

立法會
Legislative Council

LC Paper No. CB(1)251/14-15
(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 fourth meeting on
Monday, 21 July 2014, at 2:30 pm
in Conference Room 3 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 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
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

Mr Paul WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (Special Duties)

Ms Annie CHOI, JP
Commissioner of Insurance

Mr Tony CHAN
Acting Assistant Commissioner of Insurance
(Policy and Development)

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
Council Secretary (1)4

Action

I Meeting with the Administration

Discussion on the Bill

(LC Paper No. CB(1)1817/13-14(01) — Administration's paper on
"Enhancement of Existing
Regulatory Powers in respect of
Insurers (Amendments to Parts II
to VII)"

LC Paper No. CB(1)1817/13-14(02) — Administration's paper on "New
Regulatory Powers in respect of
Insurers (New Part VA)"

LC Paper No. CB(1)1817/13-14(03) — Administration's paper on "Summary of Public Comments on the Bill and the Administration's Response - Enhanced Existing Regulatory Powers in respect of Insurers (Amendments to Part II to VII) and New Regulatory Powers in respect of insurers (New Part VA)")

Matters arising from previous meetings

(LC Paper No. CB(1)1637/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 27 May 2014

LC Paper No. CB(1)1637/13-14(02) — Administration's response to issues raised at the meeting on 27 May 2014

LC Paper No. CB(1)1817/13-14(04) — List of follow-up actions arising from the discussion at the meeting on 30 June 2014

LC Paper No. CB(1)1817/13-14(05) — Administration's response to issues raised at the meeting on 30 June 2014)

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**).

2. Mr Andrew LEUNG said that he was a Director of the Hong Kong Mortgage Corporation Limited ("HKMCL"). The Deputy Chairman said that he was a Director of HKMCL and a director and shareholder of a company engaging in reinsurance business.

Admin Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information:
- (a) the latest reports of the independent Process Review Panels ("PRPs") established for other financial services regulators, including the Securities and Futures Commission ("SFC"), to enable members to better understand the structures, role and work of PRPs in ensuring proper checks and balances in the exercise of powers by the regulators concerned;
 - (b) details of the disciplinary and appellate mechanism of other financial services regulators like SFC and the Mandatory Provident Fund Schemes Authority, including the procedures for handling complaints, conducting investigations and making disciplinary decisions;
 - (c) in respect of paragraph 15 of LC Paper No. CB(1)1817/13-14(02), to elaborate under what circumstances the independent Insurance Authority ("IIA") would consult the expert panel for advice in making disciplinary decisions; and
 - (d) the guidelines published by other financial services regulators for imposition of pecuniary penalty of which IIA might make reference to in drawing up its own fining guideline and other relevant guidelines, if any.

III Any other business

Date of next meeting

4. Members agreed that the Bills Committee would hold two meetings in October 2014, on Tuesday, 7 October, at 2:30 pm, and Monday, 20 October, at 2:30 pm. As regards the Administration's proposal to hold a meeting in 18 September 2014, at 2:30 pm, the Chairman would decide having regard to members' availability.

(Post meeting note: As the majority of members had indicated that they were unavailable for the proposed meeting on 18 September 2014, the Chairman decided that the meeting would not be held. Members were informed about the arrangement vide LC Paper No. CB(1)1925/13-14 issued on 19 August.)

5. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 1
Legislative Council Secretariat
18 November 2014

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Fourth meeting on Monday, 21 July 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000453 – 000714	Chairman	Introductory remarks	
000715 – 001210	Administration	Briefing by the Administration on the paper entitled "Enhancement of Existing Regulatory Powers in respect of Insurers (Amendments to Parts II to VII)" [LC Paper No. CB(1)1817/13-14(01)]	
001211 – 001604	Mr Andrew LEUNG Administration Mr WONG Yuk-man	Mr LEUNG's disclosure of interest Mr LEUNG agreed that prior approval of the independent Insurance Authority ("IIA") should be required for appointment of controllers, directors, and key persons in control functions of authorized insurers, and enquired about the criteria for granting the approval and the relevant appellate mechanism. The Administration responded that- (a) in granting the approval, IIA would decide whether the person concerned was a "fit and proper person" having regard to the factors set out in the Annex to the paper; and (b) an authorized insurer could appeal to the Insurance Appeals Tribunal ("IAT") on IIA's decisions.	
001605 – 002213	Dr Fernando CHEUNG Administration	Dr CHEUNG's views that- (a) in including industry representatives in IIA, it was necessary to address the issue of conflict of interests; (b) measures should be put in place to avoid conflict of interests in IIA, e.g. non-executive directors with knowledge of or experience in the insurance industry should not be current practitioners in the industry; and	

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		<p>(c) reference should be made to the practices in appointment of members to the governing boards of insurance regulators of other jurisdictions, e.g. the proportion of industry representatives in the boards.</p> <p>The Administration said that:</p> <p>(a) it had responded to members' views on the need to specify the proportion of industry members in IIA in a paper (i.e. LC Paper No. CB(1)1637/13-14(02)). The Administration was not aware of any example of international financial centres, including the United Kingdom, Singapore and Australia, where the relevant legislation had specified the proportion of members from the industry in the governing bodies of their relevant regulators;</p> <p>(b) to avoid conflict of interests, there would be requirement for board members to declare their interests. On the discussion of specific items, board members would be required to make further disclosure of interests as appropriate. The Chairperson of IIA would determine relevant arrangements, including whether the director concerned should refrain from discussion of the item and access to information or documents relating to the item; and</p> <p>(c) it was not specified in the Bill that the non-executive directors with knowledge of or experience in the insurance industry had to be existing practitioners in the industry. There were divergent views among stakeholders on the proportion of IIA's non-executive directors with knowledge of or experience in the insurance industry. The current proposal in the Bill would provide flexibility in appointing the most suitable persons to IIA to perform its statutory functions.</p>	

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002214 – 002803	Deputy Chairman Chairman Administration	<p>The Deputy Chairman's disclosure of interest</p> <p>The Deputy Chairman did not support that IIA's non-executive directors with knowledge of or experience in the insurance industry must not be existing practitioners in the field as IIA's directors should keep abreast of the industry's development. There should be interest disclosure requirement to prevent conflict of interests on the part of IIA members.</p> <p>The Deputy Chairman's enquiries about:</p> <ul style="list-style-type: none"> (a) measures to help locally trained actuaries to set up a statutory body responsible for the registration of such professionals in the long run; and (b) whether there would be a black list of persons who were considered not "fit and proper" for appointment as controllers, directors or key persons in control functions of authorized insurers; and how persons previously rejected by IIA could seek IIA's approval again. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) in determining whether a person was a fit and proper person, IIA would consider the factors set out in the Annex to the paper as well as other relevant matters in a holistic manner. IIA would not automatically reject a person if he/she failed in meeting certain criteria listed in the Annex; (b) IIA would operate in a transparent manner and set out its decisions in detail, including the reasons for rejecting the application; and (c) the Actuarial Society of Hong Kong was a local actuaries' body incorporated some ten years ago. The Administration was discussing with the Society its future development. 	

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002804 – 003304	Chairman Administration	Briefing by the Administration on the paper entitled "New Regulatory Powers in respect of Insurers (New Part VA)" [(LC Paper No. CB(1)1817/13-14(02)]	
003305 – 004231	Mr WONG Yuk-man Administration Deputy Chairman Chairman	<p>Mr WONG's enquiries about:</p> <ul style="list-style-type: none"> (a) whether the authorization of an insurer would be suspended when it was under investigation by IIA so as to address public concern about the continuation of improper acts of the insurer concerned; (b) whether an independent committee would be set up for reviewing IIA's inspections and investigations as a check and balance measure against excessive powers vested with IIA; and (c) whether IIA would set out the level of pecuniary penalty to be commensurate with the misconduct committed by an insurer. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) the presumption of innocence would be applicable to IIAs' regulatory work; (b) IIA's inspection and investigation processes might involve confidential information the access to which should be appropriately restricted. Setting up an independent review committee would also fetter the relevant powers of IIA. No similar arrangements were found in other jurisdictions; (c) the inspection/investigation processes and disciplinary decisions on insurers would be handled by different teams of staff of IIA, and such separation of powers was in line with the practices of other jurisdictions; and (d) the proposed new section 41R of the Insurance Companies Ordinance (Cap. 41) ("ICO") provided that IIA must not exercise the power to impose a pecuniary penalty unless it had published a relevant guideline and IIA had had regard to the 	

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		guideline. IIA would consult the industry in formulating the guideline.	
004232 – 010107	Mr Alan LEONG Administration	<p>Mr LEONG's views and enquiries as follows –</p> <ul style="list-style-type: none"> (a) there should be a credible mechanism to allay the industry's and deputations' concern about vesting IIA with excessive powers. Reference should be made to the Operations Review Committee established by the Independent Commission Against Corruption to enhance public monitoring of IIA's powers; (b) how the Administration would allay the industry's concern about the high pecuniary penalty of \$10 million; and (c) arrangements for the litigation fee if the appellant lost in a case before IAT. <p>The Administration responded that-</p> <ul style="list-style-type: none"> (a) misconduct was not criminal in nature. An insurer and insurance intermediary who was guilty of misconduct would be subject to disciplinary actions; (b) as checks and balances, an independent Process Review Panel ("PRP") would be set up to review the procedural fairness of IIA in exercising its powers; (c) insurers and insurance intermediaries were required to put in place proper internal control systems and procedures to ensure compliance with conduct requirements set by IIA; (d) it was envisaged that IIA's fining guideline would stipulate that the level of pecuniary penalty should be commensurate with the severity of the misconduct and would not put the insurers or insurance intermediaries into financial jeopardy. These principles were consistent with those provided in the regulatory regimes under the Securities and Futures Ordinance (Cap. 571) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615); and 	

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		<p>(e) regarding appeal cases lodged to IAT, the Bill provided that IAT would award costs in accordance with the criteria stipulated in Order 62 of the Rules of the High Court (Cap. 4A) ("RHC"). The Bill did not provide that the unsuccessful party had to pay for the legal costs of IIA.</p> <p>In response to Mr LEONG's further enquiries, the Administration responded that-</p> <p>(a) it would provide the latest reports of PRPs established for other financial services regulators, including the Securities and Futures Commission ("SFC"), to enable members to better understand the structures, role and work of PRPs in ensuring proper checks and balances in the exercise of powers by the regulators concerned; and</p> <p>(b) according to the proceedings rules published by the Appeals Tribunal established to review the decisions of the Insurance Agents Registration Board, there was no upper limit on the legal cost to be paid by the unsuccessful party. The proceedings rules stated that the Tribunal should have the power to award costs in accordance with the Rules of the Supreme Court.</p>	<p>The Administration to take action as per paragraph 3(a) of the minutes.</p>
010108 – 011253	Mr YIU Si-wing Administration Chairman Department of Justice ("DoJ")	<p>Mr YIU's views and enquiries as follows:</p> <p>(a) the threshold for initiating an investigation in the proposed new section 41D of ICO, i.e. "reasonable cause to believe" the occurrence of misconduct or contravention was too vague. There should be objective criteria to prevent abuse of IIA's investigatory power;</p> <p>(b) "a person" to be issued with a warrant to enter premises in the proposed new section 41K of ICO should be specified to include "the relevant inspector or investigator" appointed by IIA; and</p>	

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		<p>(c) PRP played an important role in monitoring the operation of IIA. The proportion of industry representatives in PRP should be specified.</p> <p>The Administration responded as follows:</p> <p>(a) IIA would only investigate cases that, prima facie, suggested acts of misconduct. There would be clear record on the reasons for initiating an investigation. The term "reasonable cause to believe" appeared in a number of legislation and contained objective elements;</p> <p>(b) the term "a person" in the proposed new section 41K of ICO would allow the magistrate to authorize suitable professionals like auditors to perform specialized tasks when entering premises to search records and documents; and</p> <p>(c) PRP would consist of both industry representatives and lay persons. IIA would also consult the expert panel if expert advice was required before making disciplinary decisions. IAT might also include industry representatives as members.</p>	
011254 – 013138	Mr KWOK Wai-keung Administration Chairman	<p>Mr KWOK's views and enquiries as follows:</p> <p>(a) IIA should include industry representatives who were frontline staff of insurance intermediaries;</p> <p>(b) ensuring insurers' fair treatment to their insurance intermediaries would benefit policy holders in the long run; and</p> <p>(c) if an insurance intermediary revealed breaches of an insurer in protecting the interest of a policy holder and subsequently caught in a dispute with the insurer, whether IIA would assist the intermediary in resolving the dispute.</p>	

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		<p>The Administration responded that-</p> <p>(a) as the regulator of the insurance industry, IIAs' primary role was to protect interests of policyholders. It would therefore be inappropriate for IIA to protect the interests of insurers or insurance intermediaries. The industry had devised their own model agency agreements and IIA would not interfere in the agreements signed between insurers and insurance intermediaries because that was a commercial arrangement. Where appropriate, IIA would mediate disputes between the two parties; and</p> <p>(b) the existing agency system for insurance agents had operated smoothly for a long time. Individuals could choose to become a tied agent of an insurer or to become an employee of an insurance brokers, or financial planner. An insurance policy was a contract signed between a policy holder and an insurer. If the insurance agent who handled a policy left his job during the term of the policy, the insurer would normally assign another insurance intermediary to serve the policyholder. The policyholders' interests under the contract would not be affected.</p>	
013139 – 014354	Mr SIN Chung-kai Ms Starry LEE Administration	<p>Ms LEE's views and enquiries as follows-</p> <p>(a) IIA should have adequate representation from the industry, and the proportion of industry representatives in IIA (e.g. at least one-third of the total number of directors) should be specified in the Bill. Reference should be made to the composition of the governing board of the proposed Travel Industry Authority to be formed under the new regulatory regime for the tourism sector; and</p> <p>(b) the details of parties in IIA responsible for conducting inspections/investigations and making disciplinary sanctions.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded that-</p> <ul style="list-style-type: none"> (a) the two statutory industry advisory committees to be established by IIA were appropriate channels for the industry to reflect their views. The Bill also provided that IIA had to consult the industry on new regulatory measures; (b) the relevant legislation in other jurisdictions did not specify the proportion of industry representatives in the governing body of an insurance regulator. The current proposal in the Bill was a flexible arrangement for appointing the most suitable persons to IIA to perform its functions; and (c) inspections/investigations on insurance intermediaries and the determination of disciplinary sanctions against them would be handled by different teams of staff of IIA. There would be a "Chinese wall" between them. <p>The Administration was required to provide details of the disciplinary and appellate mechanism of other financial services regulators like SFC and the Mandatory Provident Fund Schemes Authority, including the procedures for handling complaints, conducting investigations and making disciplinary decisions.</p>	<p>The Administration to take action as per paragraph 3(b) of the minutes.</p>
014355 – 014516	Mr SIN Chung-kai Chairman	<p>Mr SIN's views that the IIA Board should not include too many industry representatives (e.g. one-fourth of or less than one-third of the total number of directors) and the Bill should specify the proportion. The industry should reflect their views through the two IACs.</p>	
014517 – 014837	Deputy Chairman Administration	<p>At the Deputy Chairman's request, the Administration was required to elaborate on the circumstances IIA would consult the expert panel for advice in making disciplinary decisions.</p>	<p>The Administration to take action as per paragraph 3(c) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
014838 – 015903	Mr James TO Administration Ms Starry LEE Deputy Chairman	<p>Mr TO expressed concern that certain practices of the insurance industry might affect the interests of policyholders, and enquired how IIA would take action against such practices.</p> <p>The Administration responded that the proposed new section 41D of ICO provided that IIA could initiate investigation if it had reasonable cause to believe that a certain practice of the industry was not in the interests of policy holders or potential policyholders or the public interest. IIA would protect the interests of policyholders and issue relevant guidelines and codes of conduct as necessary.</p> <p>In response to Ms LEE's enquiry about pecuniary penalty on misconduct by insurance intermediaries, the Administration said that-</p> <p>(a) for misconduct of insurers and insurance intermediaries, revocation of the licence would be a more severe sanction than pecuniary penalty. For serious misconduct or contravention, IIA might consider revocation of licence instead of pecuniary penalty; and</p> <p>(b) IIA would take into account the severity of misconduct in determining the level of pecuniary penalty.</p> <p>At Ms LEE's request, the Administration agreed to provide the guidelines published by other financial services regulators for imposition of pecuniary penalty to which IIA might make reference in drawing up its own fining guideline.</p>	The Administration to take action as per paragraph 3(d) of the minutes.
015904 – 020020	Chairman	Date of next meetings	