

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1178/14-15  
(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 sixth meeting on  
Tuesday, 11 November 2014, at 2:30 pm  
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 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 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
- Members absent** : Hon James TO Kun-sun  
Hon YIU Si-wing
- 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

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Action

**I Meeting with the Administration**

Discussion on the Bill

(LC Paper No. CB(1)2027/13-14(01) — Administration's paper on  
"Licensing Regime for Insurance  
Intermediaries (Amendments to  
Part X and Other Relevant New  
Provisions)"

LC Paper No. CB(1)2027/13-14(02) — Administration's paper on  
"Regulation of Insurance  
Intermediaries and Disciplinary  
Actions (New Part XI)"

LC Paper No. CB(1)2027/13-14(03) — Administration's paper on "Summary of Public Comments on the Bill and the Administration's Response")

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

LC Paper No. CB(1)2027/13-14(04) — List of follow-up actions arising from the discussion at the meeting on 21 July 2014

LC Paper No. CB(1)2027/13-14(05) — Administration's response to issues raised at the meeting on 21 July 2014

LC Paper No. CB(1)186/14-15(01) — List of follow-up actions arising from the discussion at the meeting on 20 October 2014

LC Paper No. CB(1)186/14-15(02) — Administration's response to issues raised at the meeting on 20 October 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**).

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to take follow-up actions below:

*Relationship between insurers and insurance agents*

- (a) in response to a member's concern about the proposed new section 68(2), (3), (4), (4A) and (4B) of the Insurance Companies Ordinance (Cap. 41) ("ICO") (to be added by Clause 73), the Administration was requested to explain the scope of liability of an insurer for the acts of its appointed insurance agents, in particular whether it was wider than that under the existing provisions of ICO;

*Conduct requirements of insurance intermediaries*

- (b) in the light of a member's suggestion, the Administration was requested to reconsider whether the proposed new section 89(c) of ICO (to be added by Clause 84) (regarding the requirement that an insurance intermediary might only advise on matters for which he was competent to do so) was necessary as an insurance intermediary would only be allowed to carry on regulated activities/provide regulated advice if he was licensed to do so; and

*Disciplinary process of insurance intermediaries*

- (c) in respect of the disciplinary procedures of the independent Insurance Authority (e.g. the proposed new section 81 of ICO under Clause 84), the Administration was requested to clarify whether (a) open disciplinary hearing would be conducted; and (b) legal representatives were allowed to attend the hearing.

**III Any other business**

Dates of next meetings

3. The Chairman said that the next two meetings would be held on 24 November at 2:30 pm and 9 December 2014 at 2:30 pm respectively.
4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
11 August 2015

**Proceedings of the  
Bills Committee on Insurance Companies (Amendment) Bill 2014  
Sixth meeting on Tuesday, 11 November 2014, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000131 – 000326	Chairman	Introductory remarks	
000327 – 001521	Administration	Briefing by the Administration on the paper "Regulation of Insurance Intermediaries and Disciplinary Actions (New Part XI)" [LC Paper No. CB(1)2027/13-14(02)]	
001522 – 003115	Deputy Chairman Chairman Administration	<p data-bbox="600 775 1243 846"><u>Conduct requirements on insurance intermediaries</u></p> <p data-bbox="600 887 1243 958">The Deputy Chairman's views/concerns as follows:</p> <p data-bbox="600 999 1243 1469">(a) the conduct requirement in the proposed new section 89(a) of the Insurance Companies Ordinance (Cap. 41) ("ICO") that a licensed insurance intermediary "must act ... in the best interests of the policy holder concerned or the potential policy holder concerned" ("best interests requirement") might lead to potential conflict of roles for insurance agents as they also needed to act in the best interests of their appointing insurers, and a breach of the requirement would result in disciplinary sanctions;</p> <p data-bbox="600 1509 1243 1760">(b) the Administration should confirm that the conduct requirement for a licensed insurance intermediary to disclose to its clients commission and advantage received in the proposed new section 92(2)(f) of ICO would only apply to investment-linked assurance scheme ("ILAS") products;</p> <p data-bbox="600 1800 1243 2089">(c) the Administration should elaborate the meaning of "a failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings" (in the proposed new section 93(5) of ICO) and the definition of misconduct (in the</p>	

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		<p>proposed new section 79(1)(d)); and</p> <p>(d) the Administration should confirm that a licensed insurance intermediary who had complied with the conduct requirements and IIA's relevant codes would not be subject to disciplinary sanctions or criminal offence under the Bill.</p> <p>The Administration responded that:</p> <p>(a) the policy intent of setting out general conduct requirements in the legislation was to establish conduct standards for the licensed insurance intermediaries to observe voluntarily. For example, licensed insurance agencies and insurance broker companies were required to appoint at least one responsible officer who would ensure adequate internal control systems and procedures were in place to promote compliance with the conduct requirements by the companies themselves and the licensed technical representatives they appointed;</p> <p>(b) the policy intent of including the "best interests requirement" as one of the principles of conduct requirement was to address the problem of information asymmetry to protect policy holders. The International Association of Insurance Supervisors ("IAIS") had also stated the need of implementing the "best interests requirement". Besides, some insurers had already been promoting a client-oriented culture. The existing self-regulatory regime had also incorporated similar conduct requirements on insurance intermediaries;</p> <p>(c) non-compliance with the conduct requirements would only lead to disciplinary sanctions, not the committal of a crime;</p> <p>(d) rules to be made by IIA under the new regulatory regime would be subsidiary legislation and IIA was required to publish draft rules for public consultation as</p>	

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		<p>provided in the proposed new section 130 of ICO. In addition, IIA would issue guidelines and codes to facilitate intermediaries' compliance with the conduct requirements. IIA would have to take into account intermediaries' compliance with the relevant guidelines in the disciplinary proceedings. While non-compliance with IIA's guidelines/codes would not render intermediaries liable to judicial proceedings, IIA's guidelines would have evidential value in legal proceedings as specified in the proposed new section 131(5) of ICO; and</p> <p>(e) currently only ILAS products were subject to the commission disclosure rule, and the Administration had no plans at the moment to extend the disclosure requirement to other insurance products.</p>	
003116 – 004247	Mr SIN Chung-kai Administration	<p><u>Conduct requirement for insurance intermediaries and Process Review Panel ("PRP") of IIA</u></p> <p>Mr SIN's enquiries about:</p> <p>(a) the role of PRP of IIA, its composition and appointment procedures;</p> <p>(b) IIA's policy on disclosure of commission and advantage by licensed insurance intermediaries; and</p> <p>(c) views and proposals from the industry to resolve issues relating to the "best interests requirement", and the Administration's responses.</p> <p>The Administration responded that:</p> <p>(a) PRP would be independent from IIA with members appointed by the Government. PRP would comprise professionals and representatives from the industry. PRP would not review disciplinary decisions made by IIA (which was under the purview of the Insurance Appeals Tribunal ("IAT")). PRP would review and advise IIA on the</p>	



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		<p>adequacy of its internal procedures and operational decisions to ensure IIA's regulatory powers were exercised in a fair and consistent manner;</p> <p>(b) currently only ILAS products were subject to commission disclosure requirement. The international community had yet to reach a consensus on the disclosure of commissions by intermediaries. IIA would consider relevant factors and consult the stakeholders before proposing any changes to the regulatory regime;</p> <p>(c) regarding the "best interests requirement", there were suggestions from the industry to remove the relevant provisions from the Bill, specify the requirement in IIA's non-statutory guidelines, or replace it with other terms like "fair treatment". The "best interests requirement" was widely adopted in regulatory regimes of other jurisdictions. It was adopted in the regulatory regime for Mandatory Provident Fund ("MPF") intermediaries, many of which were also insurance intermediaries;</p> <p>(d) IIA would issue guidelines and codes to provide insurance intermediaries with guidance to facilitate compliance with the requirement, in particular to allay the industry's concern about the potential conflict of roles of insurance agents.</p>	
004248 – 005900	Deputy Chairman Administration Mr SIN Chung-kai	<p><u>Conduct requirements on and pecuniary penalty for insurance intermediaries</u></p> <p>The Deputy Chairman opined that IIA should specify clearly the details of the "best interests requirement" in its guidelines and enquired about when such guidelines would be available. The Administration should also consider imposing different levels of pecuniary penalties for bodies corporate and individual insurance intermediaries, and for different types of insurance products.</p> <p>The Administration responded that:</p> <p>(a) the Administration had established with the industry the Working Group on Transition</p>	

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		<p>("Working Group") in January 2014 to discuss transitional issues including the "best interests requirement". IIA would, in consultation with the industry, develop relevant guidelines and codes in this area; and</p> <p>(b) the market consisted of insurance intermediaries of various scales, including large multi-international companies, small firms and individuals. Misconduct of an individual insurance intermediary might not necessarily be less serious than misconduct committed by a large corporate insurance intermediary. The proposed new section 82 of ICO required IIA to publish fining guidelines before it could exercise the power to impose disciplinary fines. IIA would develop its fining guidelines in consultation with the industry.</p> <p><u>Relationship between insurers and insurance agents</u></p> <p>In response to the Deputy Chairman's concern about the proposed new sections 68(2), 68(3), 68(4), 68(4A) and 68(4B) of ICO, the Administration was requested to explain the scope of liability of an insurer for the acts of its appointed insurance agents, in particular whether it was wider than that under the existing provisions of the ICO.</p> <p>The Deputy Chairman said that he would provide the relevant submission of Hong Kong Federation of Insurers for the Administration's written response.</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes.</p>
005901 – 011130	Mr WONG Yuk-man Administration	<p><u>Conduct requirements on insurance intermediaries</u></p> <p>Mr WONG's views and enquiries as follows:</p> <p>(a) the expected timeframe for IIA to review its guidelines and codes;</p> <p>(b) the Administration should elaborate the terms "in the best interests" and "uses its best endeavours" in the proposed new section 89(a) and (f) of ICO respectively</p>	

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		<p>which were subjective concepts;</p> <p>(c) the Administration should clarify the terms "specified circumstances" and "specified conditions" in the proposed new section 92(2)(k) of ICO; and</p> <p>(d) the Administration should consider imposing different levels of pecuniary penalties for bodies corporate and individual insurance intermediaries.</p> <p>The Administration responded that:</p> <p>(a) IIA would review its guidelines and codes as and when necessary having regard to developments in the industry. The Bill had provided IIA the flexibility to do so;</p> <p>(b) the terms "in the best interests" and "uses its best endeavour" were used in the provisions in order to encourage intermediaries to try their utmost to comply with the requirements having regard to the actual needs of their clients. For instance, the requirements would require a licensed insurance intermediary to assess the suitability of a particular insurance product for his/her client and to handle the issue of conflict of interest in an honest manner. IIA's guidelines and codes would set out the requirements clearly and the Working Group would further discuss the issue; and</p> <p>(c) the reason for applying the same level of maximum pecuniary penalty for different types of insurance intermediaries had been explained before.</p>	
011131 – 012027	Mr KWOK Wai-keung Administration Mr WONG Yuk-man	<p><u>Conduct requirements on insurance intermediaries</u></p> <p>Mr KWOK's views and enquiries as follow:</p> <p>(a) the Administration should address the concerns of the industry and avoid incorporating rigid provisions in the Bill which might hinder sustainable development of the industry; and</p>	

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		<p>(b) in considering the "best interests requirement", the Administration should not only make reference to overseas experience but also take into account the unique circumstances of Hong Kong. The Administration should consider adopting a more flexible approach in specifying the details of conduct requirements in subsidiary legislation.</p> <p>The Administration responded that:</p> <p>(a) the Administration had been discussing with the industry their concerns about the conduct requirements. It had also explained its positions on the "best interests requirement" and pecuniary penalty to the industry. The Administration endeavoured to discuss and follow up outstanding issues with the Working Group in a practical manner. Details of the discussions of the Working Group had also been uploaded onto the website of the Financial Services and the Treasury Bureau for reference of the general public;</p> <p>(b) the Administration had already adopted a flexible approach by stipulating the broad principles of conduct requirements in the primary legislation. The relevant details would be provided in IIA's rules (which were subsidiary legislation) and IIA's non-statutory guidelines and codes; and</p> <p>(c) the "best interests requirement" was present in the existing regulatory regime for some 32 000 MPF intermediaries, of which 76% were also insurance intermediaries.</p>	
012028 – 013012	Mr SIN Chung-kai Administration Chairman	<p><u>Conduct requirements on insurance intermediaries</u></p> <p>Mr SIN's views that the requirement that an insurance intermediary "may advise only on matters for which the intermediary is competent to advise" in the proposed new section 89(c) of ICO involved subjective judgment.</p>	

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		<p>The Administration's response that:</p> <ul style="list-style-type: none"> <li>(a) an insurance intermediary had to meet requirements, including attaining the required level of education and passing relevant professional examinations in order to get a licence; and</li> <li>(b) some insurance products were very complex and specialized and the insurance intermediary concerned should not be allowed to carry on regulated activities/provide regulated advice for such products unless he possessed the relevant knowledge and/or had received the relevant training.</li> </ul> <p><u>Pecuniary penalty for misconduct</u></p> <p>In response to the Chairman's enquiries, the Administration advised that:</p> <ul style="list-style-type: none"> <li>(a) IIA would conduct inspections proactively and upon receipt of complaints; and</li> <li>(b) the pecuniary penalty of (i) three times the amount of the profit gained or loss avoided by an insurance intermediary as a result of the misconduct or (ii) a maximum of \$10 million, whichever was the greater, was to cater for different scenarios. The formulation under (ii) was necessary to cover cases which did not involve profit gained or loss avoided, for example, negligence of an intermediary that resulted in the release of its clients' personal data. As such, it was not appropriate to conclude that (i) was effective enough and the maximum penalty level of \$10 million under (ii) could be reduced.</li> </ul>	
013013 – 013740	Deputy Chairman Administration	<p><u>Disciplinary decisions of IIA</u></p> <p>The Deputy Chairman's views and enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) the "best interests" and "best endeavour" requirements would bring great uncertainties and risks of legal action to the insurance industry. The Administration</li> </ul>	

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		<p>should explore ways to address the industry's concerns; and</p> <p>(b) to make the best use of the experience accumulated by the industry, the Administration should consider providing in the Bill the requirement for IIA to consult the Expert Panel before making a disciplinary decision, and explain the reasons for not taking the views of the Expert Panel.</p> <p><u>PRP</u></p> <p>The Deputy Chairman also relayed Mr YIU Si-wing's views that PRP should include more representatives from the industry as its members.</p> <p>The Administration responded as follows:</p> <p>(a) In establishing the PRP for IIA, reference would be made to the composition of the PRPs for the Mandatory Provident Fund Schemes Authority and SFC. Members of PRP would include industry representatives; and</p> <p>(b) IIA would consult the Expert Panel on its disciplinary decisions on cases involving complex and technical issues of the industry when necessary. The Bill had provided IIA with the power to make disciplinary decisions, which would be subject to the review of IAT. The impartiality of IIA could be compromised if the Bill specified the mandatory requirement for IIA to consult the Expert Panel on its disciplinary decisions.</p>	
013741 – 014615	Mr SIN Chung-kai Administration	<p><u>Conduct requirements on insurance intermediaries</u></p> <p>Mr SIN's view that the Bill should include provisions on the "best interests requirement" for insurance intermediaries, and the details should be set out in IIA's guidelines or codes.</p> <p>In the light of Mr SIN's suggestion, the Administration was requested to reconsider whether the proposed new section 89(c) of ICO</p>	The Administration to take action as per

Time Marker	Speaker	Subject(s)	Action Required
		<p>was necessary as an insurance intermediary would only be allowed to carry on regulated activities/provide regulated advice if he was licensed to do so.</p>	<p>paragraph 2(b) of the minutes.</p>
<p>014616 – 015231</p>	<p>Mr Paul TSE Administration Chairman</p>	<p><u>Conduct requirements on insurance intermediaries</u></p> <p>In response to Mr TSE's enquiry, the Administration advised that:</p> <p>(a) it had made reference to IAIS's requirements, relevant regulatory regimes of other comparable jurisdictions and other financial regulatory regimes in Hong Kong in formulating the principles of conduct requirements in the Bill, and</p> <p>(b) it had not made reference to non-financial regulatory regimes.</p> <p>In respect of the disciplinary procedures of IIA (e.g. the proposed new section 81 of ICO under Clause 84), the Administration was requested to clarify whether (a) open disciplinary hearing would be conducted; and (b) legal representatives were allowed to attend the hearing.</p>	<p>The Administration to take action as per paragraph 2(c) of the minutes.</p>
<p>015232 – 015825</p>	<p>Deputy Chairman Administration Chairman</p>	<p><u>Restrictions in relation to the personnel of licensed insurance agencies and licensed insurance broker companies</u></p> <p>In response to the Deputy Chairman, the Administration advised that it had provided written responses to address the concern about restrictions in relation to personnel of licensed insurance agencies and licensed insurance broker companies under the proposed new sections 64J and 64K of ICO in the paper "Administration's response to issues raised at the meeting on 27 May 2014" (LC Paper No. CB(1)1637/13-14(02)). The policy objective was that an entity/a person could not carry on regulated activities as a licensed insurance agent and a licensed insurance broker at the same time. However, there was no restriction for an entity/a person of a licensed insurance agency to act as a director of a licensed insurance broker at the same time (or vice versa) as long as the</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		entity/the person was not involved in the regulated activities of the licensed insurance broker. The Administration would discuss with the industry on the need to refine the drafting.	
015826 – 020053	Chairman	Dates of future meetings	

Council Business Division 1  
Legislative Council Secretariat  
11 August 2015