

**Action Minutes of the 7th Meeting of the Working Group to Facilitate
Smooth Transition to an Independent Insurance Authority
held at 3:00pm on 22 April 2015
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)

Miss Lynette Yau, 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 Mandy Tang, Assistant Insurance Officer (Enforcement)

Mrs Rose Chan, Chief Executive Officer/Special Duties

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)

Mr Ambrose Cheung, Chairman (Member)

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 Gary Soo, Hon Secretary

Insurance Intermediaries

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

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

I. Confirmation of action minutes of the 6th meeting

Action

1.1 Comments on the action minutes from HKFI were received and the minutes had been uploaded to FSB's website.

II. Matters arising from the 6th meeting

(a) Progress on the preparation for data transfer

2.1 OCI reported that in the drawing up of the tender document, it had been found necessary to obtain further information on the system specifications of the SROs for data transfer purpose. In this regard, OCI would be writing to the SROs as well as to obtain their consent to the disclosure of requisite information for the purpose of the tender document. It was advised that after the procurement of the IT contractor, there would be a clearer picture on the critical milestones for completing the data transfer exercise.

OCI/SROs

2.2 OCI also reported that it had continued to work with PIBA on its record-keeping system, and PIBA undertook to input all past registration and complaint records into its revamped system by end 2015.

PIBA

2.3 On CIB's request for the legal basis which enabled SROs to transfer confidential data of their registrants, the Convenor undertook to circulate the relevant provisions in the Bill covering transition arrangements after the meeting. The provisions are at **Annex A**.

[Post-meeting note: OCI would first commission an IT contractor to build the data system for the IIA and test-run the transfer of data from

SROs with dummy data. The actual data transfer of SRO's registrants and other records would take place at a much later stage, when the IIA would be ready to take over the duties of the SROs.]

(b) Confirmation of WG Paper No. 2/2015 – Existing disciplinary proceedings of the Self-regulatory Organizations

2.4 The Convenor noted that members did not have any comment on the paper. The paper would be uploaded to FSB's website.

III. Progress update on the IIA Bill

3.1 PAS(FS)SD briefed Members on the latest progress on the legislative exercise for establishing the IIA. The Convenor then explained the steps leading to the enactment of the Bill. First, upon the completion of clause-by-clause scrutiny by the Bills Committee, the Bureau would present its proposed Committee Stage Amendments ("CSAs") to the Bills Committee for discussion. The Bills Committee would then conclude the discussion (estimated to be in June 2015) and propose CSAs to be made under the name of the Bills Committee, if any. The Clerk to the Bills Committee would prepare a report for the House Committee's consideration and agreement to the resumption of Second Reading debate and Third Reading would then take place (estimated to be in July 2015). LegCo members could also put forward private member's amendments which would need a majority of votes under the bicameral voting procedure. After the passage of the Bill, the Provisional Insurance Authority ("PIA") would then be set up to prepare for the transition. It was anticipated that IIA would take over the duties of OCI about a year after the establishment of PIA. The Convenor added that the Bureau had tried to accommodate the industry's comments and would issue a final reply on all outstanding issues within next month. He noted HKFI's meeting request. He suggested sharing an advance copy of the reply with the Working Group before it was issued to the Bills Committee.

FSB

3.2 On restrictions in relation to personnel of insurance agencies / broker companies, HKFI and Mr Y K Chan held the view that insurance agents should be allowed to be a director of other insurance agencies as

long as the agent concerned did not participate in any regulated activities of those agencies. OCI recapped that there was no restriction on becoming a shareholder of more than one insurance agencies / and broker companies. However, in allowing cross-directorship, it was necessary to make sure that this would not circumvent the restriction that an insurance agent could only represent four insurers and affect the distinct roles of insurance agencies and broker companies. Members requested to see the CSAs to sections 64J and 64 K when available.

FSB

3.3 On the “best interest” conduct requirement, Mr Y K Chan suggested that it should be amended to “acting in the best interest of the client as reasonably expected from agents or brokers as the case may be” and that the different roles of agents and brokers should be taken into account when IIA compiled the code of conduct in future. On determining whether there was a breach of the conduct requirement, consideration should also be given to the actual circumstances, e.g. whether the client had refused to obtain any advice from the agent, or whether the agent could only sell limited types of products, etc. The Convenor explained that the conduct requirement aimed to address the issues of conflict of interest and misaligned incentives. He agreed that a policy holder was ultimately responsible for an informed decision he made if an intermediary had advised him in good faith and honestly

3.4 On disciplinary proceedings, CIB was concerned that the IIA was not mandatorily required to consult the Expert Panel when determining important disciplinary cases. It further suggested that a member of the Expert Panel should sit in the disciplinary proceedings to provide further information when necessary. Mr Y K Chan added that there might be a knowledge gap where the IIA officers were unfamiliar with prevailing market practices and advice from the Expert Panel in this aspect was particularly important. The Convenor noted the views but cautioned that prevailing market practices might not be readily considered as appropriate.

IV. Any other business

4.1 CIB presented the main points in its letter of 20 March 2015 co-signed by CIB, PIBA and ICG (Annex B). In particular, CIB

stressed that, for natural justice, the law should specify the right of the regulatees to request for oral hearing and cross-examination and IIA must provide justifications for all of its disciplinary decisions.

4.2 The Convenor responded that the current proposal in the Bill had been cleared by the Human Rights Division of the Department of Justice. The Bill guaranteed that all parties would be given a reasonable opportunity of being heard and did not rule out the possibility of oral hearings. Under the Bill, IIA must inform the regulatee concerned of its decision with a statement of the reasons (**Annex C**). The Convenor explained that the current proposal allowed flexibility as oral hearings might not be necessary for simple cases and mandating oral hearings might make disciplinary proceedings more costly and/or less efficient. Unlike the SROs regime, IIA would be given investigation powers which SROs currently did not have. Oral examinations / statements might be taken by IIA investigators during the course of investigation. IIA would also be given the powers to require a person to make statutory declaration and produce relevant document, etc. OCI added that in the current MPF-intermediaries regulatory regime, the IA as the frontline regulator for the insurance sector, had been statutorily empowered to require concerned parties and witnesses to attend interviews to answer questions, produce documents and records, and make statutory declarations under its investigation work. CIB maintained that the Bill should explicitly provide for the right to request oral hearing and cross examination.

4.3 It was reported that the SROs had agreed to have their respective set of past and existing codes and guidelines posted onto FSB's website corner of "Working Group on Transition". FSB would proceed with the necessary arrangements.

FSB

V. Date of next meeting

5.1 The next meeting was scheduled for 28 May 2015.

END