

**Action Minutes of the 10th Meeting of the Working Group to Facilitate
Smooth Transition to an Independent Insurance Authority
held at 3:30pm on 18 February 2016
in Room 2491, Financial Services Branch, Central Government Offices**

Present:

Financial Services and the Treasury Bureau

Mr Eddie Cheung, Deputy Secretary for Financial Services and the Treasury (Financial Services) 2 (Convenor)

Ms Joan Hung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) Special Duties (Member)

Mr Michael Li, Assistant Secretary for Financial Services and the Treasury (Financial Services) Special Duties 3 (Secretary)

Office of the Commissioner of Insurance

Miss Nancy Chien, Assistant Commissioner of Insurance (Enforcement) (Member)

Miss Peggy Fu, Senior Insurance Officer (Enforcement)

The Hong Kong Federation of Insurers (HKFI)

Mr Allan Yu, Chairman of Task Force on the Independence of the Insurance Authority (Member)

Ms Selina Lau, General Manager, Communications & Committee

Insurance Agents Registration Board (IARB)

Ms Alice Kong, Secretary General

The Hong Kong Confederation of Insurance Brokers (CIB)

Mr Bhabani S. Rath, Chairman (Member)

Mr Adrian King, Honorary Secretary & Convener of IIA Working Group

Professional Insurance Brokers Association (PIBA)

Mr Philip Mak, Chairman (Member)

Mr Gary Soo, Vice Chairman

Insurance Intermediaries

Mr Chan Yim-kwong, Convenor, Insurance Industry Regulatory and Development Concern Group (ICG) (Member)

Mr Jeff Wong, Past President, LUAHK; Past President, GAMAHK (Member)

I. Confirmation of action minutes of the 9th meeting

Action

1.1 Members' comments had been incorporated and the minutes had been uploaded to FSB's website.

II. Matters arising from the 9th meeting

(a) Progress on the preparation for data transfer

2.1 OCI reported that it had received from the SROs additional information of their existing data systems and their consent to the disclosure of their system information in the tender document for the insurance intermediaries system of IIA. In response to HKFI's query on the timetable, OCI said that it aimed to issue the tender in the following month and to allow around one month for bidders to submit their proposals. OCI would then assess the proposals received for awarding of the contract. After appointment of the contractor, OCI would arrange meetings between the appointed contractor and IT contractors of the SROs to enable the latter to ascertain the amount of work involved in facilitating the transfer of data.

2.2 CIB reiterated that the SROs should not undertake tasks other than the regulation of insurance intermediaries and that any additional costs incurred for the transition should be covered by IIA's funding. Noting the concern of the SROs about the transition cost, the Convenor opined that the Government would endeavour to reduce the burden on the SROs by exploring whether OCI's contractor could cover part of the work required of the SROs.

III. Update on the implementation of the Amendment Ordinance

3.1 The Convenor reported that IIA held its first meeting on 29 January 2016 to discuss issues relating to the corporate governance of IIA and the establishment of three committees, namely the Corporate Affairs Committee (“CSC”), the External Affairs Committee and the Audit Committee. The respective chairmen of the three committees were Mr James Wong, Ms Chitty Cheung and Mr Stephen Yiu. In particular, CSC would deal with the more critical tasks, including corporate governance and staff recruitment. PAS(FS)SD added that IIA would adopt a phased approach to staff recruitment. IIA also discussed at its meeting the proposed appointments to the two Industry Advisory Committees (“IACs”) on long-term business and general business respectively. FSTB would follow up on the appointments to the IACs with a view to establishing the official channel for providing IIA with industry advice as soon as possible.

3.2 The Convenor reported that, at a separate meeting with Mr James Wong on various transition issues, Mr James Wong appreciated the ground work on transition laid down by the Working Group. The meeting noted that IIA would take up the work of the Working Group when it had the capacity to do so.

3.3 CIB pointed out that staffing and transition costs were the most important concerns of the SROs and suggested a more specific timeline on the implementation of the licensing framework for insurance intermediaries be set to facilitate the SROs to better plan for their operations. In response, the Convenor said that whether IIA could commence the licensing framework on schedule depended on whether key staff members could be recruited as planned. Based on the existing target, IIA would start the statutory licensing regime starting from Q1 2018 the earliest. When formulating the recruitment plan, IIA would take into account the need of maintaining continuity of regulatory expertise and the SROs’ concern on manpower shortage.

IV. Draft guideline on pecuniary penalty

4.1 PIBA asked whether the guideline would provide two separate

penalty scales applicable to firms and individuals respectively. Similarly, Mr Y K Chan opined that, in considering the “behaviour of the regulated person after the conduct”, the guideline should list out specific considerations applicable to firms and individuals respectively. In response, the Convenor said that the law did not differentiate a regulated individual from a regulated firm. For deciding on the appropriate quantum of financial penalties, IIA should apply the principle of proportionality, i.e., depending on the severity of the misconduct in question and take into account other relevant factors, including mitigating factors. It was also a general principle that the penalty would not put the affected person (company) into financial jeopardy. Separate penalty scales would be inappropriate because the severity of an individual’s misconduct might not be necessarily lighter than that of a company. CIB concurred and added that the guideline should provide high-level principles, for example, various mitigating and aggravating factors and the penalty should serve as a deterrent to others from committing similar misconduct.

4.2 In response to HKFI’s question on how a misconduct case would be handled if it involved criminal acts, OCI said that the procedure would be similar to that under the existing regime i.e. IIA would report a suspected criminal offence to law enforcement departments for investigation. Noting the meeting’s concern, the Convenor suggested that the wording of clause (a)(ix) in relation to “financial crime” be refined. The SROs opined that, as a general principle, if a fine had already been imposed/awarded in respect of the misconduct in question by the court, or other domestic or overseas regulators, IIA would take that into consideration in deciding whether and to what extent pecuniary penalty on the same misconduct would be imposed so as to avoid “double jeopardy”. It was also clarified that in case of serious misconduct, IIA could suspend or revoke the licence of the regulated person if the imposition of a fine might not be appropriate. Mr Y K Chan enquired about the operation of clause (g) on “other factors” that IIA may consider. The Convenor suggested that the wording of the clause be improved to avoid the impression of causing “double jeopardy”.

4.3 Mr Y K Chan noted that clause (d) in relation to “financial resources” could help address the industry’s concerns about the

maximum amount of pecuniary penalty for individuals. HKFI pointed out that IIA might consider constructing a general scale of financial penalty for different common types of misconduct for concerned parties' reference.

4.4 In response to HKFI's query, OCI explained that the current regulation of Mandatory Provident Fund intermediaries would remain the same under IIA's regime i.e. IIA would be responsible for frontline investigation of alleged misconduct while the Mandatory Provident Fund Schemes Authority would be responsible for determining and imposing disciplinary actions. OCI also clarified that the sale of investment-linked assurance scheme products by intermediaries would be subject to regulatory oversight of IIA.

4.5 In response to HKFI's request, the Convenor welcomed members of the Working Group to consult their respective members on the draft guideline on the understanding that it was meant to serve as a working draft only. It was anticipated that IIA would consult the industry formally before finalising the guideline.

V. Any other business

5.1 PAS(FS)SD said that, according to the work plan adopted at the last meeting, the next meeting would discuss the relevant draft guidelines on "fit and proper" and "continuous professional development" requirements.

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