

立法會
Legislative Council

LC Paper No. CB(1)1279/14-15
(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 twenty-second meeting on
Tuesday, 26 May 2015, at 2:30 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 James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP

Members absent : Hon Starry LEE Wai-king, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP

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

Administration's responses to outstanding issues

LC Paper No. CB(1)877/14-15(01) — List of follow-up actions arising from the discussion at the meeting on 18 May 2015

LC Paper No. CB(1)877/14-15(02) — Administration's response to issues raised at the meeting on 18 May 2015

LC Paper No. CB(1)877/14-15(03) — Summary of outstanding follow-up issues

- LC Paper No. CB(1)877/14-15(05) — Letter dated 22 May 2015 from Legal Service Division to the Administration
- 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)858/14-15(04) — Administration's response to letter dated 31 March 2015 from Assistant Legal Adviser
- LC Paper No. CB(1)824/14-15(06) — Letter dated 5 May 2015 from Legal Service Division to the Administration
- LC Paper No. CB(1)858/14-15(05) — Administration's response to letter dated 5 May 2015 from Assistant Legal Adviser
- LC Paper No. CB(1)858/14-15(03) — Administration's response to issues arising from the meetings and the industry

Consideration of Committee Stage amendments proposed by the Administration

- LC Paper No. CB(1)877/14-15(04) — Draft Committee Stage amendments proposed by the Administration

Other relevant papers

- 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**).

II Any other business

Legislative timetable

2. The Chairman said that subject to the Bills Committee's progress in scrutinizing the Bill, the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 8 July 2015. If so, the Bills Committee would report its deliberations to the House Committee on 19 June 2015 and the deadline for giving notice of amendments to the Bill would be 27 June 2015.

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 2 June 2015 at 2:30 pm. If necessary, the Bills Committee would hold additional meetings on 5 June 2015, at 10:45 am and 9 June 2015, at 4:30 pm.

(Post-meeting note: Members were informed of the details of the additional meetings vide LC Paper No. CB(1)898/14-15 issued on 27 May 2015.)

4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
30 September 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Twenty-second meeting on Tuesday, 26 May 2015, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000704 – 000922	Chairman	Introductory remarks	
000923 – 001659	Administration Assistant Legal Adviser 7 ("ALA7")	<p>Briefing by the Administration on the papers entitled "Administration's response to issues raised at the meeting on 18 May 2015" and "Summary of outstanding follow-up issues". [LC Paper Nos. CB(1)877/14-15(02) and (03)]</p> <p>ALA7 highlighted her observations and views set out in her letter to the Administration dated 22 May 2015 [LC Paper Nos. CB(1)877/14-15(05)].</p> <p>The Administration responded as follows:</p> <p>(a) it noted ALA7's view that the case referred to in footnote 3 of Administration's paper (LC Paper No. CB(1)858/14-15(03)) was not directly relevant to the proposed Committee Stage amendments ("CSAs") to be introduced to the proposed amended section 68 of the Insurance Companies Ordinance (Cap. 41) ("ICO"). The case only served to reflect the development in common law; and</p> <p>(b) on ALA7's enquiry about whether the Administration would consider specifying in the proposed amended section 68 the conduct of an insurance agent which would be regarded as being within or outside the scope of the agent's authority given by the insurer by making reference to section 917A of the Corporations Act 2001 of Australia, the Administration was of the view that it was unnecessary to do so as the agent's authority had been set out in the agency agreement between the insurer and the agent.</p>	
001700 – 014511	Chairman ALA7 Administration Deputy Chairman Mr YIU Si-wing Mr James TO Mr KWOK Wai-keung Mr Alan LEONG	<p>Briefing by the Administration on the paper entitled "Administration's response to outstanding issues arising from the discussions at previous meetings and raised by the industry" (paragraphs 18 to 27) [LC Paper No. CB(1)858/14-15(03)]</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p data-bbox="614 248 1262 315"><u>"Best interests requirement" on licensed insurance intermediaries</u></p> <p data-bbox="614 353 1262 573">The proposed new section 89(a) of ICO imposed requirement on licensed insurance intermediaries that they "must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity" ("the best interests requirement").</p> <p data-bbox="614 611 863 645">ALA7's views that:</p> <p data-bbox="614 683 1262 1048">(a) the proposed new section 89(a) of ICO applied the same "best interests requirement" to insurance agents and insurance brokers. According to the Administration, the independent Insurance Authority ("IIA") would elaborate what constituted "best interests" and take into account the different roles of insurance agents and insurance brokers in drawing up the code of conduct; and</p> <p data-bbox="614 1086 1262 1377">(b) as it was likely that IIA would develop different sets of codes of conduct for insurance agents and insurance brokers respectively, whether it was appropriate to subject insurance agents and insurance brokers to the same "best interests requirement" provision as in the proposed new section 89(a).</p> <p data-bbox="614 1415 1262 1482">The Deputy Chairman's views and enquiries as follows:</p> <p data-bbox="614 1520 1262 1998">(a) he shared ALA7's views. Insurance agents were concerned that as they were appointed by insurers in selling insurance products and needed to act in the interests of their appointing insurers, the "best interests requirement" requiring agents to act in the best interests of their clients would result in conflict and create difficulties for agents. Moreover, agents did not have access to products offered by other insurers. Hence, they could not ensure the products offered by their appointing insurers were the best for their clients;</p> <p data-bbox="614 2036 1262 2103">(b) the industry was concerned that the "best interests requirement" would create a new</p>	

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		<p>statutory cause of action, and that the court would only consider the "best interests requirement" in the proposed new section 89(a) without taking into account IIA's code of conduct; and</p> <p>(c) how the Administration would address concerns about the "best interests requirement" raised in the Insurance Industry Regulatory & Development Concern Group's submission dated 18 May 2015 [LC Paper No. CB(1)866/14-15(01)];</p> <p>Mr YIU expressed concern that without setting out the objective criteria of the "best interests requirement" in the proposed new section 89, the provision might create a new statutory cause of action. He suggested that the Bill should specify the requirement that both the insurance intermediary and the policy holder must understand their rights and responsibilities before entering into an insurance contract.</p> <p>Mr KWOK shared the concern about possible surge in litigation against insurance intermediaries. He stressed the need for the Administration to address the industry's concern, and that IIA should consult frontline practitioners in compiling the code of conduct.</p> <p>Mr LEONG opined that the industry's concern about the "best interests requirement" might create a new statutory cause of action was understandable. Given that insurance agents and insurance brokers belonged to different categories of insurance intermediaries, it might be inappropriate to subject them to the same provision on "best interests requirement". The relevant legislation in Australia had specified the actions of insurance intermediaries in meeting the "best interests requirement" under various scenarios. The Administration might make reference to the Australian practice in refining the relevant provisions in the Bill.</p> <p>Mr TO agreed that the Bill should impose the "best interests requirement" on insurance intermediaries. He opined that as an insurance agent could only sell the insurance products of its/his appointed insurer, the agent would be regarded as having complied with the "best</p>	

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		<p>interests requirements" if the product offered to a client was, among the insurer's products, the best/most suitable for the client.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) the "best interests requirement" was present in the insurance regulatory regime of a number of jurisdictions including Singapore and Australia; (b) the general principles of conduct requirement on insurance intermediaries including the requirement to act in the "best interests" of their clients were set out in the proposed new section 89 of ICO. IIA would draw up relevant code of conduct having regard to the different roles of insurance agents and insurance brokers and consult the stakeholders beforehand. The proposed new section 93(7) of ICO provided that the code of conduct would be admissible in evidence in any proceedings under ICO before a court, and that "if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision" ; (c) the Administration considered the proposed approach appropriate and would prevent setting out the details of the conduct requirement in the principal legislation which might make the Bill unnecessarily complicated. Similar approach was adopted in Australia and Singapore; (d) it was envisaged that IIA's code of conduct would specify that an insurance agent should inform its/his clients that it/he could sell insurance products of its/his appointing insurers only, and in selling the insurance products, the agent should recommend, among the insurer's available insurance products, the best/most suitable products for the clients; (e) to address the industry's concern about the "best interest requirement" creating a new cause of action, the Administration would 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>move a CSA to the proposed new section 89 of ICO to clarify that a breach of the conduct requirements would not on its own render any insurance intermediary or insurer liable to judicial proceedings. The Administration had discussed the proposed CSA with the industry;</p> <p>(f) moreover, the Bill had stipulated that if a provision in an insurance agent's agency agreement with an insurer was in conflict with the interests of policy holders, the provision concerned would be void;</p> <p>(g) the Working Group on Transition ("the Working Group") would continue to discuss issues relating to compliance with the "best interests requirement", and its deliberations would be reflected to IIA for consideration in drawing up the code of conduct; and</p> <p>(h) the Corporations Act 2001 of Australia only set out the general principles on the "best interests requirement" and did not stipulate different arrangements for insurance agents and brokers.</p> <p>In response to Mr LEONG's enquiry about whether the proposed section 93(7) of ICO might have the effect of shifting the burden of proof from the prosecution to the defendant, ALA7 remarked that the current drafting did not seem to have that effect. She pointed out that the Administration had addressed the issue in its response paper to issues raised at the meeting on 20 April 2015 [LC Paper No. CB(1)824/14-15(05)].</p> <p><u>Consultation with the proposed expert panel</u> [paragraph 10 of LC Paper No. CB(1)858/14-15(03)]</p> <p>As the Administration maintained its position that IIA would only consult the proposed expert panel when necessary, the Deputy Chairman enquired how the Administration would alleviate the industry's concern that the relevant staff of IIA might not possess expert knowledge of the industry in making disciplinary decisions.</p>	

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		<p>The Administration responded as follows:</p> <p>(a) IIA would operate in an impartial manner to strengthen public confidence in the insurance industry. It was envisaged that staff of IIA would possess knowledge of and experience in the industry; and</p> <p>(b) IIA would, upon consulting the industry, issue a handbook on the disciplinary proceedings.</p>	
Consideration of Committee Stage amendments proposed by the Administration			
014512 – 015955	Chairman Administration Mr James TO	<p>Briefing by the Administration on the Chinese version of its proposed CSAs to the Bill [LC Paper No. CB(1)877/14-15(04)]</p> <p><u>CSAs to the revised section 2(1) of ICO</u></p> <p>In response to Mr TO's enquiries, the Administration advised that:</p> <p>(a) the proposed CSA would not result in any material change to the definition of the term "controller";</p> <p>(b) the proposed CSAs to the definition of "former auditor" were made to enhance, clarify and align the drafting of the English and Chinese texts; and</p> <p>(c) the proposed CSA to replace the words "損益表" by "損益帳" was to standardize the Chinese rendition of the term "profit and loss accounts" in the Bill.</p>	
015956 – 020350	Chairman Mr James TO	Legislative timetable and date of next meeting	