

立法會
Legislative Council

LC Paper No. CB(1)1087/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/13/1

Bills Committee on Insurance Companies (Amendment) Bill 2014

Seventh meeting on
Monday, 24 November 2014, at 2:30 pm
in Conference Room 2 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 Alan LEONG Kah-kit, SC
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 Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
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

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 Confirmation of minutes of meeting

(LC Paper No. CB(1)248/14-15 — Minutes of the meeting on 27 May 2014

LC Paper No. CB(1)249/14-15 — Minutes of the meeting on 24 June 2014

LC Paper No. CB(1)250/14-15 — Minutes of the meeting on 30 June 2014

LC Paper No. CB(1)251/14-15 — Minutes of the meeting on 21 July 2014)

The minutes of the meetings held on 27 May, 24 June, 30 June and 21 July 2014 were confirmed.

II Meeting with the Administration

Matters arising from previous meetings

(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"

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

LC Paper No. CB(1)257/14-15(01) — List of follow-up actions arising from the discussion at the meeting on 11 November 2014

LC Paper No. CB(1)257/14-15(02) — Administration's response to issues raised at the meeting on 11 November 2014)

Discussion on the Bill

(LC Paper No. CB(1)257/14-15(03) — Administration's paper on "Transitional Arrangements for Insurance Intermediaries (New Schedule 11)"

LC Paper No. CB(1)257/14-15(04) — Administration's paper on "Insurance Appeals Tribunal (New Part XII and New Schedules 9 & 10)"

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

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. The Administration was requested to take the following actions.

Financial arrangements for the independent Insurance Authority

- (a) In respect of the start-up fund for the independent Insurance Authority ("IIA") to help meeting its expenses in the initial five years of operation, the Administration was requested to consider a member's view that part of the funds should be provided by loans from Government to IIA.
- (b) In the light of members' suggestion, the Administration would consider making arrangement for briefing the relevant Panel of the Legislative Council on the annual budget of IIA.

Order to pay costs of investigation

- (c) The proposed new section 64ZZO of the Insurance Companies Ordinance (Cap. 41) ("ICO") (under Clause 71) provided that the court may order convicted insurance intermediaries to pay for the costs of investigation and IIA may recover the costs as a civil debt. To address the industry's concern about potential huge investigation costs, the Administration was requested to consider refining the provision to limit recovery of costs to extremely serious and complex cases of misconduct.

Relationship between insurers and insurance agents

- (d) The Administration was requested to follow up with the Hong Kong Federation of Insurers ("HKIF") and report the outcome to the Bills Committee, on HKIF's concern about the scope of liability of an insurer for its appointed insurance agents under the proposed new section 68(1) to (4C) (to be added by Clause 73). In particular HKIF's views that the new provisions had changed the existing scope of liability of an insurer for the acts of an insurance agent appointed by the insurer under ICO.

Transitional arrangements for insurance intermediaries

- (e) The Administration was requested to report to the Bills Committee on its consideration of HKIF's views in refining the provisions in the proposed new Schedule 11 to ICO (to be added by Clause 94) to specify more clearly the transitional arrangements for insurers and clarify certain aspects of the transitional arrangements like the

arrangement for litigation fees.

III Any other business

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 9 December at 2:30 pm, and 22 December 2014 at 10:45 am respectively.

5. There being no other business, the meeting ended at 4:31 pm.

Council Business Division 1
Legislative Council Secretariat
9 July 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Seventh meeting on Monday, 24 November 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000106 – 000139	Chairman	Confirmation of minutes of meetings	
000140 – 000249	Chairman	Introductory remarks	
000250 – 000928	Administration	Briefing by the Administration on the paper "Summary of Public Comments on the Bill and the Administration's Response" ("the paper on summary of comments and response") [LC Paper No. CB(1)2027/13-14(03)]	
000929 – 001549	Mr SIN Chung-kai Administration Chairman Mr James TO Deputy Chairman	<p><u>Accounting and financial arrangement for the independent Insurance Authority ("IIA")</u></p> <p>Mr SIN's view that IIA should follow the existing practice of the Securities and Futures Commission ("SFC") in briefing the relevant Panel of the Legislative Council ("LegCo") on its annual budget as the industry might have concern about the fees and levies charged by IIA.</p> <p>The Deputy Chairman agreed to Mr SIN's suggestion.</p> <p>Mr James TO further suggested that the consultation arrangement with LegCo on IIA's annual budget should be specified in the Bill.</p> <p>The Administration responded that:</p> <p>(a) the existing practice of SFC in briefing the Panel on Financial Affairs on its annual budget was an administrative arrangement instead of a statutory requirement;</p> <p>(b) the orders to specify IIA's fees and levies would be subsidiary legislation subject to the negative vetting procedure of LegCo; and</p> <p>(c) IIA's annual estimates were subject to the approval of the Financial Secretary ("FS")</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>and the approved estimates would be tabled before LegCo as provided in the proposed new section 5B of the Insurance Companies Ordinance (Cap. 41) ("ICO").</p> <p>In the light of members' suggestion, the Administration was requested to consider members' views above.</p>	<p>The Administration to take action as per paragraph 3(b) of the minutes.</p>
001550 – 002155	Administration	Briefing by the Administration on the paper on summary of comments and response (continued)	
002156 – 004206	Deputy Chairman Chairman Administration	<p><u>IIA's disciplinary decisions</u></p> <p>The Deputy Chairman's remark that the Administration should provide a concrete response to the Hong Kong Federation of Insurers' ("HKIF") views regarding the proposed new section 41P of ICO that disciplinary decisions on authorized insurers should not be published until the right of appeal had been exhausted.</p> <p>The Administration responded that:</p> <p>(a) IIA's disciplinary process would be transparent. IIA may disclose the details of its disciplinary decisions to the public where appropriate, and the arrangements on the disclosure were consistent with those of SFC; and</p> <p>(b) before IIA made a final decision on the disciplinary sanction, it would provide the insurer with an opportunity to be heard, and only the final disciplinary decision might be disclosed to the public.</p> <p><u>Costs of investigations under the proposed new section 64ZZO of ICO</u></p> <p>The Deputy Chairman's concerns about the potential huge costs for investigation undertaken by IIA, IIA would recover the costs from insurance intermediaries thus putting them into financial jeopardy, and why the Administration considered it unjustified to provide a cap on the costs.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) IIA would only appoint outside professionals to undertake investigation for complicated cases, and as checks and balances, IIA would have to obtain the consent of FS before making the appointment; (b) it was the court to order an insurance intermediary paid for the investigation costs if the investigation had resulted in conviction of a crime; (c) similar cost recovery arrangements were in place in other financial regulatory regimes; and (d) it would be difficult for IIA to set objective criteria for working out a cap on the investigation costs. As a court order was required for the recovery of the investigation costs, the court would consider factors including the reasonableness of the costs. <p>At the Deputy Chairman's request, the Administration was required to consider refining the proposed new section of 64ZZO of ICO to limit recovery of costs to extremely serious and complex cases of misconduct so as to address the industry's concern about potential huge investigation costs.</p>	<p>The Administration to take action as per paragraph 3(c) of the minutes.</p>
004207 – 004525	Administration	Briefing by the Administration on the paper on summary of comments and response (continued)	
004526 – 004942	Dr Fernando CHEUNG Administration Chairman	<p><u>Disciplinary processes and the appellate mechanism</u></p> <p>In response to Dr CHEUNG's enquiries, the Administration explained the disciplinary processes and the appellate mechanism under the new regulatory regime. IIA's disciplinary decisions would be subject to review by the Insurance Appeals Tribunal. A complainant dissatisfied with IIA's decisions on the complaint could also apply to the court for judicial review.</p>	

Time Marker	Speaker	Subject(s)	Action Required
004943 – 005329	Mr NG Leung-sing Administration	<p><u>Transitional arrangement for applications and notifications</u></p> <p>In response to Mr NG's enquiries about the transitional arrangement for applications and notifications not yet completed by the three self-regulatory organizations ("SROs") in the proposed new Schedule 11 to ICO, the Administration responded that the Working Group on Transition was discussing the relevant details, including setting a "cut-off" time after which outstanding applications and notifications not yet completed by the three SROs would need to be re-submitted to IIA.</p>	
005407 – 005456	Administration	Briefing by the Administration on the paper on summary of comments and response (continued)	
005457 – 010141	Chairman Administration	<p>Briefing by the Administration on its response to issues raised at the meeting on 27 May and 30 June 2014</p> <p>[LC Paper Nos. CB(1)1637/13-14(02)]</p> <p>[LC Paper No. CB(1)1817/13-14(05)]</p>	
010142 – 010755	Mr NG Leung-sing Administration	<p><u>IIA's fees and levies</u></p> <p>In response the Mr NG's enquiry about the mechanism for reviewing IIA's fees and levies, the Administration advised that:</p> <p>(a) the proposed new section 133 of ICO required IIA to consult the Financial Secretary with a view to recommending a levy reduction once its reserve, after deducting depreciation and all provisions, were more than twice its estimated operating expenses for the financial year and IIA had no outstanding debt. Estimates of IIA's operating expenses would be prepared having regard to its actual operation; and</p> <p>(b) details of the incremental approach for introducing the fees and levies were set out in Notes 5 and 6 of Annex D to the response paper LC Paper No. CB(1)1817/13-14(05).</p>	

Time Marker	Speaker	Subject(s)	Action Required
010756 – 011514	Mr SIN Chung-kai Administration Chairman	<p><u>Accounting and financial arrangements</u></p> <p>Mr SIN enquired about the estimated start-up fund to be provided by the Government to IIA, whether the funding would need Finance Committee ("FC")'s approval and whether IIA would be required to re-pay part of the start-up fund if it had accumulated huge reserves.</p> <p>The Administration responded that:</p> <p>(a) based on a consultancy study in 2009, it was recommended that a lump sum of \$500 million be provided to IIA to meet part of its expenses in the initial five years before it achieved the target levels of fees and levies. The Administration would update the relevant amount and submit funding proposal to FC in due course; and</p> <p>(b) the proposed new section 133 of ICO provided for the mechanism for reviewing the levels of levy imposed by IIA. Proposed amendments to the levels of levy would need to be introduced in the form of subsidiary legislation subject to negative vetting of LegCo.</p> <p>In respect of the start-up funds for IIA, the Administration was requested to consider Mr SIN's view that part of the funds should be provided by loans from Government to IIA.</p>	The Administration to take action as per paragraph 3(a) of the minutes.
011515 – 011719	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 21 July 2014 [(LC Paper No. CB(1)2027/13-14(05)]	
011720 – 012035	Deputy Chairman Administration Chairman	<p><u>Expert panel for the disciplinary process</u></p> <p>The Deputy Chairman's view that IIA should consult its expert panel before making disciplinary decisions particularly for those involving serious sanctions. The expert panel comprising industry experts would provide advice on technical matters and specialized products so as to ensure IIA would make fair and reasonable decisions.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		The Administration responded that IIA would develop guidelines on the matters and circumstances when it would seek advice from the expert panel. This arrangement was in line with the practice adopted by overseas regulators for the insurance sector.	
012036 – 012522	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 20 October 2014 [(LC Paper No. CB(1)186/14-15(02)]	
012523 – 014057	Deputy Chairman Chairman Administration Mr SIN Chung-kai	<p><u>Activities performed by employees of insurers</u></p> <p>The Deputy Chairman expressed concern that:</p> <ul style="list-style-type: none"> (a) the existing self-regulatory regime only regulated insurance intermediaries, and employees of insurers (even if such employees were involved in the sales activities of insurance products) were not required to register with the three SROs; (b) however, as the new regulatory regime would be activity-based, the industry was concerned that employees of insurers would be required to be licensed. A recent survey of HKFI revealed that over 5 000 such employees might need to be licensed in performing their jobs; and (c) there were certain ambiguous areas in the new licensing regime, and the above issue was not covered in previous consultation with the industry. The Administration should continue to discuss with the industry on the issue in order to resolve the matter. <p>Mr SIN's view that certain types of employees of insurers, including internal auditors and staff whose work involved insurance policies and related tasks (e.g. processing of claims, sales support, etc.) should be required to be licensed. He was concerned about ambiguous areas in deciding which types of employees of insurers had to be licensed.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded that:</p> <ul style="list-style-type: none">(a) there were no explicit provisions in the existing ICO requiring employees of insurers engaging in sales activities of insurance products to be registered with SROs;(b) the new regulatory regime would be activity-based and anyone engaging in regulated activities or providing regulated advice that caused policy holders or potential policy holders to make material decisions would be subject to the same licensing and conduct requirements. However, the proposed new section 121(2) of ICO provided exemption for a person acting on behalf of an insurer from getting a licence if he/she carried on a regulated activity that only involved the discharge of clerical or administrative duties for the insurer. As such, the internal auditors of insurers who would not contact customers would not need to be licensed, nor back-office staff of insurers if they would not cause policy holders or potential policy holders to make material decisions. The insurers concerned would need to set up internal control systems and procedures to ensure those staff engaging in regulated activities which included inducing a person to make a material decision or giving regulated advice, were licensed as appropriate;(c) the Administration was aware of the industry's concern. It was estimated that around 1 400 to 1 500 employees of insurers who were currently not required to register with SROs would need to be licensed under the new regulatory regime; and(d) the Administration maintained an open mind on the issue and would continue to discuss with the industry. It would consider specifying more clearly in the Bill the policy objectives of the licensing regime, i.e. only persons who engaged in regulated activities, induced policy holders	

Time Marker	Speaker	Subject(s)	Action Required
		or potential policy holders to make material decisions or provided regulated advice would need to be licensed. It would also consider suggestions from the industry as appropriate.	
014058 – 014409	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 11 November 2014 [LC Paper No. CB(1)257/14-15(02)]	
014410 – 014641	Deputy Chairman Administration	<u>Relationship between insurers and insurance agents</u> The Deputy Chairman said that HKFI was concerned that the proposed new sections 68(1) to (4C) of ICO (to be added by Clause 73) had expanded the current scope of an insurer's liability for its appointed insurance agents. He pointed out that there were certain ambiguous areas under the existing self-regulatory regime and urged the Administration to clarify these issues. The Administration reiterated that it was not the policy intent to change the existing scope of liability of an insurer. The Administration agreed to follow up with HKFI and report the outcome to the Bills Committee.	The Administration to take action as per paragraph 3(d) of the minutes.
014642 – 015437	Chairman Administration	Briefing by the Administration on the paper "Transitional Arrangements for Insurance Intermediaries (New Schedule 11)" [(LC Paper No. CB(1)257/14-15(03))] (Post-meeting note: The powerpoint presentation materials (LC Paper No. CB(1)284/14-15(01)) (Chinese version only) were issued to Members by a Lotus Notes e-mail on 24 November 2014.)	
015438 – 015718	Deputy Chairman Administration	<u>Transitional arrangements for insurance intermediaries</u> The Administration was requested 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 be added by Clause 94) to specify more clearly the transitional arrangements for insurers and clarify certain	The Administration to take action as per paragraph 3(e) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		aspects of the transitional arrangement like the arrangements for litigation fees.	
015719 – 020136	Mr KWOK Wai-keung Administration	<p><u>Effect of disciplinary sanctions imposed by SROs</u></p> <p>Mr KWOK enquired about the current arrangements for SROs to recover fines from insurance intermediaries, and how SROs would recover outstanding fines from intermediaries after the commencement date (i.e. the date on which the new licensing regime take effect) under section 119(2) of the proposed new Schedule 11.</p> <p>The Administration responded that currently SROs recovered fines from insurance intermediaries through civil litigations. SROs could recover the fines as a civil debt on or after the commencement date. The provisions would enhance deterrent effect against non-compliance.</p>	
020137 – 020153	Chairman	Dates of next two meetings	