

立法會
Legislative Council

LC Paper No. CB(1)1051/14-15
(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 eleventh meeting on
Tuesday, 27 January 2015, at 10:45 am
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 Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon NG Leung-sing, SBS, JP
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon Steven HO Chun-yin
Hon Christopher CHEUNG Wah-fung, SBS, JP
- 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 : Mr Timothy TSO
Assistant Legal Adviser 2

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)479/14-15(01) — List of follow-up actions arising
from the discussion at the
meeting on 12 January 2015

LC Paper No. CB(1)479/14-15(02) — Administration's response to
issues raised at the meeting on
12 January 2015)

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:

Composition of the independent Insurance Authority ("IIA") and the Industry Advisory Committees ("IACs")

- (a) In light of different views expressed by members on whether the Bill should specify a proportion of members of IIA from the insurance industry (e.g. at least 25%), the Administration was requested to: (i) explain its decision to maintain the current proposal that at least two non-executive directors of IIA should be persons with knowledge of or experience in the insurance industry (in the proposed new section 4AA(3) of the Insurance Companies Ordinance (Cap. 41) ("ICO")); and (ii) address some members' concern that under the current proposal, when the number of non-executive directors increased, representation of the insurance industry in IIA might decrease.

- (b) The Administration was requested to provide a written response to the Hong Kong Federation of Insurers' written submission, which covered, inter alia, suggestions on the composition of IIA and IACs, issues on which IIA should consult IACs and the industry's representation in IIA and IACs.

Retention requirements of business records

- (c) The Administration was requested to provide information on: (i) requirements on authorized insurers for retaining business records under ICO, including the retention period and format of the records (e.g. written and audio records) for different types of business; and (ii) sanctions for non-compliance with the requirements and the rationale for the existing sanctions.
- (d) The Administration was requested to address some members' concern that failure of authorized insurers in complying with IIA's guidelines/codes on retention of business records might not have any legal consequences given that such guidelines were non-statutory. As provided in the proposed new section 131(4) and (7) of ICO, failure of a person to comply with these guidelines/codes might not render the person liable to any judicial or other proceedings, and these guidelines/codes were not subsidiary legislation.
- (e) The Administration was requested to consider reviewing the definition of "business record" in the proposed new section 41A of ICO (under clause 55) in order to address: (i) some members' concern about the extensive scope of the term; and (ii) their views that coverage of the term should be sufficient to allow IIA to obtain necessary and relevant business records from insurers in conducting investigations on the one hand, and should not create undue compliance burden on insurers on the other.

Drafting issue

- (f) In respect of the first sentence of the proposed new section 41B(1) of ICO (under clause 55), the Administration had agreed to examine the need to align the drafting of the English and the Chinese texts.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 9 February 2015, at 2:30 pm and 3 March 2015, at 2:30 pm respectively. The Deputy Chairman remarked that he would need to attend a meeting relating to the public consultation on the Voluntary Health Insurance Scheme in the afternoon of 9 February 2015 and hoped that the meeting time could be changed. The Chairman instructed the Clerk to make alternative arrangement accordingly.

(Post-meeting note: the twelfth meeting of the Bills Committee was rescheduled from 2:30 pm to 4:30 pm on 9 February 2015. Members were informed of the revised meeting time vide LC Paper No. CB(1)494/14-15 issued on 29 January 2015.)

4. There being no other business, the meeting ended at 12:41 pm.

Council Business Division 1
Legislative Council Secretariat
30 June 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Eleventh meeting on Tuesday, 27 January 2015, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000403 – 000458	Chairman	Introductory remarks	
000459 – 000935	Administration	Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 12 January 2015" [LC Paper No. CB(1)479/14-15(02)]	
000936 – 003250	Deputy Chairman Administration Chairman Mr Andrew LEUNG Mr YIU Si-wing Dr Fernando CHEUNG Mr SIN Chung-kai	<p><u>Composition of the independent Insurance Authority ("IIA") and the Industry Advisory Committees ("IACs")</u></p> <p>The Deputy Chairman pointed out that the industry had raised a number of concerns, particularly its representation in the independent Insurance Authority ("IIA"), in a recent consultation session with the Administration. He also requested the Administration to provide a written response to the Hong Kong Federation of Insurers' written submission, which covered, inter alia, suggestions on the composition of IIA (e.g. at least 25% of the members should be representatives from the insurance industry) and the Industry Advisory Committees ("IACs"), as well as issues on which IIA should consult IACs and the industry's representation in IIA and IACs.</p> <p>Mr LEUNG and Mr YIU opined that the Administration should fully address the industry's concerns, particularly about possible decrease in representation of the industry in IIA with increase in the number of non-executive directors.</p> <p>Mr YIU considered that the Administration should consider specifying in the Bill that a certain proportion of IIA's members should come from the industry, such as including a representative from every major business of the insurance industry.</p> <p>Mr SIN was of the view that IIA should protect the interests of policy holders and consumers.</p>	The Administration to take action as per paragraph 2(b) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>Hence, he had reservation about the proposal in the Bill that "at least two non-executive directors of IIA" should be persons from the insurance industry. Instead, IIA should include "at most" two non-executive directors from the industry. He was opposed to the suggestion that "at least 25%" of IIA's members should be representatives from the insurance industry.</p> <p>Dr CHEUNG held the view that the existing self-regulatory regime of the insurance industry had a number of problems. As the purpose of the Bill was to establish a regulator independent of the Government and the insurance industry for enhancing the regulatory regime, he agreed with the Administration's proposal that IIA should include "at most two non-executive directors" from the insurance industry.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) IIA was a regulator rather than a trade association or a government department. According to the Insurance Core Principle 2 promulgated by the International Association of Insurance Supervisors, an insurance regulator should be independent of the industry and government; (b) the Administration was aware of the industry's concerns about the composition of IIA. The original proposal was that IIA should have "at least one but not more than two non-executive directors" with knowledge of and experience in the insurance industry. It was revised to "at least two non-executive directors" in the Bill. The Administration considered that the revised proposal had struck a balance between industry's concerns about the adequacy of IIA's industry expertise and the need to ensure IIA's impartiality and independence. The Administration maintained its position in the Bill; (c) as there was no limit on the number of non-executive directors "with knowledge of or experience in the insurance industry" in IIA, an increase in the number of non-executive directors would not necessarily 	

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		<p>reduce the proportion of industry experts in IIA;</p> <p>(d) the Bill had provided that IIA should include non-executive directors with knowledge in consumer affairs;</p> <p>(e) IACs' composition should include people from the insurance industry and other professionals. Details of IAC's constitution and proceedings were set out in the new Schedule 1C to the Insurance Companies Ordinance (Cap. 41) ("ICO"); and</p> <p>(f) IIA would consult IACs on important matters relating to the industry.</p> <p>The Deputy Chairman clarified that the industry had suggested specifying in the Bill that 25% of IIA's members (rather than most of the members) should be representatives from the industry.</p> <p>The Chairman remarked that members held different views about whether the Bill should specify a proportion of members of IIA from the insurance industry. If necessary, members might consider moving Committee Stage amendments ("CSAs") in their own capacity. He requested the Administration to provide supplementary information to:</p> <p>(a) explain its decision in maintaining the current proposal that at least two non-executive directors of IIA should be persons with knowledge of or experience in the insurance industry (in the proposed new section 4AA(3) of ICO); and</p> <p>(b) address some members' concern that under the current proposal, when the number of non-executive directors increased, representation of the insurance industry in IIA might decrease.</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
Clause-by-clause examination of the Bill			
003251 – 004108	Chairman Administration Deputy Chairman	<p><u>Clause 41 – Section 22A amended (foreign insurers may be authorized to maintain accounts in relation to their Hong Kong business)</u></p> <p><u>Clause 42 – Section 23 amended (application of assets of insurer with long term business)</u></p> <p>The Deputy Chairman's enquiries about:</p> <p>(a) the policy objective of imposing requirements on authorized insurers regarding maintenance of assets for their business and investment on the assets; and</p> <p>(b) the industry's views on the proposed amendments to section 23 of ICO.</p> <p>The Administration responded that:</p> <p>(a) the proposed amendments to section 23 required an authorized insurer to maintain separate accounts for each class of its long term business, and that assets of a fund maintained by the insurer in this respect should be applicable only for the purpose of that part of business to which the fund related. Such requirements were currently only applicable to Classes G and H of long term business (there were altogether nine statutory classes from A to I). The Administration had discussed with the industry the proposed amendments which sought to strengthen the protection of policy holders, and was not aware of any objections. It was noted that the majority of authorized long term insurers in Hong Kong were already keeping separate funds for individual classes of their business; and</p> <p>(b) in making investment of its assets, an authorized insurer was allowed to mix the funds for various classes of insurance business.</p>	

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004109 – 004414	Administration Mr SIN Chung-kai	<p><u>Clause 43 – Section 25A amended (maintenance of assets in Hong Kong—general business)</u></p> <p><u>Clause 44 – Section 25B amended (direction by Insurance Authority to re-determine liabilities)</u></p> <p><u>Clause 45 – Section 26 amended (grounds on which powers are exercisable)</u></p> <p><u>Clause 46 – Section 34 amended (power to obtain information and require production of documents)</u></p> <p><u>Clause 47 – Section 35AA amended (maintenance of excess of assets over liabilities etc.)</u></p> <p><u>Clause 48 – Section 35B amended (accounts)</u></p> <p><u>Clause 49 – Section 36 amended (notice of proposed exercise of power under section 27)</u></p>	
004415 – 010338	Administration ALA2 Ms Cyd HO Chairman Mr SIN Chung-kai	<p><u>Clause 50 – Section 37 amended (notice of proposed exercise of powers on ground of unfitness)</u></p> <p>In response to ALA2's enquiries, the Administration responded that:</p> <p>(a) the term "public officer" was replaced by "person" in the amended section 37(1)(b) of ICO, as under the new regulatory regime IIA would be an independent body instead of a government department; and</p> <p>(b) regarding the scope of "person" for receiving oral representations under the amended section 37(1)(b), the proposed new section 4F provided that IIA might delegate its functions to its members, committees and employees.</p> <p>Ms HO's views and concerns as follows:</p> <p>(a) the Administration should consider specifying in the Bill the relevant officers of IIA responsible for receiving oral representations so as to ensure IIA would assign appropriate level of staff for the duty;</p>	

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		<p>(b) whether "persons appointed by IIA" in the amended ICO would be under the same stringent conduct requirements as "public officers" in the existing ICO; and</p> <p>(c) the Administration should, in the course of the clause-by-clause examination, alert members to amendments of replacing "a public officer" with "a person appointed by IIA".</p> <p>The Administration responded that:</p> <p>(a) given the complexity of the businesses of the insurance industry, it would be necessary for IIA to assign staff members of different grades and ranks to receive oral representations. It would be appropriate for IIA to set out the details in its operation manuals rather than in legislation; and</p> <p>(b) both the members and staff of IIA would be subject to the regulation of the Prevention of Bribery Ordinance (Cap. 201) by virtue of the amendments made under clause 104 of the Bill.</p> <p>Ms HO remarked that the Administration should provide the draft operation manuals of IIA for members' reference.</p> <p>In response to Mr SIN's enquiries about the purposes of the proposed amendments to section 37(6) and (7) of ICO, the Administration responded that:</p> <p>(a) the existing sections 27 to 35 of ICO conferred powers on the Insurance Authority (i.e. the Commissioner of Insurance) to intervene the operations of an insurer under certain circumstances. When the insurer objected to the Insurance Authority's decisions, it could make written representations and would be provided an opportunity to be heard if so requested. This mechanism would be maintained under the new regulatory regime;</p> <p>(b) the amended section 37(6) provided that if an authorized insurer, upon receiving IIA's</p>	

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		<p>notice on the rejection/revocation of the appointment of an individual as its controller/director, continued with the appointments concerned, IIA would not be required to serve the notices under section 37 if IIA decided to exercise the powers conferred on it under sections 27 to 35;</p> <p>(c) the amended section 37(7) provided that section 37(6) would still apply if the authorized insurer concerned applied to the Insurance Appeals Tribunal ("IAT") for a review and IAT had not yet made a decision on the review; and</p> <p>(d) it would be a criminal offence for an authorized insurer to appoint an individual as its controller/director without IIA's approval.</p>	
010039 – 011411	Administration Chairman Mr SIN Chung-kai	<p><u>Clause 51 – Section 38A amended (effect of direction given under section 35(2)(b))</u></p> <p><u>Clause 52 – Section 38B amended (powers of Manager)</u></p> <p>In response to Mr SIN's enquiries, the Administration explained that:</p> <p>(a) section 35(2)(b) of ICO provided that if IIA had reasonable doubt on the financial position of an authorized insurer, it could appoint a Manager to take over the management of the insurer. The powers of the Manager were set out in the amended section 38B; and</p> <p>(b) as regards section 38C, the provision empowered the Court of First Instance to, on application of the Manager appointed by IIA or any member of the authorized insurer, approve or refuse to approve any resolution passed at an annual general meeting of the authorized insurer. The proposed amendments to the provision were technical amendments.</p> <p><u>Clause 53 – Section 40 amended (withdrawal of authorization)</u></p>	

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011412 – 012019	Administration Ms Cyd HO ALA2	<p><u>Clause 54 – Section 41 amended (offences under Part V)</u></p> <p>In response to Ms HO's enquiry about the drafting of the proposed new section 41(1A) of ICO (which replaced subsection (1)(b)), the Administration explained that the proposed amendments were textual in nature and there was no material change in the content. The English version of the text remained the same while the Chinese text had been modernized.</p>	
012020 – 012305	Administration Mr SIN Chung-kai	<p><u>Clause 55 – Part VA added</u></p> <p><i>Part VA – Further Regulatory Powers on Insurers</i></p> <p><i>Division 1—Preliminary</i></p> <p><i>41A. Interpretation</i></p> <p>Mr SIN enquired why the proposed amendment to section 37(1)(b) of ICO (i.e. replacing the phrase "a public officer appointed by the Insurance Authority" by "a person appointed by IIA") had not specified the post and rank of the person to be appointed, while in the new Part VA of ICO it was provided that the future IIA could appoint "inspectors" and "investigators".</p> <p>The Administration responded as follows:</p> <p>(a) both inspectors and investigators mentioned in the new Part VA would be appointed by IIA; and</p> <p>(b) given the complexity of businesses in the insurance industry, IIA would need to appoint staff members of various ranks and levels as appropriate for different tasks. It would be impossible to specify such details in the primary legislation. On the other hand, the tasks set out in Part VA were very specific and considered appropriate to be taken up by "inspectors or investigators" to be appointed by IIA.</p>	

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012306 – 012459	Administration ALA2	<p><i>Division 2—Inspection and Investigation without Warrant</i></p> <p><i>41B. Power to conduct inspection</i></p> <p>In light of ALA2's comments, the Administration agreed to examine the need to align the drafting of the English and the Chinese texts in respect of the first sentence in the proposed new section 41B(1) of ICO.</p>	The Administration to take action as per paragraph 2(f) of the minutes.
012500 – 014337	Administration Mr SIN Chung-kai ALA2 Chairman	<p>Mr SIN considered that there should be provisions in the Bill setting out the types of records, the period and format of which that insurers were required to keep so as to facilitate IIA's inquiries and investigations of offences and misconduct of insurers. At Mr SIN's request, the Administration was requested to provide information on:</p> <p>(a) requirements on authorized insurers for retaining business records under ICO, including the retention period and format of the records (e.g. written and audio records) for different types of business; and</p> <p>(b) sanctions for non-compliance with the requirements and the rationale for the existing sanctions.</p> <p>The Administration was also requested to address some members' concern that failure of authorized insurers in complying with IIA's guidelines/codes on retention of business records might not have any legal consequences given that such guidelines were non-statutory. As provided in the proposed new section 131(4) and (7) of ICO, failure of a person to comply with these guidelines/codes might not render the person liable to any judicial or other proceedings, and these guidelines/codes were not subsidiary legislation.</p>	The Administration to take action as per paragraphs 2(c) and 2(d) of the minutes.
014338 – 014518	Mr Andrew LEUNG Administration	In response to Mr LEUNG's enquiry, the Administration advised that the powers of IIA's inspectors and investigators in conducting inspections and investigations with warrant and without warrant were similar to those specified in the Securities and Futures Ordinance (Cap. 571)("SFO"), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and	

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		the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)("AMLO").	
014519 – 015540	Mr Paul TSE Administration Deputy Chairman Ms Cyd HO	<p>Mr TSE's concern that the scope of the term "business records" set out in the proposed new section 41A of ICO was extensive, and enquired if the Administration had made reference to comparable legislation in other jurisdictions in determining the scope.</p> <p>The Deputy Chairman shared Mr TSE's concern about the wide coverage of the term "business records".</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) given that the insurance industry involved a wide variety of businesses, the term "business records" had to be sufficiently extensive to cover various types of records and documents; (b) IIA would exercise its inspection and investigation powers in a reasonable manner; and (c) in drafting the new Part VA, reference had been made to SFO, MPFSO and AMLO, and the term "business records" was in line with the relevant provisions in the three Ordinances. <p>The Administration was requested to consider reviewing the definition of "business record" in the proposed new section 41A in order to address:</p> <ul style="list-style-type: none"> (a) some members' concern about the extensive scope of the term; and (b) their views that coverage of the term should be sufficient to allow IIA to obtain necessary and relevant business records from insurers in conducting investigations on the one hand, and should not create compliance burden on insurers on the other. 	The Administration to take action as per paragraph 2(e) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
015541 – 015735	Chairman Deputy Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
30 June 2015