

立法會
Legislative Council

LC Paper No. CB(1)1050/14-15
(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 tenth meeting on
Monday, 12 January 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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
- 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

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)423/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 22 December 2014

LC Paper No. CB(1)423/14-15(02) — Administration's response to
issues raised at the meeting on
22 December 2014)

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)369/14-15(03) — Administration's paper on
"Index for Clause-by-clause
Examination"

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 the following follow-up actions:

Appropriation to the independent Insurance Authority ("IIA")

- (a) In respect of the proposed new section 5C of the Insurance Companies Ordinance (Cap. 41) ("ICO") (under Clause 15), the Administration was requested to review the drafting of the provision with reference to the corresponding provision (i.e. section 14) in the Securities and Futures Ordinance (Cap. 571).

Penalties relating to authorization of insurers, approval of controllers, directors or key persons in control functions appointed by authorized insurers

- (b) Members had expressed concerns about the penalties imposed for contravention of provisions on authorization of insurers (section 6(3) of ICO), approval of controllers, directors or key persons in control functions of authorized insurers (the proposed new sections 13A(11),

13AB(3), 13AC(11), 13AD(3) and 13AE(11) of ICO) (under Clauses 23 to 25); including different levels of fines imposed on offences committed by an authorized insurer, an individual or a person appointed by the insurer; and treatment of some offences as continuing offences with imposition of daily fines. The Administration was requested to explain the rationale for setting different penalties for the various offences, and examine the need to align the penalties.

Determination of the key persons in control functions of authorized insurers

- (c) In respect of the proposed new section 13AE(14) and (15) of ICO (under Clause 25), which empowered the Financial Secretary to specify new control functions by notice published in the Gazette, the Administration was requested to explain the mechanism involved, including whether such notice was subject to the scrutiny of the Legislative Council ("LegCo"), and whether LegCo was empowered to amend or repeal the new control functions published in the Gazette.

Disclosure of conditions imposed by IIA on the approval granted under sections 13A, 13AC and 13AE of ICO

- (d) In light of views expressed by members on the need to strike a proper balance between enhancing protection of policy holders and avoiding negative impacts on the authorized insurers, controllers, directors or key persons in control functions appointed by the insurers and protecting sensitive commercial information, the Administration was requested to: (i) consider including provisions in the Bill for public disclosure of the conditions imposed by IIA under the proposed new section 13AF of ICO (under Clause 25) in relation to approval granted under sections 13A, 13AC and 13AE; and (ii) provide examples on possible conditions that might be imposed by IIA under section 13AF.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 27 January 2015, at 10:45 am and 9 February 2015, at 2:30 pm respectively.

4. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 1
Legislative Council Secretariat
30 June 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Tenth meeting on Monday, 12 January 2015, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000149 – 000258	Chairman	Introductory remarks	
000259 – 000551	Administration	Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 22 December 2014" [LC Paper No. CB(1)423/14-15(02)]	
000552 – 000827	Mr YIU Si-wing Chairman Deputy Chairman	<p>On the proposed new section 4E of the Insurance Companies Ordinance (Cap. 41) ("ICO") (i.e. the appointment of the independent Insurance Authority ("IA")'s staff and consultants, and determination of their remuneration and terms and conditions), Mr YIU maintained his views that the Bill should specify explicitly that IA must make the relevant decisions according to its "actual needs" and in a "reasonable manner".</p> <p>The Deputy Chairman said that there were no strong views from the insurance industry on the proposed new section 4E. He agreed that in discharging its functions, IA should not appoint too many consultants.</p>	
Clause-by-clause examination of the Bill			
000828 – 001947	Administration Mr SIN Chung-kai Chairman Deputy Chairman	<p><u>Clause 14 – Section 5 repealed (register of insurers)</u></p> <p><u>Clause 15 – Part IA, Division 2 added</u></p> <p><i>Division 2—Accounting and Financial Arrangements</i></p> <p><i>5A. Interpretation of Part IA, Division 2</i> <i>5B. Corporate plan and annual estimates</i> <i>5C. Appropriation</i> <i>5D. Accounts and annual report</i></p> <p>At Mr SIN's request, the Administration was required to review the drafting of the proposed new section 5C of ICO with reference to the corresponding provision (i.e. section 14) in the</p>	The Administration to take action as per paragraph

Time Marker	Speaker	Subject(s)	Action Required
		<p>Securities and Futures Ordinance (Cap. 571).</p> <p>The Deputy Chairman expressed concern as to how the Legislative Council ("LegCo") could monitor IIA's estimates and utilization of its resources, in particular to prevent over-expansion of IIA's establishment. He pointed out that the requirement for IIA to brief the Panel on Financial Affairs ("FA Panel") on its annual estimates was not sufficient to ensure effective monitoring of IIA's expenditure by LegCo.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) IIA would make reference to the practice of the Securities and Futures Commission ("SFC") in briefing FA Panel on its annual estimates; (b) IIA was expected to have a leaner structure than other financial regulators. The initial establishment number of IIA would be around 250, compared to some 150 of the existing Office of the Commissioner of Insurance ("OCI"), 750 of SFC, 650 of the Mandatory Provident Fund Schemes Authority, and 800 of the Hong Kong Monetary Authority; (c) IIA would set out its work and manpower requirement in its corporate plan and annual estimates; and (d) IIA would be subject to value for money audit by the Audit Commission. 	2(a) of the minutes.
001948 – 002429	Administration Chairman	<p><i>5E. Auditors</i> <i>5F. Financial statements to be audited</i> <i>5G. Tax exemption</i></p> <p>In response to the Chairman's and Deputy Chairman's enquiries, the Administration advised that:</p> <ul style="list-style-type: none"> (a) the proposed new section 5G of ICO exempted IIA from taxation under the Inland Revenue Ordinance (Cap. 112). The exemption was necessary as IIA might generate profits from its fees and levies (to be paid by the industry and policy holders). The same exemption was provided for other 	

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		<p>financial regulators; and</p> <p>(b) the Bill had included a mechanism for IIA to reduce its levies when its reserves reached certain level.</p>	
002430 – 004356	Administration Mr SIN Chung-kai Chairman	<p><u>Clause 16 – Section 5H added</u></p> <p><i>5H. Register of authorized insurers</i></p> <p><u>Clause 17 – Section 7 amended (application for authorization to carry on insurance business)</u></p> <p><u>Clause 18 – Section 8 amended (authorization)</u></p> <p><u>Clause 19 – Section 10 amended (meaning of relevant amount (有關數額) in section 8(3))</u></p> <p><u>Clause 20 – Section 11 amended (appeal against refusal of authorization under section 8(2))</u></p> <p><u>Clause 21 – Section 12 amended (conditions imposed under section 8 may be revoked)</u></p> <p><u>Clause 22 – Section 13 amended (fee payable upon authorization and annually thereafter)</u></p> <p><u>Clause 23 – Section 13A substituted</u></p> <p><i>13A. Approval of certain controllers of authorized insurers</i></p> <p>In respect of IIA's revocation of the approval of appointment of an individual as a controller of an authorized insurer, Mr SIN enquired about:</p> <p>(a) the difference between "a notice in writing" and "a preliminary written notice" served by IIA on the authorized insurer under the proposed new section 13A(7) and (9) of ICO respectively, and their effects on the controller concerned; and</p> <p>(b) how IIA could prevent the controller concerned from committing serious misconduct during the one-month period between the service of the notice in writing and the preliminary written notice.</p>	

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		<p>The Administration responded that:</p> <p>(a) when IIA planned to revoke the approval of appointment of a controller of an authorized insurer, in order to ensure procedural fairness, IIA would serve a preliminary written notice about its intention on the insurer and controller concerned. Both the authorized insurer and controller would have an opportunity to make representations to IIA within one month. IIA was required to take the representations into consideration before serving the notice in writing. If IIA maintained its decision with the revocation, it would serve the notice in writing on the authorized insurer and controller. The effective date of the revocation would be specified in the notice; and</p> <p>(b) IIA would monitor the operation of the relevant insurer closely and interfere when necessary. It would be unlikely that the controller concerned could exploit the one-month period to commit serious misconduct.</p> <p>The Administration confirmed the Chairman's understanding that, notwithstanding the revocation of the approval of a controller of an authorized insurer under the proposed new section 13A, IIA might exercise disciplinary powers on an authorized insurer on the grounds of misconduct.</p>	
004357 – 010236	Administration Mr SIN Chung-kai Mr Dennis KWOK Deputy Chairman Chairman	<p><u>Clause 24 – Section 13AB added</u></p> <p><i>13AB. Restrictions on acting as controllers of authorized insurers in contravention of section 13A</i></p> <p><u>Clause 25 – Sections 13AC to 13AH added</u></p> <p><i>13AC. Approval of directors of certain authorized insurers</i></p> <p><i>13AD. Restrictions on acting as directors of authorized insurers in contravention of section 13AC</i></p> <p><i>13AE. Approval of key persons in control functions of certain authorized insurers</i></p>	

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		<p>In order to comply with the relevant Insurance Core Principles ("ICPs") of the International Association of Insurance Supervisors ("IAIS"), the Administration advised that it would, for the purposes of "control function" in the proposed new section 13AE(12) of ICO, move a Committee Stage amendment ("CSA") to include the following new control functions: risk management, financial control, compliance and internal audit. The industry had been consulted on the proposed amendment and did not raise objection.</p> <p>Mr SIN expressed concern about the penalties imposed for contravention of provisions on authorization of insurers (section 6(3) of ICO), approval of controllers, directors or key persons in control functions of authorized insurers (the proposed new sections 13A(11), 13AB(3), 13AC(11), 13AD(3) and 13AE(11)) (under Clauses 23 to 25); including different levels of fines imposed on offences committed by an authorized insurer, an individual or a person appointed by the insurer; and treatment of some offences as continuing offences with imposition of daily fines. The Administration was requested to explain the rationale for setting different penalties for the various offences, and examine the need to align the penalties.</p> <p>In response to Mr SIN's enquiries, the Administration advised that approval of non-executive directors of an authorized insurer was covered in the proposed new section 13AC.</p> <p>Mr KWOK enquired about:</p> <ul style="list-style-type: none"> (a) the legal liability of a director for the affairs and business of the insurer if he/she had not been approved by IIA to be a director of the insurer; and (b) IIA's approval for a person as a director of an authorized insurer which was incorporated in Hong Kong, or overseas. <p>The Administration responded that IIA's approval for the appointment of directors was necessary for: (a) an authorized insurer incorporated in Hong Kong; and (b) the Hong</p>	<p>The Administration to take action as per paragraph 2(b) of the minutes.</p>

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		<p>Kong insurance subsidiary of an insurer incorporated in other jurisdictions. While there was no requirement for the Hong Kong branch of an authorized insurer which was incorporated overseas to obtain IIA's approval for the appointment of its directors, the Hong Kong branch concerned would be subject to other relevant provisions of the amended ICO. The Administration also confirmed that the Companies Registry would only approve an application for registration of an overseas incorporated insurer as a Hong Kong insurance company if the later had fulfilled the relevant requirements in the amended ICO.</p> <p>In response to the Deputy Chairman's enquiry, the Administration confirmed that while currently an authorized insurer incorporated in Hong Kong merely had to notify the OCI of its appointment of independent directors and non-executive directors, it had to seek IIA's approval of such appointments under the new regulatory regime.</p>	
010237 – 011307	Ms Cyd HO Administration Mr SIN Chung-kai Chairman Deputy Chairman	<p>Ms HO noted that the proposed new section 13AE(14) and (15) of ICO empowered the Financial Secretary ("FS") to specify new control functions by notice published in the Gazette. She requested the Administration to explain the mechanism involved, including whether such notice was subject to the scrutiny of LegCo, and whether LegCo was empowered to amend or repeal the new control functions published in the Gazette.</p> <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) the purposes of the proposed new section 13AE(14) and (15) were to provide a mechanism for adding new control functions identified by IAIS to the regulatory regime; (b) a notice to be published by FS in the Gazette under the proposed new section 13AE(14) would be a piece of subsidiary legislation subject to negative vetting by LegCo; and (c) the proposed new section 13AE(15) provided that FS must not specify a function to be a control function unless FS was satisfied that the function was likely to enable the 	The Administration to take action as per paragraph 2(c) of the minutes.

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		<p>individual responsible for the performance of the function to exercise a significant influence on the business carried out by an authorized insurer; and</p> <p>(d) the proposed new section 134 provided the procedural requirements for publishing notices under sections 13AE(14) and 121(5), which included, inter alia, the requirement of consulting relevant stakeholders.</p>	
011308 – 013416	Administration Mr SIN Chung-kai Chairman Deputy Chairman Ms Cyd HO	<p><i>13AF. Authority may impose conditions on granting approval under sections 13A, 13AC and 13AE</i></p> <p>In light of views expressed by Mr SIN, Ms HO and the Deputy Chairman on the need to strike a proper balance between enhancing protection for policy holders and avoiding negative impacts on the authorized insurers, controllers, directors or key persons in control functions appointed by the insurers and protecting sensitive commercial information, the Administration was requested to:</p> <p>(i) consider including provisions in the Bill for public disclosure of the conditions imposed by IIA under the proposed new section 13AF of ICO in relation to approval granted under sections 13A, 13AC and 13AE; and</p> <p>(ii) provide examples on possible conditions that might be imposed by IIA under section 13AF.</p> <p>In respect of the proposed new section 13AF(5), Mr SIN enquired about the means of serving a notice in writing on the authorized insurer. The Administration advised that IIA must send the written form of the notice to the party concerned and might also send a copy of the relevant notice through other means e.g. by fax or email.</p>	The Administration to take action as per paragraph 2(d) of the minutes.
013416 – 014209	Administration Ms Cyd HO	<p><i>13AG. Procedural requirements for rejecting application, or imposing or amending conditions</i></p> <p><i>13AH. Offence to provide false information in connection with application for approval</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 26 – Section 13B amended (approval of persons proposing to become certain controllers of authorized insurer)</u></p> <p><u>Clause 27 – Section 13C amended (restrictions on and sale of shares where there has been a contravention of section 13B(2))</u></p> <p><u>Clause 28 – Section 13D amended (punishment for attempted evasion of restrictions)</u></p> <p><u>Clause 29 – Section 14 amended (notification of change in particulars, and objection to appointment of new director or controller)</u></p> <p><u>Clause 30 – Section 14A added</u></p> <p><i>14A. Determination of fit and proper</i></p> <p>The Administration explained that the factors to be taken into consideration by IIA in determining whether an individual was fit and proper were set out under section 14A.</p>	
014210 – 014443	Administration Deputy Chairman	<p><u>Clause 31 – Section 15 amended (appointment of auditor and actuary)</u></p> <p><u>Clause 32 – Section 15AA added</u></p> <p><i>15AA. Authority may impose conditions on granting approval under section 15</i></p> <p>The Deputy Chairman opined that the Administration should assist the local actuaries to set up a professional body to facilitate the seeking of international accreditation on the professional qualifications of actuaries.</p> <p>The Administration responded that it was liaising with the Actuarial Society of Hong Kong on the issue. In the meantime, the existing appointment arrangements for actuaries by authorized insurers would remain unchanged under the new regulatory regime.</p>	
014444 – 015052	Ms Cyd HO Administration Chairman Deputy Chairman	Ms HO expressed concern that an authorized insurer might face operational problems when its appointment of controller/director/key person in control functions/actuary was revoked by IIA	

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		<p>and it could not solicit a suitable successor in time.</p> <p>The Administration responded that IIA would serve a preliminary written notice to the authorized insurer on its intention to revoke the approval of the appointment of the insurer's controller/director/key person in control functions/actuary. The authorized insurer had a month's time to take appropriate actions.</p> <p>Given that authorized insurers were usually large companies, the Deputy Chairman did not envisage that they would have problems finding personnel replacements in time. Moreover, an insurer would often appoint more than one controller/director/key person in control functions/actuary. The operation of the insurer would not be adversely affected when the approval of some of its key personnel were revoked.</p>	
015053 – 015600	Administration Chairman Deputy Chairman	<p><u>Clause 33 – Section 15A amended (notification in respect of auditors appointed under section 15)</u></p> <p><u>Clause 34 – Section 15B amended (notification in respect of actuaries appointed under section 15)</u></p> <p><u>Clause 35 – Section 16 amended (keeping and preserving of proper books of account)</u></p> <p><u>Clause 36 – Section 17 amended (submission of financial information)</u></p> <p><u>Clause 37 – Section 18 amended (periodic actuarial investigation of insurer with long term business)</u></p> <p><u>Clause 38 – Section 20 amended (deposit of accounts etc. with Insurance Authority)</u></p> <p><u>Clause 39 – Section 21 amended (documents to be deposited with Registrar of Companies)</u></p> <p>The Administration confirmed the Chairman's understanding that the term "book of accounts" in the amended section 16 of ICO included book of accounts in electronic form.</p>	

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		<p>In response to the Chairman's enquiry, the Deputy Chairman remarked that he was not aware of any particular comments from the insurance industry on the proposed amendments to section 20(1) of ICO which shortened the time for an authorized insurer to submit the relevant record from the present six months to four months.</p> <p><u>Clause 40 – Section 22 amended (separation of assets and liabilities attributable to long term business)</u></p>	
015601 – 015706	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
30 June 2015