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Legislative Council

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Paper for the House Committee meeting on 27 November 2020

**Report of the Subcommittee on
Registration of Determinations and Orders of Public Interest Entities
Auditors Review Tribunal Rules and
Registration of Orders of Insurance Appeals Tribunal Rules**

Purpose

This paper reports on the deliberations of the Subcommittee on Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules and Registration of Orders of Insurance Appeals Tribunal Rules ("the Subcommittee").

Background

Public Interest Entities Auditors Review Tribunal

2. The Financial Reporting Council (Amendment) Ordinance 2019 ("the FRC Amendment Ordinance") was enacted in February 2019, and came into effect on 1 October 2019.¹ As explained by the Administration, the FRC Amendment Ordinance enables the Financial Reporting Council ("FRC") to become a full-fledged and independent oversight body regulating auditors of public interest entities ("PIE"),² and be responsible for the inspection,

¹ The Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice provides that all provisions of the Amendment Ordinance, except for sections 62 and 85, are to commence on 1 October 2019. Sections 62 and 85 of the Amendment Ordinance will separately commence on 1 January 2022. Section 62 provides for the payment of levies to the Financial Reporting Council and related issues. Section 85 sets out the calculation methods of the said levies.

² Public interest entities refer to corporations with issued shares or stocks listed in Hong Kong or collective investment schemes with interests listed in Hong Kong.

investigation and disciplinary functions with regard to PIE auditors, as well as the recognition of overseas PIE auditors. The Hong Kong Institute of Certified Public Accountants ("HKICPA") continues to perform the statutory functions of registration, setting requirements for continuing professional development, and prescribing standards on professional ethics, auditing and assurance in respect of local PIE auditors, subject to oversight by FRC.

3. The Public Interest Entities Auditors Review Tribunal ("PIEART") was established in October 2019 pursuant to Part 3C of the Financial Reporting Council Ordinance (Cap. 588) ("FRCO") with jurisdiction to review and make determination on a review of any of the specified decisions as defined in section 2 of FRCO, such as decisions of HKICPA relating to registration of local PIE auditors, decisions of FRC relating to recognition of overseas PIE auditors, and disciplinary decisions of FRC in relation to PIE auditors.

4. Pursuant to section 37T of FRCO, PIEART may determine a review in relation to a specified decision by confirming, varying or setting aside the decision, or remitting the matter in question to the decision authority (i.e. FRC or HKICPA as the case may be) with any direction it considers appropriate. In accordance with sections 37Y(1), 37ZA(1) of and 11 of Schedule 4A to FRCO, PIEART may also issue orders in relation to a review.

Insurance Appeals Tribunal

5. The Insurance Companies (Amendment) Ordinance 2015 ("the Insurance Amendment Ordinance") was enacted in July 2015 to provide for, among other things, the establishment of the Insurance Authority ("IA") which is responsible for the regulation of insurance companies and implementation of a new statutory regulatory regime for insurance intermediaries replacing the previous self-regulatory system. The Insurance Amendment Ordinance commenced in stages in 2015, 2017 and 2019.³ IA was set up in December 2015, and took over the statutory functions of the then Office of the Commissioner of Insurance and became the regulator of insurance companies on 26 June 2017, and further took over the regulation of insurance intermediaries from the then three Self-Regulatory Organizations ("SROs")⁴ on 23 September

³ The provisions of the Insurance Companies (Amendment) Ordinance 2015 commenced operation in phases on 7 December 2015, 26 June 2017 and 23 September 2019 respectively pursuant to the Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2015, the Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2017, and the Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2019.

⁴ The then three Self-Regulatory Organizations ("SROs") were the Insurance Agents

2019.

6. The Insurance Appeals Tribunal ("IAT") was established in June 2017 pursuant to section 97 of the Insurance Ordinance (Cap. 41) ("IO"), and in accordance with Part XII of and Schedule 10 to IO, it has jurisdiction to review the specified decisions made by IA as well as hear and determine a question or issue arising out of or in connection with a review. Specified decisions made by IA that are subject to the review by IAT are set out in Schedule 9 to IO.

Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules and Registration of Orders of Insurance Appeals Tribunal Rules

7. Pursuant to section 37ZB of FRCO, the Court of First Instance ("CFI") may, upon receipt of a written notice given by PIEART in the way prescribed by rules made by the Chief Justice ("CJ"), register a determination or order of PIEART. Upon registration, such determination or order is to be regarded, for its enforcement, as a determination or order of CFI made within its jurisdiction. Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules ("the PIEART Rules") are made by CJ under section 37ZJ(b) of FRCO to prescribe the form and way in which a notice for registration of a determination or order made by PIEART in CFI is to be given by PIEART.

8. The Registration of Orders of Insurance Appeals Tribunal Rules ("the IAT Rules") are made by CJ under section 117(b) of IO. Section 109 of IO provides that CFI may, after receiving a written notice given by IAT in the manner prescribed by rules made by CJ, register an order of IAT. Upon registration, such order is to be regarded for all purposes as an order of CFI made within its jurisdiction. The IAT Rules prescribe the form and way in which a notice for registration of an order made by IAT in CFI is to be given by IAT.

9. The PIEART Rules and the IAT Rules were gazetted on 16 October 2020, tabled at the Council meeting of 21 October 2020 for negative vetting, and will come into operation on 14 December 2020.

The Subcommittee

Registration Board established under The Hong Kong Federation of Insurers, The Hong Kong Confederation of Insurance Brokers and The Professional Insurance Brokers Association.

10. At the House Committee meeting on 23 October 2020, Members agreed to form a subcommittee to study the PIEART Rules and the IAT Rules. The membership list of the Subcommittee is in the **Appendix**. The Subcommittee has held one meeting with the Administration to examine the two sets of Rules, and agreed that a motion should be moved at the Council meeting of 18 November 2020 to extend the scrutiny period of the two sets of Rules to the Council meeting of 9 December 2020. As the motion was not dealt with at the Council meeting of 18 November 2020, the scrutiny period of the two sets of Rules expired at the said Council meeting.

Deliberations of the Subcommittee

11. Members of the Subcommittee in general do not object to the PIEART Rules and the IAT Rules. The major deliberations of the Subcommittee are set out in the ensuing paragraphs.

Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules

Composition and work of the Public Interest Entities Auditors Review Tribunal

12. Some members have enquired about the composition of PIEART, and the selection and qualification requirements of its members.

13. The Administration has pointed out that PIEART is composed of a chairman and two ordinary members. The chairman must be a former Justice of Appeal of the Court of Appeal, a former judge, a former recorder or a former deputy judge of CFI, or a person eligible for appointment as a judge of the High Court. In conducting a review of a specified decision made by FRC or HKICPA, the chairman of PIEART will recommend two ordinary members from a Tribunal panel to join the review. The Tribunal panel consists of members appointed by the Chief Executive ("CE") and who are not public officers. As regards qualification requirements of members of the Tribunal panel, the Administration has explained that no such requirements are specified in FRCO as the nature of cases handled by PIEART varies so that CE has flexibility in appointing persons with appropriate expertise to serve as members. The Financial Services and Treasury Bureau ("FSTB") will, having regard to a host of factors including the professional knowledge and expertise of the persons concerned, recommend candidates for appointment by CE to the Tribunal panel. Currently, the Tribunal panel consists of members with different background and from various sectors including the legal and accountancy sectors, and academics.

14. Noting that PIEART has not received any applications for review since

its establishment in October 2019, some members of the Subcommittee have enquired about the assessment of caseload of and support for the Tribunal in the future. The Administration has advised that FSTB is currently providing support for the Secretariat of PIEART in handling applications for review. FSTB will monitor the caseload of PIEART and adjust the manpower for the Secretariat of Tribunal accordingly.

Registration of Orders of Insurance Appeals Tribunal Rules

Regulation of insurance intermediaries and protection of policy holders

15. Subcommittee members have enquired how the new regulatory regime for insurance intermediaries has enhanced the regulation of intermediaries, and thus the protection for policy holders, in particular against mis-selling of insurance products by intermediaries. Some members have urged IA to step up publicity on the channels for the public to lodge complaints against mis-selling of insurance products.

16. The Administration has responded that under the new regulatory regime for insurance intermediaries, all intermediaries carrying on regulated activities are required to obtain licences from IA. An insurance intermediary can be an agent (i.e. an individual acting on behalf of the appointing insurance company/companies), an agency (i.e. a company acting on behalf of the appointing insurance company/companies), or a broker (i.e. a company acting on behalf of the consumer for arranging an insurance contract). IA has taken over the regulation of insurance intermediaries from the then three SROs with effect from 23 September 2019. Since then, IA has taken a number of measures to enhance the regulation of insurance intermediaries, including issuing various rules, codes and guidelines, as well as imposing continuing professional development requirements for individual licensees.

17. As regards protection for policy holders, the Administration has pointed out that any persons who are dissatisfied with the sales process of insurance products can lodge complaints to IA against the insurance intermediary and/or insurance company concerned. IA will, in accordance with its functions and powers under IO, decide each case with reference to individual circumstances of the case. Should IA's decision be a specified decision under Schedule 9 to IO, a party aggrieved by the decision can apply to IAT for a review. For the protection for policy holders, IA has arranged publicity on the complaint channels to facilitate members of the public in lodging complaints relating to insurance companies and intermediaries. The Administration will convey to IA members' views for IA to enhance its publicity on complaint channels against insurance intermediaries.

Processing of appeal cases by Insurance Appeals Tribunal

18. In response to Subcommittee members' enquiry about the processing of appeal cases by IAT, the Administration has advised that from 26 June 2017 to 22 September 2019, IAT only had powers to deal with appeals relating to insurance companies.⁵ The IAT did not received any appeals during the said period. With effect from 23 September 2019, IAT has powers to deal with appeals relating to insurance intermediaries, in addition to insurance companies. As at 31 October 2020, IAT has received 19 appeal cases all of which were outstanding cases transferred from the appeal tribunals of the then SROs. IAT has completed the processing of 16 cases so far.⁶

Recommendation

19. The Subcommittee has completed scrutiny of the PIEART Rules and the IAT Rules.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
26 November 2020

⁵ Before the Insurance Authority took up the role as the regulator of insurance intermediaries on 23 September 2019, appeals relating to insurance intermediaries were handled by the respective appeal tribunals of the then three SROs.

⁶ For nine out of the 16 appeal cases, the appellants concerned have withdrawn their appeals.

**Subcommittee on
Registration of Determinations and Orders of Public Interest Entities
Auditors Review Tribunal Rules and
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Membership list*

Chairman (Vacant)

Members Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

(Total: 3 members)

Clerk Ms Connie SZETO

Legal Adviser Ms Wendy KAN

* Changes in membership are shown in **Annex to Appendix**

**Subcommittee on
Registration of Determinations and Orders of Public Interest Entities
Auditors Review Tribunal Rules and
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Changes in membership

Member	Relevant date
Hon HUI Chi-fung	Up to 11 November 2020
Hon Claudia MO	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020

Note 1 According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council ("LegCo") on 30 July 2020.

Note 2 Pursuant to section 15(1)(a) of the Legislative Council Ordinance (Cap. 542), HUI Chi-fung ceased to hold office as a member of LegCo upon his resignation on 12 November 2020.

Note 3 Pursuant to section 15(1)(a) of the Legislative Council Ordinance (Cap. 542), Claudia MO ceased to hold office as a member of LegCo upon her resignation on 13 November 2020.