

For discussion

on 6 February 2012

Legislative Council
Panel on Financial Affairs

**Creation of a Supernumerary Directorate Post in the
Office of the Commissioner of Insurance of the
Financial Services and the Treasury Bureau
(Financial Services Branch) for Enforcing the
Anti-Money Laundering Regime and
Regulating Relevant Mandatory Provident Fund Intermediaries**

Purpose

This paper briefs Members on a proposal to create a supernumerary post of Assistant Commissioner of Insurance (“ACI”) (D2) in the Office of the Commissioner of Insurance (“OCI”) of the Financial Services Branch under the Financial Services and the Treasury Bureau (“FSTB”) for a period of 24 months with immediate effect upon approval by the Finance Committee (“FC”) for the purpose of performing new regulatory functions stipulated in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) enacted on 29 June 2011 and the Mandatory Provident Fund Schemes (Amendment)(No. 2) Bill 2011 (“MPF Bill”) introduced into the Legislative Council on 14 December 2011.

Background

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

2. The new AMLO will come into operation on 1 April 2012. The AMLO stipulates the customer due diligence (“CDD”) measures and record-keeping requirements to be undertaken by financial institutions in line with the international AML standards as promulgated by the Financial

Action Task Force, the standard setting body for the international AML standards. The Insurance Authority (“IA”) is the relevant authority under the AMLO to supervise compliance by insurers and insurance intermediaries viz. insurance brokers and insurance agents (collectively referred to as “insurance institutions” hereunder) with the statutory CDD and record-keeping obligations. Under the AMLO, the IA is empowered to conduct routine inspections on insurance institutions, investigate into suspected breaches, impose disciplinary sanctions and initiate prosecution against criminal offences committed by insurance institutions. The IA is also empowered to issue guidelines on the details in respect of the statutory CDD and record-keeping obligations to facilitate compliance by insurance institutions.

Mandatory Provident Fund Schemes (Amendment)(No. 2) Bill 2011

3. Separately, the Government seeks to enact the MPF Bill in this legislative session with a view to, among others, enhancing the regulation of the sales and marketing activities of MPF intermediaries before implementing the Employee Choice Arrangement¹ by November 2012. Under the Bill, IA will be given the statutory role as the frontline regulator responsible for the supervision and investigation of registered MPF intermediaries whose main line of business is in the insurance sector. IA would help ensure compliance by MPF intermediaries from the insurance sector with the conduct and other relevant statutory requirements specified in the Bill and the Code of Conduct to be issued by the Mandatory Provident Fund Schemes Authority (“MPFA”). In performing these regulatory functions, IA will maintain close liaison with MPFA and the other frontline regulators in the regulatory process. Subject to the passage of the Bill through LegCo in the current legislative session, IA will assume the new enforcement duties when the statutory regime commences operation in November 2012.

Justifications for the Creation of a Supernumerary Post of ACI

4. To implement the new AML regulatory functions, IA will have to carry out inspections and investigations on insurance institutions, and follow up those investigations which require further action that might lead to subsequent disciplinary actions and/or prosecutions. There are currently

¹ The Employee Choice Arrangement will allow MPF scheme members to transfer accrued benefits derived from their mandatory contributions during current employment to an MPF scheme of their own choice at least once a year.

162 insurers and about 73,300 insurance intermediaries.

5. There are currently 485 corporate MPF intermediaries and some 30,500 individual MPF intermediaries. Among the individual MPF intermediaries, about 71% of them (i.e. some 21,800) have their main line of business in the insurance sector. At present, IA does not exercise direct regulation of insurance intermediaries, as inspections and investigations as well as the disciplinary process in respect of insurance intermediaries are currently conducted by the three insurance self-regulatory organisations². With the implementation of the proposed statutory regulatory regime on MPF intermediaries, IA would need to be provided with additional staff to carry out routine inspections on MPF intermediaries from the insurance sector, and investigations into their non-compliance, for enhancing investor protection.

6. The new enforcement duties in respect of AML and MPF intermediaries from the insurance sector will be long-term regulatory commitments of the IA involving on-site and off-site inspections of insurance institutions, handling complaints and investigation into non-compliance. In the case of AML regulation, it will also include imposition of disciplinary sanctions and prosecution work. In view of the scale and complexity of the above additional work, as well as the importance of MPF intermediaries supervision for investor protection, we propose that a supernumerary ACI post, designated as Assistant Commissioner of Insurance (Enforcement) (“ACI(E)”), be created in OCI for 24 months with immediate effect upon approval by FC to oversee all the relevant regulatory duties and to head an expanded AML Team and a new MPF Intermediaries Team in the OCI. While such regulatory commitments will be long-term in nature, taking into account the Administration’s plan to introduce a Bill into the LegCo in the 2012-13 legislative session for the proposed establishment of an independent Insurance Authority (IIA), we consider it appropriate that the ACI(E) post be created as a supernumerary post for a period of 24 months initially. The continual need for the post will be reviewed in light of the progress of the proposed establishment of the IIA.

7. The proposed ACI(E) post will provide steer and directives to the AML and MPF Intermediaries Teams in mapping out the regulatory regimes for performing the AML and MPF tasks, including drawing

² The three insurance self-regulatory organisations are the Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

up/reviewing industry guidelines/codes and procedural guides, engaging stakeholders in finalising the guidelines/codes and guides, designing the inspection and investigation strategy and the disciplinary framework, working out on-site system set-up, planning and overseeing staff training, and also acting as the subject directorate officer in liaison with the other regulators in Hong Kong and overseas on AML and MPF intermediaries matters. The proposed job description of the post of ACI(E) is at **Annex A**. An organization chart of OCI showing the proposed creation of the post of ACI(E) is at **Annex B**.

Alternatives Considered

8. At present, there are three ACIs in OCI: ACI (Policy and Development) (“ACI(P)”), ACI (General Business) (“ACI(G)”) and ACI (Long Term Business) (“ACI(L)”). ACI(P) is responsible for overseeing policy and legislative matters. ACI(P) is heavily engaged in a number of important tasks, including the preparation and oversight of a Consultancy Study on Risk-Based Capital Framework for Insurance Business with a view to aligning Hong Kong’s capital adequacy and solvency regime with the international trend for insurance regulation, providing input to FSTB on the policy initiative to establish a Policyholder’s Protection Fund and drawing up relevant implementation details, participating in the International Association of Insurance Supervisors in relation to cross-border supervision matters, and liaising with the China Insurance Regulatory Commission and the insurance industry regarding the Mainland and Hong Kong Closer Economic Partnership Arrangement measures and Mainland/Hong Kong co-operation. Currently ACI(P) is also responsible for overseeing AML matters in general. The proposed creation of the post of ACI(E) will relieve ACI(P) from the extremely heavy workload and allow the officer to focus on the afore-mentioned policy and development tasks whilst the AML duties will be transferred to ACI(E) who will also take up, inter alia, the expanded duties of AML regulation.

9. ACI(G) and ACI(L) are responsible for monitoring the general business insurers and long term business insurers respectively. We have also critically examined whether these two ACIs can absorb the additional work of ACI(E). Given the current volatility of the global financial market, in order to enhance protection of policyholders’ interest and ensure insurance market stability, IA has strengthened the supervision of insurers and the General Business Division and Long Term Business Division under

these two ACIs have been monitoring the financial position of insurers closely and conducting frequent inspections on and stress testing of insurers. Furthermore, as Hong Kong is the lead regulator for a large international insurer which is headquartered and listed in Hong Kong with operation in 14 jurisdictions, the Long Term Business Division also needs to work closely with all the other overseas regulators concerned in monitoring vigilantly the financial position of that large insurer. As the workload of these Divisions has increased significantly in recent years and there is no indication that the situation would change in the near term, it will not be operationally feasible for these two ACIs to take up the proposed additional duties of the proposed ACI(E) without seriously affecting the discharge of their current duties.

Non-directorate Support

10. The post of ACI(E) will be supported by a new MPF Intermediary Team and an expanded AML Team comprising Insurance Officers, IT staff and clerical staff. These posts will be filled by contract staff on non-civil service contract terms or through internal redeployment.

Financial Implications

11. The proposed creation of the supernumerary post of ACI(E) will bring about an additional notional annual mid-point salary of \$1,611,600. The full annual average staff cost of the proposal, including salaries and staff on-cost is \$2,445,216. We will include the necessary provision in the draft Estimates of 2012-13 and 2013-14.

Advice Sought

12. We plan to submit the staffing proposal to the LegCo Establishment Subcommittee at its meeting on 2 May 2012 for recommendation to the FC on 25 May 2012 for approval. Members are invited to note and comment on this proposal.

**Financial Services Branch
Financial Services and the Treasury Bureau
January 2012**

**Job Description of Assistant Commissioner of Insurance
(Enforcement)**

Rank : Assistant Commissioner of Insurance (D2)

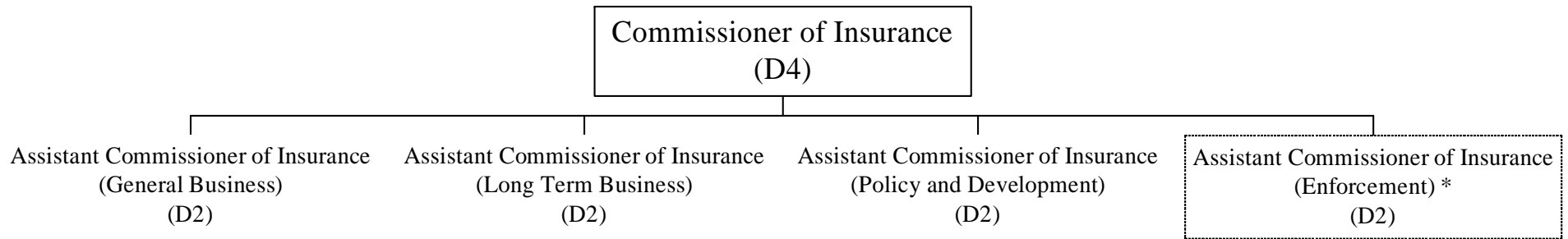
Responsible to : Commissioner of Insurance

Main Duties and Responsibilities –

1. To oversee the implementation of the AML regulatory regime for the insurance sector upon the commencement of the AMLO, including mapping out the detailed implementation plans on inspection, investigation of non-compliance cases, disciplinary process and prosecution of insurance institutions.
2. To liaise with the insurance industry on the latter's compliance with the new statutory AML requirements and review the industry guidelines issued under the AMLO to promote and facilitate compliance by insurance institutions.
3. To set up the system for supervision of MPF intermediaries from the insurance sector, including compliance monitoring, inspection, investigation, complaints handling and promulgation of implementation details, and to oversee the implementation of the new regulatory system upon commencement of the legislation on the regulation of MPF intermediaries.
4. To represent IA in the close liaison with the other AML and MPF intermediaries regulators.
5. To liaise with the existing insurance intermediaries self-regulatory bodies and other financial regulators on the transitional arrangements with a view to take over the MPF intermediaries supervision.
6. To design educational programmes for MPF intermediaries from the insurance sector on the new regulatory procedures.

Annex B

Proposed Organization Chart of the Office of the Commissioner of Insurance



* Supernumerary directorate post to be created