she had not breached the codes and guidelines.</p> <p>The Administration explained that IIA's codes and guidelines were to set out the details of requirements under the new regulatory regime so</p> | The Administration to take action as per paragraph 2(e) of the minutes |

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| | | <p>as to facilitate compliance by the industry. Non-compliance with the provisions in the codes and guidelines would not by itself render a person liable to judicial proceedings, but the codes and guidelines would have evidential value in the proceeding under ICO.</p> <p>In response to Mr LEONG's enquiry, ALA7 remarked that the current drafting of the proposed new section 131(5) of ICO did not seem to have the effect of shifting the burden of proof from the prosecution to the defendant. However, the Administration might consider improving the drafting to clarify its policy intent.</p> <p>Mr TSE observed that the expression "大律師" was used in the Chinese text of the proposed new sections 121(1)(a) and 124(3) of ICO, whereas the expressions "counsel" and "barrister" were used in the English text of the two provisions respectively. He suggested that the expression "barrister" should be adopted for the English text of the Bill as it was the official term used by the Hong Kong Bar Association. The Administration was requested to consider Mr TSE's suggestion and review the relevant provisions in the Bill to maintain consistency in the use of the expression.</p> | <p>The Administration to take action as per paragraph 2(f) of the minutes</p> |
| 020445 – 020520 | Chairman | Dates of next two meetings | |