

Bills Committee on Insurance Companies (Amendment) Bill 2014

Summary of outstanding follow-up issues (as at 21 May 2015)

Item	Issues	Meeting	Action requested on the Administration	Follow-up actions undertaken by the Administration in its response paper	Response by the Administration
1.	Guidelines to be issued by IIA	20 Oct 2014	To provide a memorandum setting out the issues for follow-up by the future IIA in drawing up relevant guidelines. [CB(1)186/14-15(01)]	The Administration would compile a list of issues discussed at the Bills Committee that would need to be followed up by IIA in future. [CB(1)186/14-15(02)]	The list of follow-up issues is at Annex .
2.	Activities performed by employees of insurers to be covered under "regulated activities" (new section 64G)	20 Oct 2014	To discuss with the industry on whether some of the insurance employees' activities should be excluded from the definition of "regulated activity". [CB(1)186/14-15(01)]	The Administration would further discuss with the industry to see how, under the principle that the proposed regulatory regime is activity-based, the Bill could cater for insurers' operational needs, and would report to the Bills Committee the results of the discussion in due course. [CB(1)186/14-15(02)]	Please refer to the paper titled "The Administration's Response to Outstanding Issues Arising from the Discussion at Previous Meetings and Raised by the Industry". [CB(1)858/14-15(03)]
3.	Concern about the possible change in scope of liability of an insurer for the acts of its appointed insurance agents under the new	24 Nov 2014	To follow up with HKFI and report the outcome to the Bills Committee, on HKFI's concern about the scope of liability of an insurer for its appointed insurance agents under the proposed new section 68(1) to (4C).	The Administration has no intention to change the existing scope of liability of an insurer for the acts of an insurance agent appointed by the insurer under ICO. It would follow up with HKFI on their concern and report the outcomes to	Ditto.

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	regulatory regime (new section 68(1) to (4C))		[CB(1)332/14-15(02)]	the Bills Committee. [CB(1)332/14-15(03)]	
4.	Setting out the transitional arrangements for insurance intermediaries in a clearer manner (new Schedule 11)	24 Nov 2014	To report to the Bills Committee on its consideration of HKFI's views in refining the provisions in the new Schedule 11 to ICO to specify more clearly the transitional arrangements for insurers and clarify certain aspects of the transitional arrangement like the arrangements for litigation fees. [CB(1)332/14-15(02)]	The Administration would follow up with HKFI on their proposal related to the transitional arrangements for insurers and report the outcome to the Bills Committee. [CB(1)332/14-15(03)]	<p>The Administration has set up a Working Group on Transition to IIA and the membership of which includes the three Self-regulatory Organizations and insurance intermediaries. The Working Group has held 7 meetings to deal with detailed transitional arrangements. Outcome of deliberation has been posted onto the website of FSTB.</p> <p>The Administration would introduce CSAs -</p> <ul style="list-style-type: none"> ● to new section 41P to clarify that IIA cannot impose disciplinary sanctions on insurers retrospectively; and ● to new Schedule 11 to provide for the treatment

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					of appeals to the Financial Secretary under the Ordinance before the commencement date.
5.	Restrictions of licensed insurance intermediaries to prevent conflict of interests arising from common directorships in insurance intermediaries (new sections 64I, 64J and 64K)	3, 9 Mar 2015	To consider the different views expressed by members on the appropriate level of restrictions. [CB(1)614/14-15(01), CB(1)668/14-15(01)]	The Administration would discuss with the industry to ascertain if the wording of the new sections 64J and 64K need to be refined, and introduce CSAs if necessary. [CB(1)668/14-15(02)]	Please refer to our response to item 2.
6.	The "best interests" conduct requirements for licensed insurance intermediaries (new section 89(a))	10 April 2015	To: (i) provide a written response to the submission of HKFI 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 handling the "best interests" requirement on insurance intermediaries for enhancing	The Administration would respond to issues related to conduct requirements in a separate paper. [CB(1)824/14-15(04)]	Ditto.

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			protection for the interests of policy holders. [CB(1)824/14-15(01)]		
7.	Funding option to IIA	24 Nov 2014	To consider a member's view that part of the start-up funds should be provided by loans from Government to IIA. [CB(1)332/14-15(02)]	The Administration would consider the member's view. [CB(1)332/14-15(03)]	The Administration would consult the Panel on Financial Affairs and seek the Finance Committee's approval of the funding proposal in due course.
8.	Establishment of the PRP (new section 4D)	22 Dec 2014	To consider the written submission from the industry to include provisions in the Bill for the establishment of PRP. [CB(1)423/14-15(01)]	The Administration would consider the written submission from the industry when available and report to the Bills Committee. [CB(1)423/14-15(02)]	The Administration has not received any submission from the industry on the issue. The Administration explained its position at the meeting on 22 December 2014.
9.	Composition of IIA and IACs (new Schedules 1B and 1C)	27 Jan 2015	To provide a written response to the HKFI's written submission, which covered, inter alia, suggestions on the composition of IIA and IACs, issues on which IIA should consult IACs and the industry's representation in IIA and IACs. [CB(1)527/14-15(01)]	The Administration would copy the Bills Committee its response to HKFI's suggestions on the composition of IIA and IACs, issues on which IIA should consult IACs and the industry's representation in IIA and IACs. [CB(1)527/14-15(02)]	The Administration explained its position at the meeting on 27 January 2015. Meeting agenda of the IACs would be subject to the approval of the Chairpersons. We believe that the Chairpersons would duly consider suggestions put up by every single IAC member.

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10.	Licensees' duty to notify IIA of changes in particulars within 14 days (new section 64P)	20 Oct 2014	To discuss with the industry whether licensees would have difficulty in complying with the requirement, and consider relaxing the requirement if necessary. [CB(1)186/14-15(01)]	The Administration would further discuss with the industry on whether there is any genuine difficulty for the licensees to comply with the requirement. [CB(1)186/14-15(02)]	The Administration maintains the position that licensees should be required to notify IIA of changes in particulars within a specified time in order not to compromise IIA's regulatory effectiveness. Nevertheless, the Administration would propose CSAs to amend new section 64P to delete "fax number" from the list of particulars.
11.	Transfer of records on revocation or suspension of licence (new section 64ZT)	20 Oct 2014	To liaise with the industry to ensure smooth implementation of the requirement for protecting the interests of clients. [CB(1)186/14-15(01)]	The Administration would liaise with the industry through the Working Group on Transition to ensure smooth implementation of the requirement under the provision. [CB(1)186/14-15(02)]	The Administration will continue to liaise with the industry through the Working Group on Transition to IIA.
12.	Different penalties for contravention of provisions on authorization of insurers, approval of controllers, directors or key persons in control functions appointed by authorized	12 Jan 2015	To explain the rationale for setting different penalties for the various offences, and examine the need to align the penalties. [CB(1)479/14-15(01)]	The Administration would introduce CSAs to align penalties relating to authorization of insurers, approval of controllers, directors or key persons in control functions appointed by authorized insurers. [CB(1)479/14-15(02), CB(1)593/14-15(02)]	The Administration will propose CSAs accordingly.

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	insurers (new sections 13A(11), 13AB(3), 13AC(11), 13AD(3) and 13AE(11))				
13.	Use of "lay prosecutors" (i.e. a person not qualified to practice as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)) by IIA (new section 124(3))	20 Apr 2015	To consider deleting the new section 124(3) in view of members' concern about the use of "lay prosecutors" by IIA. [CB(1)824/14-15(03)]	In view of members' concerns, the Administration would move a CSA to delete the new section 124(3) on the use of "lay prosecutors" by IIA. [CB(1)824/14-15(05)]	The Administration will propose CSAs accordingly.
14.	Determination of review by IAT on written representations only (new Schedule 10)	9 Dec 2014	To consider HKFI's suggestion that IAT may review the decisions of IIA based on written representations only so as to save time and reduce potential legal costs of the parties concerned. [CB(1)369/14-15(01)]	The Administration would consider including specific provisions that IAT may make a determination on the basis of written submission only. [CB(1)369/14-15(02)]	Please refer to our response to item 2.
15.	Arrangements for an IAT's review in progress if the Chairperson or an ordinary member of IAT	14 Apr 2015	To consider specifying the relevant arrangements in the Bill, including whether the relevant arrangements should be set out in the principal	The Administration would introduce CSAs to clearly stipulate the relevant arrangements. [CB(1)824/14-15(04)]	The Administration will propose CSAs accordingly.

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	resigns (new Schedule 10)		provisions or in the new Schedule 10. [CB(1)824/14-15(02)]		
16.	Drafting issues and textual amendments (including: revised section 2(1), new section 4AA(1)(b) and (5), new section 4D(4), new section 41B(1), new section 41D. new section 64ZZF(1), new section 53C(2))	9, 22 Dec 2014, 27 Jan 2015, 9 Feb and 3 Mar 2015		The Administration would consider the suggestions and introduce CSAs if necessary. [CB(1)369/14-15(02), CB(1)423/14-15(02), CB(1)527/14-15(02), CB(1)593/14-15(02) CB(1)668/14-15(02)	The Administration will propose CSAs accordingly.
17.	Drafting issues raised in letters of ALA7 dated 31 March and 5 May 2015		To consider the views/suggestions on drafting issues. [CB(1)729/14-15(01), CB(1)824/14-15(06)]	--	The Administration issued the respective responses on 15 May 2015. [CB(1)858/14-15(04), CB(1)858/14-15(05)]
18.	Offences by bodies corporate and partners (new section 122)	20 Apr 2015	To examine the need of amendment having regard to members' views on the scope of new section 122(4) and (5). [CB(1)824/14-15(03)]	--	Please refer to our response to item 2.

Abbreviations:

CSA:	Committee Stage Amendment
FSTB:	Financial Services and the Treasury Bureau
HKFI:	The Hong Kong Federation of Insurers
IIA:	independent Insurance Authority
IAT:	Insurance Appeals Tribunal
IAC:	Industry Advisory Committee
ICO	Insurance Companies Ordinance (Cap. 41)
PRP	Process Review Panel
SFO:	Securities and Futures Ordinance (Cap. 571)

(Note: The summary has not included the follow-up for issues arising from the discussion at the meeting on 7 May 2015. The Administration has provided a response paper (CB(1)858/14-15(02)) which was discussed at the meeting on 18 May 2015.

Financial Services and the Treasury Bureau
and
Council Business Division 1
Legislative Council Secretariat
22 May 2015

List of follow-up actions for the independent Insurance Authority (“IIA”)

Matters to be followed up by IIA

- To issue a code of conduct in consultation with the industry. In particular, the code of conduct should –
 - elaborate on the details of “**fit and proper**” and “**misconduct**”; and
 - set out more clearly what is expected of the licensed insurance intermediaries by the regulator regarding “**acting in the best interests of policy holders**”.
- To obtain a **consolidated set of the existing codes and guidelines issued by the three Self-regulatory Organizations (“SROs”)** for reference. When promulgating codes and guidelines, IIA should make reference to them as well as the statutory requirements.
- To make reference to existing relevant guidelines issued by relevant parties including the three SROs and consult the industry when formulating **IIA’s fining guidelines** (under the Bill, IIA must publish a fining guideline before exercising its power to impose a disciplinary fine).
- To explain in the guidelines the **referral activities** that fall outside the definition of regulated activities under the Bill.
- To set out details of **disciplinary proceedings**, including the procedures of conducting **hearing of representation** by IIA.
- To elaborate on the requirements on the **prohibition of a person from involving in insurance intermediary activities concurrently** (i) in an insurance agency and an insurance broker company; or (ii) in two or more insurance agencies in codes and guidelines with illustrative examples.
- To issue guidelines on the **keeping of relevant business documents** by licensees.
- To set out **performance pledges on the processing time** for applications submitted to IIA, including different types of appointments.
- To put in place arrangements to ensure that **investigators will not be involved in the determination of disciplinary sanctions**.
- To establish an **expert panel** comprising insurance industry experts with in-depth

knowledge of insurance practice and products so that IIA may seek the panel's advice if such a need arises (e.g. when a case involves highly technical insurance contracts) during disciplinary proceedings.

- To consult ICAC on **corruption prevention guidelines**.

Other matters (to be followed up by the Administration)

- To review, in consultation with IIA, the need to continue the **exemption** provided to persons in the existing section 51 of the Insurance Companies Ordinance (Cap. 41).
- To consider adopting the existing arrangement agreed between the Administration and the Legislative Council ("LegCo") for the budgetary process of the Securities and Futures Commission ("SFC"), under which the Administration briefs the LegCo Panel on Financial Affairs on the main features of SFC's **proposed budget prior to seeking approval by the Financial Secretary**.
- To establish a **Process Review Panel**.