

立法會
Legislative Council

LC Paper No. CB(1)1276/14-15
(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 nineteenth meeting on
Thursday, 7 May 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon James TO Kun-sun
- 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 meetings

- | | |
|---------------------------------|---|
| LC Paper No. CB(1)824/14-15(01) | — List of follow-up actions arising from the discussion at the meeting on 10 April 2015 |
| LC Paper No. CB(1)824/14-15(02) | — List of follow-up actions arising from the discussion at the meeting on 14 April 2015 |
| LC Paper No. CB(1)824/14-15(03) | — List of follow-up actions arising from the discussion at the meeting on 20 April 2015 |

LC Paper No. CB(1)824/14-15(04) — Administration's response to issues raised at the meetings on 10 and 14 April 2015

LC Paper No. CB(1)824/14-15(05) — Administration's response to issues raised at the meeting on 20 April 2015

Clause-by-clause examination of the Bill

LC Paper No. CB(1)824/14-15(06) — Letter dated 5 May 2015 from Legal Service Division to the Administration

LC Paper No. CB(1)729/14-15(01) — Letter dated 31 March 2015 from Legal Service Division to the Administration

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:

Disclosure of interests by members of the independent Insurance Authority ("IIA") (under clause 86)

- (a) Members of IIA were required to disclose their pecuniary interests under section 5 of the proposed new Schedule 1B to the Insurance Companies Ordinance (Cap. 41) ("ICO") (on the constitution and proceedings of IIA). A member had suggested extending the scope of disclosure to include "conflict of interest". The Administration was requested to consider the member's suggestion taking into account the policy intent and similar provisions in legislation of other statutory bodies.

Transfer of records from the existing Office of the Commissioner of Insurance ("OCI") to the future IIA (under clause 94)

- (b) Part 3 of the proposed new Schedule 11 to ICO contained provisions on the transfer of records from the existing OCI to the future IIA. Members had stressed the importance for the two parties to conduct the transfer process in a prudent manner to ensure protection of the relevant records, particularly secrecy of the personal data contained therein. The Administration was requested to: (i) provide information on the contemplated record transfer process, including the timeframe for transfer of records in various forms (i.e. in hardcopy or electronic form), relevant measures to protect secrecy of the personal data, etc.; and (ii) consider the need to specify in the provisions when the transfer process would be regarded as completed so that IIA's legal obligations for the transferred records under the Personal Data (Privacy) Ordinance (Cap. 486) would officially commence.

Drafting issues(c) *Orders and regulations for levies of IIA* (under clause 84)

The proposed new section 132(1) of ICO provided that a levy specified by the Chief Executive in Council by order published in the Gazette was payable to IIA by "the person so specified in the order for every contract of insurance". The Administration had explained that the phrase "the person so specified in the order" was intended to cover policy holders only. In the light of a member's comment, the Administration was requested to review the drafting and consider replacing the phrase by the words "policy holders" to better reflect the policy intent.

(d) *Reduction of levies by IIA* (under clause 84)

The proposed new section 133(1) and (2) of ICO provided for the mechanism for reduction of IIA's levies. The Administration had explained that the policy intent was that when the reserves of IIA, after deducting depreciations, all provisions, and outstanding debts, were more than twice its estimated operating expenses for the financial year, IIA had to consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced. Members considered that if the Administration was to adopt the concept of "net reserves of IIA" for considering the need of levy reduction, the present provisions might need to be amended. The Administration agreed to review the drafting in the light of members' comments.

(e) *Regulated Activities* (under clause 86)

In Part 1 of the proposed new Schedule 1A to ICO, regulated activities under the new regulatory regime covered "the act of inviting or inducing, or attempting to invite or induce a person to enter into a contract of insurance". In view of a member's comment that the existing Chinese rendition of the term "induce" ("誘使") might convey a negative meaning, the Administration was requested to consider whether a more neutral term like "促使" should be adopted.

- (f) *Constitution and proceedings of Industry Advisory Committee*
(under clause 86)

In the light of comment by the Legal Adviser to the Bills Committee, the Administration had agreed to add the word "and" after paragraph (c) of section 1 of the proposed new Schedule 1C to ICO.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 11 May 2015, at 10:45 am and 18 May 2015, at 10:45 am respectively.
4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
30 September 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Nineteenth meeting on Thursday, 7 May 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
001014 – 001109	Chairman	Introductory remarks	
001110 – 003038	Administration Mr SIN Chung-kai Mr Alan LEONG Deputy Chairman	<p>Briefing by the Administration on the papers "Administration's response to issues raised at the meetings on 10 and 14 April 2015" [LC Paper No. CB(1)824/14-15(04)] and "Administration's response to issues raised at the meeting on 20 April 2015" [LC Paper No. CB(1)824/14-15(05)].</p> <p>Mr SIN agreed that the Administration should amend the Chinese rendition of the term "insurer" from "保險人" to "保險公司" in the Insurance Companies Ordinance (Cap. 41) ("ICO") in future legislative exercises.</p> <p>The Deputy Chairman relayed the industry's concern that some terms in the proposed new section 122 of ICO (including "connivance" and "omission") might not be well-defined, thus might increase the risk of criminal liability of innocent senior management of insurers and insurance intermediaries. The industry was seeking legal advice on the matter and would provide a written submission in due course.</p> <p>Mr LEONG enquired why the Administration considered it inappropriate to compare section 260(2) of the Securities and Futures Ordinance (Cap. 571) ("SFO") (costs awarded by the Market Misconduct Tribunal ("MMT")) with the proposed new section 104(2) of ICO (costs awarded by the Insurance Appeals Tribunal ("IAT")).</p> <p>The Administration explained that MMT and IAT represented judicial bodies of different functions. While IAT would review the disciplinary decisions of the independent Insurance Authority ("IA"), MMT's function was not to review decisions of the Securities and Futures Commission. Hence, it would be more appropriate to compare provisions of IAT with</p>	

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		those of other quasi-judicial tribunals performing similar functions (i.e. reviewing the decisions of a regulator), such as the Securities and Futures Appeals Tribunal and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal.	
Clause-by-clause examination of the Bill			
003039 – 005218	Administration Chairman Mr SIN Chung-kai Deputy Chairman Mr Alan LEONG	<p>The Chairman remarked that the Administration was requested to provide written responses to the letter dated 5 May 2015 by the Legal Adviser to the Bills Committee ("ALA7") [LC Paper No. CB(1)824/14-15(06)] on legal and drafting issues relating to the Bill, and where necessary, ALA7 could raise her concerns when the Bills Committee discussed the relevant clauses.</p> <p><i>Part XIII – Miscellaneous</i></p> <p><i>Division 4—Regulations and Rules, etc.</i></p> <p><i>131. Codes or guidelines on functions of Authority, etc.</i></p> <p><i>132. Orders and regulations for levies</i></p> <p><i>133. Reduction of levies</i></p> <p><i>134. Procedural requirements for publishing notices under sections 13AE(14) and 121(5)</i></p> <p><i>135. Authority may specify forms</i></p> <p><i>136. Amendment of Schedules</i></p> <p>Responding to the Deputy Chairman's enquiry, the Administration confirmed that the existing levies imposed on some types of insurance policies (like motor vehicle insurance) would be retained under the new regulatory regime.</p> <p>The proposed new section 133(1) and (2) of ICO provided for a mechanism to reduce IIA's levies. Given that the proposed new section 133(2)(b) of ICO provided that one of the requirements for IIA to consider the need for levy reduction was that it had no outstanding debt, Mr SIN was concerned</p>	

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		<p>that the provision might allow IIA to deliberately incur debt in order not to trigger the levy reduction mechanism.</p> <p>The Administration explained that the policy intent was that when the reserves of IIA, after deducting depreciations, all provisions, and outstanding debts, were more than twice its estimated operating expenses for the financial year, IIA had to consult the Financial Secretary ("FS") with a view to recommending to the Chief Executive ("CE") in Council that the rate or amount of a levy be reduced.</p> <p>Members considered that if the Administration was to adopt the concept of "net reserves of IIA" for considering the need of levy reduction, the present provisions might need to be amended. The Administration agreed to review and improve the drafting in the light of members' comments.</p> <p>Responding to Mr SIN's enquiries, the Administration advised that:</p> <p>(a) the Administration had undertaken that the future IIA would brief the Panel on Financial Affairs on its proposed budget prior to seeking FS' approval; and</p> <p>(b) the proposed new section 132 of ICO provided for the mechanism for IIA to introduce new levies or amend the rates of levies. The order to be made by IIA under the new section 132 would be subsidiary legislation subject to the negative vetting procedure of the Legislative Council.</p> <p>The proposed new section 132(1) of ICO provided that a levy specified by CE in Council by order published in the Gazette was payable to IIA by "the person so specified in the order for every contract of insurance". The Administration explained that the phrase "the person so specified in the order" was intended to cover policy holders only. The Administration's preliminary thinking was that IIA would impose levies on all insurance policies except those subject to exemption. The levy rate and ceiling for different types of insurance products might differ.</p>	<p>The Administration to take action as per paragraph 2(d) of the minutes</p> <p>The Administration to take action as per paragraph 2(c) of the minutes</p>

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		In the light of Mr LEONG's comment that the scope of the phrase "the person so specified in the order" might be unnecessarily wide, the Administration had agreed to review the drafting and consider replacing the phrase by the words "policy holders" to better reflect the policy intent.	
005219 – 010229	Administration Mr SIN Chung-kai Chairman Deputy Chairman	<p>Part XIV Savings and Transitional Arrangements</p> <p><i>137. Savings and transitional arrangements for Insurance Companies (Amendment) Ordinance 2014</i></p> <p><u>Clause 85 – First Schedule amended (classes of insurance business)</u></p> <p><u>Clause 86 – Schedules 1A to 1D added</u> <i>Schedule 1A. Regulated Activity, Material Decision and Regulated Advice</i></p> <p>In Part 1 of the proposed new Schedule 1A to ICO, regulated activities under the new regulatory regime covered "the act of inviting or <u>inducing</u>, or attempting to invite or <u>induce</u> a person to enter into a contract of insurance". In view of Mr SIN's comment that the existing Chinese rendition of the term "induce" ("誘使") might convey a negative meaning, the Administration was requested to consider whether a more neutral term like "促使" should be adopted.</p> <p>Responding to the Deputy Chairman's enquiry about whether referral activities would be regarded as regulated activities, the Administration advised that the proposed new Schedule 1A should be read in conjunction with the proposed new section 64G of ICO. In general, a referral activity would not be regarded as a regulated activity if the person concerned did not conduct the activity in the course of his/her business or employment, or for reward.</p>	The Administration to take action as per paragraph 2(e) of the minutes
010230 – 011855	Administration Mr SIN Chung-kai Chairman Deputy Chairman Assistance Legal Adviser 7 ("ALA7")	<p><i>Schedule 1B Constitution and Proceedings of Authority, etc.</i></p> <p>Section 4(1)(d) of the proposed new Schedule 1B to ICO specified that CE might remove a member of IIA if the member "is convicted in Hong Kong of an offence that is punishable by imprisonment</p>	

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		<p>for 12 months or more, or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable". Mr SIN was concerned whether the above removal criteria would be too lenient and enquired about similar arrangements in other relevant regulatory regimes.</p> <p>The Administration responded that in drafting section 4(1)(d) of the proposed new Schedule 1B to ICO, the Administration had made reference to other relevant legislation including SFO and the Financial Reporting Council Ordinance (Cap. 588). The removal criteria as provided in the provision was "an offence that was punishable by imprisonment for 12 months or more" regardless of the actual period of imprisonment as decided by the court.</p> <p>Members of IIA were required to disclose their pecuniary interests under section 5 of the proposed new Schedule 1B to ICO. Mr SIN suggested extending the scope to include "conflict of interest". The Administration was requested to consider his suggestion taking into account the policy intent and similar provisions in legislation of other statutory bodies.</p> <p>The Chairman remarked that there might be operational difficulties if the scope of disclosure for members of IIA was too wide.</p> <p>ALA7 highlighted the drafting issue raised in her letter regarding section 1(6) of the proposed new Schedule 1B to ICO, and requested the Administration to explain whether the em-dash "—" used in various provisions of the Bill had the same effect and meaning.</p> <p>The Administration explained that the issue referred to by ALA7 reflected the new drafting practice of Department of Justice. The use of em-dashes (i.e. "—") would be an optional alternative to set off a conditional phrase ("條件句").</p>	<p>The Administration to take action as per paragraph 2(a) of the minutes</p>

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011856 – 012411	Administration ALA7 Chairman Deputy Chairman	<p><i>Schedule 1C Constitution and Proceedings of Industry Advisory Committees</i></p> <p>In the light of the comment by ALA7, the Administration agreed to add the word "and" after paragraph (c) of section 1 of the proposed new Schedule 1C to ICO.</p> <p>The Deputy Chairman remarked that the majority of members of the Industry Advisory Committees ("IACs") should be persons with knowledge of or experience in the insurance industry.</p> <p>The Administration responded that the name of IAC per se already reflected that its members would include persons with knowledge of or experience in the insurance industry. Moreover, IAC would have members representing consumers.</p>	The Administration to take action as per paragraph 2(f) of the minutes
012412 – 013136	Administration Chairman ALA7	<p><i>Schedule 1D Non-delegable Functions of Authority</i></p> <p><u>Clause 87 – Second Schedule amended (directors and controllers)</u></p> <p><u>Clause 88 – Third Schedule amended (accounts and statements)</u></p> <p><u>Clause 89 – Fourth Schedule amended (proposed appointment of controller within the meaning of section 13A(1) or authorized representative under section 50B)</u></p> <p><u>Clause 90 – Fifth Schedule amended (person proposing to become controller within the meaning of section 13B(1))</u></p> <p><u>Clause 91 – Sixth Schedule amended (person who has become controller of insurer in contravention of section 13B(2))</u></p> <p><u>Clause 92 – Seventh Schedule amended (powers of Manager of insurer)</u></p> <p><u>Clause 93 – Eighth Schedule amended (assets which qualify as assets in Hong Kong)</u></p> <p><u>Clause 94 – Schedules 9, 10 and 11 added</u></p>	

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		<p><i>Schedule 9 Specified Decisions</i></p> <p><i>Schedule 10 Appointment of Members and Proceedings of Tribunal, etc</i></p> <p>The Administration advised that the Bills Committee had already scrutinized the proposed new Schedules 9 and 10 to ICO in previous meetings.</p> <p>ALA7 referred to the drafting issues raised in her letter regarding sections 5(8) and 7(1) of the proposed new Schedule 10 to ICO. The Administration remarked that it would provide a written response to the letter in due course.</p>	
013137 – 020033	Administration ALA7 Chairman Mr YIU Si-wing Ms Cyd HO	<p><i>Schedule 11 Savings and Transitional Arrangements for Insurance Companies (Amendment) Ordinance 2014</i></p> <p>Part 3 of the proposed new Schedule 11 to ICO contained provisions on the transfer of records from the existing Office of the Commissioner of Insurance ("OCI") to the future IIA. ALA7 highlighted the drafting issue regarding section 3(1) of new Schedule 11 raised in her letter, and sought clarification from the Administration on what point of time should the transfer of records be considered as completed.</p> <p>The Administration advised that the transfer of records from OCI to IIA would be a process, which would be regarded as completed at the moment IIA had received all the records from OCI, and by then IIA would be subject to the regulation of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO").</p> <p>Mr YIU's views and enquiries as follows:</p> <p>(a) IIA and OCI should handle the transfer of records prudently and work out the relevant arrangements and timeframe;</p> <p>(b) whether OCI would have sufficient manpower to handle the task as many of its staff members were expected to have left the Office during the last stage before its dissolution. The Administration should provide more support to OCI if necessary; and</p>	

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		<p>(c) to ensure smooth and prudent transfer of records, whether OCI and the future IIA would sign an agreement regarding the transfer arrangements and protection of data privacy.</p> <p>Ms HO agreed that the transfer of records from OCI to IIA should be carried out carefully and enquired about arrangements for the transfer of electronic records.</p> <p>The Administration responded as follows:</p> <p>(a) both the existing and former employees of OCI were subject to the secrecy provisions in the existing section 53A of ICO. Contravention of the provision would be a criminal offence. OCI was also subject to the regulation of PDPO; and</p> <p>(b) OCI would monitor its manpower situation and request additional resources from the policy bureau if necessary.</p> <p>In the light of members' view that OCI and IIA should conduct the transfer of records in a prudent manner to ensure protection of the relevant records, particularly secrecy of the personal data contained therein, the Administration was requested to:</p> <p>(a) provide information on the contemplated record transfer process, including the timeframe for transfer of records in various forms (i.e. in hardcopy or electronic form), relevant measures to protect secrecy of the personal data, etc.; and</p> <p>(b) consider the need to specify in the provisions when the transfer process would be regarded as completed so that IIA's legal obligations for the transferred records under PDPO would officially commence.</p> <p>Ms HO's views and enquiries as follows:</p> <p>(a) whether OCI and the future IIA would exist concurrently; and</p> <p>(b) the transitional arrangement for the existing staff of OCI, including whether the existing</p>	<p>The Administration to take action as per paragraph 2(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>contract staff would have priority in applying for jobs in IIA.</p> <p>The Administration responded as follows:</p> <p>(a) there would only be one regulator overseeing the insurance industry at any time, hence OCI and the future IIA would not operate as regulators concurrently;</p> <p>(b) Annex E to the Legislative Council Brief on the Bill had set out the staffing arrangement in relation to the replacement of OCI by IIA. Staff of OCI could decide whether to apply for posts in IIA; and</p> <p>(c) OCI would further discuss with its staff on the staffing arrangements after the passage of the Bill.</p>	
020034 – 020101	Chairman	Dates of next two meetings	