

立法會
Legislative Council

LC Paper No. CB(1)1278/14-15
(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 twenty-first meeting on
Monday, 18 May 2015, at 10:45 am
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 James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Alan LEONG Kah-kit, SC
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
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon WONG Kwok-kin, SBS
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

Administration's responses to outstanding issues

- LC Paper No. CB(1)858/14-15(01) — List of follow-up actions arising from the discussion at the meeting on 7 May 2015
- LC Paper No. CB(1)858/14-15(02) — Administration's response to issues raised at the meeting on 7 May 2015
- LC Paper No. CB(1)858/14-15(03) — Administration's response to issues arising from the meetings and the industry

- 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)858/14-15(04) — Administration's response to letter dated 31 March 2015 from Assistant Legal Adviser
- 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)858/14-15(05) — Administration's response to letter dated 5 May 2015 from Assistant Legal Adviser

Other relevant papers

- LC Paper No. CB(1)1494/13-14(01) — Administration's paper on Insurance Companies (Amendment) Bill 2014
- LC Paper No. CB(3)581/13-14 — The Bill
- LC Paper No. CB(1)1636/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- File Ref: C2/2/50C — Legislative Council Brief
- LC Paper No. LS50/13-14 — Legal Service Division Report
- LC Paper No. CB(1)1494/13-14(02) — Background brief on Insurance Companies (Amendment) Bill 2014 prepared by the Legislative Council Secretariat

Discussion

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

Admin Follow-up actions to be taken by the Administration

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

Insurance agents' relationship with insurers (under clause 73)

Members noted that one of the objectives of the Bill was to modernize the Insurance Companies Ordinance (Cap. 41) ("ICO") with a view to providing better protection for policy holders and facilitating the stable development of the industry. In the light of concerns expressed by some members on the scope of liability of an insurer for the acts of its appointed agent under the proposed amended section 68 of ICO and the Administration's proposal to introduce Committee Stage amendments to refine the scope (paragraph 8 of LC Paper No. CB(1)858/14-15(03)), the Administration was requested to:

- (a) provide information on provisions in the Bill which concerned an insurer's relationship with its insurance agents that might have impacts on the rights and interests of policy holders; and
- (b) explain the objectives and scope of the Administration's proposed amendments to the proposed amended section 68, in particular, whether the proposed amendments might reduce the level of protection of policy holders or might allow an insurer to evade its responsibilities for ensuring its appointed insurance agents would act prudently and comply with the necessary requirements in their dealings with clients.

II Any other business

Legislative timetable

3. The Chairman said that subject to the progress of Bills Committee in scrutinizing the Bill, the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 8 July 2015. If so, the Bills Committee would report its deliberations to the House Committee on 19 June 2015, and the deadline for giving notice of amendments to the Bill would be 27 June 2015.

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 26 May 2015, at 2:30 pm and 2 June 2015, at 2:30 pm respectively.

5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
30 September 2015

**Proceedings of the
Bills Committee on Insurance Companies (Amendment) Bill 2014
Twenty-first meeting on Monday, 18 May 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000612 – 000823	Chairman	Introductory remarks	
000824 – 001628	Administration Chairman	Briefing by the Administration on the paper entitled "Administration's response to issues raised at the meeting on 7 May 2015" [LC Paper No. CB(1)858/14-15(02)]	
001629 – 014104	Administration Mr SIN Chung-kai Mr James TO Deputy Chairman Chairman	<p>Briefing by the Administration on the paper entitled "Administration's response to outstanding issues arising from the discussions at previous meetings and raised by the industry" [LC Paper No. CB(1)858/14-15(03)]</p> <p><u>Insurance agents' relationship with insurers</u></p> <p>Members noted the industry's view that the proposed amended section 68 of the Insurance Companies Ordinance (Cap. 41) ("ICO") would override the common law position that an insurer would not have to be responsible for the acts of its appointed insurance agent if the relevant policy holder knew that the insurance agent's acts were outside the latter's authority. To address the concern, the Administration proposed to model on the relevant provisions under the Corporations Act 2001 of Australia to move Committee Stage amendments ("CSAs") to make it clear that an insurer was not liable for the act of its appointed insurance agent if: (a) the act was not within the scope of the insurance agent's authority; and (b) the insurance agent had disclosed that fact to the client before the client relied on the act. The insurer would have to bear the onus of proof.</p> <p>Mr SIN's views and enquiries as follows:</p> <p>(a) the Administration should elaborate on the relevant details of the Corporations Act 2001;</p> <p>(b) an insurer should be responsible for the acts of its appointed insurance agent even if the clients knew that such acts were outside the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>agent's authority since the insurer had duty to ensure proper dealings of its appointed insurance agents with their clients. The proposed CSAs might allow insurers to evade liability for acts of their appointed agents. The interests of policy holders might be adversely affected and insurers might have lower incentive to strengthen their internal control system; and</p> <p>(c) whether the proposed CSAs would allow an insurer to evade liability for an insurance policy under certain scenarios, such as conspiracy between a policy holder and an insurance agent to defraud.</p> <p>Mr TO's views and enquiries as follows:</p> <p>(a) whether there were provisions in the existing ICO on insurers' compensation to policy holders for improperly arranged insurance policies (eg. provision of misleading information by the relevant insurance agent to the policy holder);</p> <p>(b) it might be more appropriate to leave the issue of insurance agents' relationship with insurers to the relevant case law instead of introducing the proposed CSAs; and</p> <p>(c) what were the possible impacts of the proposed CSAs on litigation relating to insurers' liability for their insurance policies.</p> <p>The Deputy Chairman remarked that the proposed CSAs were to address the industry's concern. Except under the special circumstances as prescribed in the proposed CSAs, it would not be possible for an insurer to exclude or limit its liability for acts of its appointed agents in the latter's dealings with the policy holders on insurance contracts.</p> <p>The Chairman enquired if an insurance agent had acted beyond his/her authority and the policy holder concerned consented to the agent's improper act, whether the insurer would be liable for the acts of the agent.</p>	

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		<p>The Administration responded as follows:</p> <ul style="list-style-type: none"><li data-bbox="614 338 1268 701">(a) insurers were required under the existing and the new regulatory regime to establish proper control mechanism to ensure proper dealings of their appointed insurance agents with their clients. Misconduct committed by the appointed agents referred to the Office of the Commissioner of Insurance or the Insurance Agents Registration Board or, in future, the independent Insurance Authority ("IIA") would be followed up;<li data-bbox="614 741 1268 1066">(b) the proposed amended section 68 of ICO sought to maintain the existing requirement under ICO regarding the liability of an insurer for the acts of its appointed insurance agent. The proposed CSAs were introduced to reflect the latest developments in the agency law. Without the proposed CSAs, the revised section 68 would override the common law position;<li data-bbox="614 1106 1268 1431">(c) the proposed CSAs provided that an insurer would not be liable for the acts of its appointed insurance agent, if it could prove that (i) the act concerned was not within the scope of the insurance agent's authority; and (ii) the insurance agent had disclosed that fact to the client before the client relied on the act. The insurer also had to bear the onus of proof;<li data-bbox="614 1471 1268 1834">(d) an insurer still had responsibility to establish internal controls to ensure its appointed insurance agents' compliance with relevant requirements under the new regulatory regime. The approval of the key person in control functions (which included intermediary management function) granted to an insurer would be revoked if the key person failed to enforce proper internal control on the intermediaries;<li data-bbox="614 1874 1268 2085">(e) there was no provision in the existing ICO on the liability of insurers for their insurance policies. The proposed CSAs would not have any impact on this matter and the court would determine the matter having regard to the relevant facts and evidence of the case;	

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		<p>(f) apart from establishing IIA, the Bill also aimed to modernize regulatory requirement under ICO to remove outdated requirements and bring the regime in line with international standard; and</p> <p>(g) insurance agents were required to comply with conduct requirements, including acting honestly and fairly in the best interests of their clients. They also needed to act in the interests of their appointing insurers.</p> <p>Mr TO expressed strong reservation about the proposed CSAs on the grounds that they might adversely affect the interests of policy holders. He was concerned that aggrieved policy holders might be discouraged from pursuing litigations with insurers, as huge legal costs might be involved. The Administration should elaborate further on the rationale of the proposed CSAs, and clarify in what ways they might affect the court's interpretation of the principal-agent relationship.</p> <p>Mr SIN shared the concern and expressed reservation on the proposed CSAs.</p> <p>The Chairman enquired whether the proposed CSAs would benefit insurers at the expense of the interests of policy holders.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed CSAs would not alter an insurer's liability for an insurance policy nor would they weaken the protection for policy holders;</p> <p>(b) the relevant case mentioned (footnote 3 in the Administration's paper) related to general principal-agent relationship; and</p> <p>(c) one of the major objectives of the Bill was to enhance the protection of policy holders. It remained the Administration's primary consideration to protect the interests of policy holders.</p> <p>The Deputy Chairman expressed support for the proposed CSAs which were to address the industry's concern. He suggested that members</p>	<p>The Administration to take action as per</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>who had reservation about the proposed CSAs should communicate with the industry to better understand the latter's concerns and the purpose of the proposed CSAs.</p> <p>In the light of concerns expressed by Mr TO and Mr SIN, the Administration was requested to:</p> <p>(a) provide information on provisions in the Bill which concerned an insurer's relationship with its insurance agents that might have impacts on the rights and interests of policy holders; and</p> <p>(b) explain the objectives and scope of the proposed CSAs, in particular whether they might reduce the level of protection of policy holders or might allow an insurer to evade its responsibilities for ensuring its appointed insurance agents would act prudently and comply with the necessary requirements in their dealings with clients.</p>	<p>paragraph 2 of the minutes</p>
<p>014105 – 015958</p>	<p>Administration Mr SIN Chung-kai Mr James TO Chairman</p>	<p><u>Consequences of a breach of the conduct requirements</u></p> <p>Mr SIN expressed strong reservation on the proposed CSAs to amend the proposed new section 89 of ICO to provide that a breach of the conduct requirements would not on its own render any insurance intermediary or insurance company liable to judicial proceedings (ie paragraph 25 of the paper). He considered that the proposed CSAs might limit policy holders' right to take civil action against an insurance intermediary or an insurer whom IIA had taken disciplinary actions against.</p> <p>Mr TO's views and enquiries as follows:</p> <p>(a) the Administration's current approach was different from that adopted by the Securities and Futures Commission ("SFC") under which banks and securities brokerages were required to incorporate the relevant code of practice into the client agreements. Contravention of the provisions in the code could be a cause of action for the client. The Administration should make reference to the practice adopted by SFC; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the proposed CSAs might have unintended effects on policy holders.</p> <p>The Administration responded as follows:</p> <p>(a) a breach of the conduct requirements would not on its own render any insurance intermediary or insurer liable to judicial proceedings. The proposed CSAs would not affect an aggrieved person's right to take civil action against an insurance intermediary or an insurer on other grounds under common law;</p> <p>(b) policy holders could pursue civil action against an insurance intermediary or an insurer. The court would decide on the case having regard to the relevant evidence and facts of the case; and</p> <p>(c) as regards SFC's practice, it was clarified that a breach of the relevant code of practice would not create a new statutory cause of action under the Securities and Futures Ordinance (Cap. 571). The proposed CSAs to be made to the new section 89 of ICO had similar effect.</p>	
015959 – 020210	Chairman	Legislative timetable and dates of the next two meetings	