

**For discussion on
5 July 2013**

Legislative Council Panel on Financial Affairs

**Key Legislative Proposals on Establishment of
an Independent Insurance Authority**

Consultation Conclusions

Purpose

The Administration is finalizing the draft enabling legislation for the establishment of an independent Insurance Authority (“IA”). This paper briefs Members on the outcome of the public consultation on the key legislative proposals and sets out the Administration’s responses.

Background

2. The policy objectives of setting up the IA are to modernize the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policyholders, and align with international practice that financial regulators should be financially and operationally independent of the Government. Public consultation on the proposed establishment of the IA was first launched in July 2010. We announced the consultation conclusions and detailed proposals on 24 June 2011, and consulted the Legislative Council Panel on Financial Affairs on the aforesaid on 4 July 2011. There is general public support for the establishment of an IA.

3. We have been engaging the insurance industry throughout the process for formulating the proposals and preparing the draft legislation. Based on the detailed proposals and views received from the industry, we prepared the key legislative proposals on establishing the IA for a 3-month consultation from 26 October 2012 to 26 January 2013. We have issued a press release, broadcast Announcements of Public Interest on radio, organized three public forums and posted the consultation document onto the website of the Financial Services and the Treasury Bureau (“FSTB”) to invite views from the general public. We have also attended nine meetings and briefings organized by trade

associations, professional bodies and other groups during the consultation period. Based on the views collected, the Administration is now finalising a bill to amend the Insurance Companies Ordinance (“ICO”) (Cap. 41) for establishing the IIA (“the amendment bill”). We have to emphasize that our engagement with the stakeholders will continue to ensure that the amendment bill will take into account their concerns and strike a reasonable balance between the interests of different stakeholders.

Outcome of Consultation

4. We have received 558 written submissions from individuals and companies/organizations. Out of these submissions, 503 are copies of three templates of standard petitions. Counting all such duplicates as three submissions, there are in total 58 submissions. All the submissions are uploaded to the FSTB’s website.¹

Summary of Proposals and Responses

5. A summary of issues raised by respondents with the Administration’s responses are at **Annex**. Major issues that have drawn most attention of respondents and our corresponding responses are highlighted in the ensuing paragraphs.

(a) Functions of the IIA

6. The insurance industry advocated that the IIA should promote the development of the industry and expressed concerns about over-regulation. We agree that in discharging its regulatory functions, the IIA should also give due regard to market innovation and the competitiveness of the insurance industry of Hong Kong. We have therefore refined our proposal by including “promoting the competitiveness of the insurance industry in the global insurance market” as one of the statutory functions of the IIA. To this end, the IIA should be empowered to adjust regulatory requirements by regulations, which are pieces of subsidiary legislation, to meet evolving market needs and up-to-date international standards. This would help promote Hong Kong as an international insurance centre by ensuring our regulatory regime is kept updated on a timely and continuous basis.

¹ Available at <http://www.fstb.gov.hk/fsb>.

(b) Composition of the Governing Board of the IIA

7. There are calls from the industry for more participation in the Governing Board of the IIA so that the future regulator will be kept abreast of market development. At the same time, there are calls from consumer interest groups for the IIA to be, and to be seen to be, impartial for it to perform its regulatory functions without fear or favour. We have refined our proposal to include on the Governing Board of the IIA no less than two directors (instead of no more than two directors as originally proposed) with knowledge of and experience in the insurance industry. Insurers and insurance intermediaries will also be represented on the two Industry Advisory Committees² to be set up to advise the IIA. They will also be brought in by the IIA as members of an Expert Panel to advise the IIA on market practices for making disciplinary decisions.

(c) Licences for Insurance Intermediaries

8. In our proposal, we have put forward a categorization of licences for insurance intermediaries that seeks to mirror the existing registration categories of the three self-regulatory organizations (“SROs”)³ (see the table below). There are suggestions from the industry and the legal profession to streamline the proposed categorization of licences. On balance, we consider the original proposal desirable as it would ensure a smooth transition of the existing SRO system to a statutory licensing regime by avoiding possible confusion caused by re-categorization of intermediaries. However, the IIA may review the categorization after the 3-year transition period to ensure that the licensing regime will evolve with changing market needs.

	Insurance agent	Insurance broker
Corporate licence	(1) licensed insurance agencies	(2) licensed insurance broker companies
Individual licence	(3) licensed individual insurance agents (4) licensed technical representatives (“TRs”) (agent)	(5) licensed TRs (broker)

² One on life insurance and the other general insurance.

³ The Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

(d) Regulated Activities of Insurance Intermediaries

9. In our proposal, we put forward a statutory definition of “regulated activities” to define the regulatory net under the amendment bill. There are suggestions from the industry and other stakeholders to simplify the proposed definition for “regulated activities” and to clarify the exemption provisions (e.g. the meaning of “persons providing solely back office administration services”) for avoiding inadvertent breaches of law. We shall refine the legislative provisions to improve clarity on the activities to be exempted from the proposed licensing regime.

(e) Appointment of Responsible Officers

10. The proposed requirement for an insurer and a corporate licensee to appoint a responsible officer (“RO”) is to ensure that there will be a specified person responsible for the internal control system in respect of conduct compliance by insurance practitioners. An RO is required to endeavour to secure observance of the internal controls and procedures by his corporate licensee or insurer and insurance practitioners engaged by his corporate licensee or insurer. In the light of industry’s concern that an RO’s statutory responsibilities could be onerous, we have refined our proposal by allowing the appointment of an additional RO subject to the approval of the IIA, so as to provide corporate licensees and insurers with some flexibility. The two ROs will be jointly and severally responsible for fulfilling the statutory requirements.

11. There are also views from the industry that the requirement for ROs to use “best endeavours” to fulfill their responsibilities is too onerous and “reasonable endeavours” should be a more appropriate standard. We have examined this matter in detail with the Department of Justice. We note recent court cases have established that the test of reasonableness has been introduced in the interpretation of using “best endeavours”. In addition, the “best endeavours” standard has been recently adopted in a similar context under the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 for the regulation of Mandatory Provident Fund (“MPF”) intermediaries⁴. We believe that intermediaries selling insurance policies should not be subject to a lower regulatory standard than those selling MPF products.

⁴ About 33,000 intermediaries sell MPF products, most of whom are also insurance intermediaries.

(f) Conduct Requirement of Insurance Intermediaries

12. Some industry practitioners consider that the proposed conduct requirement of “acting in the best interest of policyholders” is impractical for an insurance agent who has to act in the best interest of his appointing insurer, as provided for under the prevailing contractual principal-agent relationship in the insurance industry in Hong Kong. The objective of the proposed requirement is that an agent should have regard to a policyholder’s interest before his own interest. In addition, we are aware that “acting in the client’s best interest” is an internationally-endorsed principle in recent reviews of regulation of insurance intermediaries in overseas jurisdictions⁵. The same requirement has also been adopted in the regulatory regime for MPF intermediaries. After considering the comments received, we propose to provide in the legislation that any contract term which contravenes the statutory “best interest” duty will be unenforceable. We have assured the insurance agents that codifying this principle in the statute will relieve them from any potential challenge from their insurers that may arise from their contractual obligation if they put clients’ interest ahead of insurers’ interest.

(g) Inspection and Investigation Powers

13. The industry has provided useful technical comments on the operation of the inspection and investigation powers. Some industry practitioners consider that the powers to be given to the IIA could be too wide. We have reviewed the proposals and are satisfied that the proposed regulatory powers are similar to those for financial regulators in Hong Kong and other international financial centres. With industry’s comments, we will however seek to improve the statutory safeguards governing the use of these powers.

(h) Disciplinary Sanctions

14. The industry has expressed concerns about the proposed upper limit of the disciplinary fines which is \$10 million or three times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct. We have to point out that a range of disciplinary sanctions proportionate to the nature and severity of

⁵ The European Union Insurance Mediation Directive II has also adopted this requirement.

misconduct may be imposed by the IIA. These include reprimand, fines, suspension or revocation of license and prohibition of licence application within a specified period. The proposal is comparable to the disciplinary sanctions under the regulatory regimes for intermediaries regulated by the Mandatory Provident Fund Schemes Authority and the Securities and Futures Commission. Under our proposal, the IIA has to publish a guideline before it may impose any financial penalty. Drawing reference from the practices of other financial regulators, the guiding principles in determining a pecuniary penalty will include proportionality to the severity of the misconduct, whether the licensee has made financial gains, and that the penalty should not put the licensee into financial jeopardy. In addition, any disciplinary decisions by the IIA will be subject to safeguards including merit review by an independent appeals tribunal, the Insurance Appeal Tribunal (“IAT”). The IAT will be chaired by a person eligible for appointment as a High Court judge and consist of two market practitioners as members. It may confirm, vary or set aside the decision or remit the matter to the regulator with directions as appropriate.

(i) Specified Suspension Power

15. We have proposed to introduce a specified suspension power, as a stop gap policyholder protection measure, where the IIA⁶ may consider, in the interest of the public or policyholders, suspending a licensee (or RO) from carrying on a regulated activity (or any part of it) for a specified period of time, if it is envisaged that the decision on disciplinary sanctions will not be readily available in a complicated case. There are strong objections to the introduction of this power on the grounds that such a suspension, which has the effect of a punishment before a disciplinary decision, would compromise due process. Others demand more clarifications on the circumstances under which this power will be exercised, the procedures of exercising this power and safeguards against any abuse in exercising this power. After detailed consideration, we have decided not to pursue the introduction of this power. We will seek to enhance policyholder protection through other regulatory arrangements proposed for the IIA.

⁶ Or the Hong Kong Monetary Authority (“HKMA”) under delegated power in respect of banks’ insurance intermediary activities.

(j) Regulatory Arrangements for Banks' Insurance Intermediary Activities

16. We have proposed that, subject to the approval of the Chief Executive ("CE") in Council, the IIA will delegate its power of inspection and power of investigation to HKMA for the purpose of regulating any regulated activity carried on by a bank and licensed insurance intermediary engaged by it. The insurance industry has expressed concerns about potential regulatory inconsistency. Balancing this against the need to minimise regulatory duplication, we believe that the proposed regulatory arrangement is appropriate given HKMA's role as the primary and lead regulator of banks. However, we are mindful of the need to ensure that the financial regulators, as at present, should maintain close liaison and coordination to ensure effective regulation and minimise any regulatory overlap/underlap and consistency in their regulatory outcome for investor protection and prudential risk management.

(k) Transitional Arrangements for Insurance Intermediaries

17. The industry practitioners generally support the proposed transitional arrangements. They have put forward practical suggestions to ensure a smooth transition from the existing self-regulatory regime for insurance intermediaries to the statutory licensing regime in future. We have accordingly refined the proposal by specifying in the amendment bill that –

- (i) the SROs should assist the Office of the Commissioner Insurance and the IIA to compile the relevant records of current registration as well as existing and outstanding complaints and disciplinary cases; and
- (ii) the transfer of personal data for assisting the transitional arrangements will not breach the Personal Data (Privacy) Ordinance (Cap. 486).

(l) Appellate Mechanism

18. Some industry practitioners have proposed that the IAT should include representatives of the insurance industry and the appointing authority should be the Chief Justice instead of the Chief Executive. We have reviewed the proposals and note that it is in line with the operation of appeal tribunals established under other financial regulatory regimes in Hong Kong. These tribunals have been operating smoothly and independently. We shall adopt similar practice for the

proposed IAT.

(m) Levy and Fees

19. We have proposed that the IIA should be financed by licence fees payable by insurers and insurance intermediaries, user fees for providing specific services by the IIA and a levy of 0.1%⁷ on insurance premiums for all insurance policies (subject to a cap on non-life insurance policies at \$5,000 and life insurance policies at \$100). There are diverse views on whether insurers or policyholders should pay the levy and various suggestions on levy exemptions. Some have also suggested that the IIA should be financed by the Government entirely. We consider it desirable to ensure that the IIA has stable sources of income so as to be financially independent of the Government. The proposed funding mode is in line with insurance regulators in other international financial centres.

Way Forward

20. We plan to introduce the amendment bill into the Legislative Council in the 2013/14 session, with a view to setting up the IIA in 2015. We shall continue our dialogues with stakeholders, including insurance practitioners, to ensure that the bill will strike a reasonable balance between protecting policyholders and facilitating market innovation and sustainable development. We believe that the engagement efforts will help shape the proposed regulatory requirements such that they will be capable of effective enforcement by the IIA as well as compliance by the practitioners.

Financial Services and the Treasury Bureau 26 June 2013

⁷ The IIA will adopt an incremental approach in achieving the target level of levy in the first five years after the IIA's establishment, in accordance with the following schedule –

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Market levy as a % on insurance premiums	0.04%	0.05%	0.06%	0.07%	0.085%	0.1%

Consultation on Key Legislative Proposals on Establishment of an Independent Insurance Authority

Consultation Conclusions

Background

The policy objectives of setting up the IIA are to modernize the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policyholders, and align with international practice that financial regulators should be financially and operationally independent of the Government. In July 2010, the Financial Services and the Treasury Bureau (“FSTB”) launched a public consultation on the broad framework for establishing an independent Insurance Authority (“IIA”), the outcome of which indicated general public support for the proposal. In June 2011, FSTB published the Proposed Establishment of an IIA Consultation Conclusions and Detailed Proposals (“detailed proposals”) and started the next phase of engagement with the industry and relevant stakeholders. Based on the detailed proposals and comments received during the engagement process, we have prepared the draft key legislative proposals for a 3-month consultation from 26 October 2012 to 26 January 2013. The key legislative proposals cover the following areas –

- (a) functions and governance structure of the IIA;
- (b) licensing regime for insurance intermediaries;
- (c) regulatory powers of the IIA;
- (d) regulatory arrangements for banks’ insurance intermediary activities;
- (e) appellate mechanism and checks and balances;
- (f) levy and fees; and
- (g) transitional arrangements for pre-existing insurance intermediaries.

2. To invite views from the general public, we issued a press release, broadcast Announcements of Public Interest on radio, and posted the consultation document onto FSTB’s website. In addition, we have organized three public forums and attended nine meetings and briefings organized by trade associations, professional bodies and other groups during the consultation period.

3. Taking into account the comments received during the

consultation, the Administration is finalizing a bill to amend the Insurance Companies Ordinance (“ICO”) (Cap. 41) for establishing the IIA (“the amendment bill”).

Outcome of Consultation

4. We have received 558 written submissions during the consultation. Out of the submissions, 503 are copies of three templates of standard petitions. Counting all such duplicates as three submissions, there are in total 58 submissions. Respondents in general provided useful comments on the legislative proposals while some respondents queried the need to establish a new regulator and were worried that the powers of the IIA could be too wide and the future regulation of insurance intermediaries would be too stringent. Some also call for another round of consultation on the draft amendment bill. A list of the respondents is at **Appendix A**. Their full submissions are available at the FSTB’s website.¹

Summary of Proposals

5. A summary of major issues raised by respondents with our corresponding responses is set out in **Appendix B**. After considering the comments of the respondents, we have refined some key legislative proposals as appropriate. The reasons for making the refinements or retaining our proposals are set out in the ensuing paragraphs.

(a) Functions of the IIA

6. We have proposed that in addition to the existing functions of the Insurance Authority, the IIA should take up the following additional functions commensurate with its role as a statutory independent regulatory authority –

- (i) regulating the conduct of insurance intermediaries through a licensing regime;
- (ii) assisting the Financial Secretary in maintaining the financial stability of Hong Kong;
- (iii) promoting understanding of insurance products by the public; and

¹ Available at <http://www.fstb.gov.hk/fsb>.

- (iv) facilitating sustainable market development of the insurance industry.

We accept the industry's suggestion that the IIA should also have the function of promoting the development of the industry. In discharging its regulatory functions, the IIA should also give due regard to market innovation and the competitiveness of the insurance industry of Hong Kong. We have therefore refined our proposal by including "promoting the competitiveness of the insurance industry in the global insurance market" as one of the statutory functions of the IIA. To this end, the IIA should be empowered to adjust regulatory requirements by regulations, which are pieces of subsidiary legislation, to meet evolving market needs and up-to-date international standards. This would help promote Hong Kong as an international insurance centre by ensuring our regulatory regime is kept updated on a timely and continuous basis.

(b) Composition of the Board of the IIA

7. The Governing Board ("the Board") of the IIA is to provide leadership and guide the IIA in developing policies and implementing strategies to achieve its objectives. We have proposed that the Board should comprise pre-dominantly non-executive directors, including at least one but not more than two directors with knowledge of and experience in the insurance industry, as well as others from relevant professional fields such as consumer affairs, law and actuarial science. In addition, there should be at least two Industry Advisory Committees ("IAC"), one for life insurance and the other for general insurance, to advise the IIA.

8. There is strong demand from the industry to strengthen its participation in the governance of the IIA, e.g. more members from the industry should be represented on the Board and insurance intermediaries and insurers must be represented on the IACs, so that the IIA will be kept abreast of market development. There are also calls for the IIA to be, and to be seen to be, impartial for it to perform its regulatory functions without fear or favour. To strike a balance between tapping industry expertise and ensuring the impartiality of the IIA as well as maintaining flexibility in appointing a mix of talents to the Board of the IIA, we propose to make the following two refinements to the amendment bill –

- (i) the Board should comprise at least two directors with knowledge of and experience in the insurance industry; and

- (ii) there will be express provisions that both insurers and insurance intermediaries will be represented on the two IACs so that they can reflect a broad spectrum of industry views to the Board.

(c) Licences for Insurance Intermediaries

9. We have proposed that the IIA should issue five types of licences (see the table below) for insurance intermediaries, mirroring the existing registration categories of the three self-regulatory organizations (“SROs”). As a transitional arrangement, pre-existing insurance intermediaries validly registered with the SROs will be deemed as a licensee under the IIA regime for three years.

10. There are suggestions to re-categorize the licences with a view to streamlining the proposed categorization of licences. On balance, we consider our proposal desirable as it would ensure a smooth transition to a statutory licensing regime by avoiding possible confusion caused by the re-categorization of licences. However, the IIA may review the need for streamlining the licensing regime after the 3-year transitional period to ensure that the licensing regime will evolve with changing market needs.

	Insurance agent	Insurance broker
Corporate licence	(1) licensed insurance agencies	(2) licensed insurance broker companies
Individual licence	(3) licensed individual insurance agents (4) licensed technical representatives (“TRs”) (agent)	(5) licensed TRs (broker)

(d) Regulated Activities of Insurance Intermediaries

11. To provide a legal basis for regulating the conduct of licensed insurance intermediaries, we have proposed a definition for “regulated activities” and exemptions of persons providing solely back office administration services and professionals (e.g. lawyers and accountants) providing regulated advice wholly incidental to their professional practice. There are comments that the proposed statutory definition of “regulated activities”, which includes a list of activities, should be simplified and the exemption provisions should be more

precise (e.g. the meaning of “wholly incidental to” and “persons providing solely back office administration services”).

12. We consider that the proposed formulation of the statutory definition is appropriate because it should have covered all insurance intermediary activities (i.e. the selling and after-sale administration of insurance policies) the carrying on of which should be licensed. There is no need to define “wholly incidental to” in the legislation but we propose to clarify that “persons solely providing back office administration” refers to “an employee or a service provider who is acting on behalf of an authorized insurer or licensed insurance intermediary, and engaged solely in the performance of clerical or administrative duties for that insurer or intermediary”.

(e) Appointment of Responsible Officers

13. We have proposed that each and every corporate licensee² and authorized insurer should appoint a responsible officer (“RO”), who is statutorily required to be given sufficient resources and authority by his corporate licensee or insurer, to secure observance of internal control and procedures for compliance with conduct requirements by the corporate licensee or insurer, tied agents and employees concerned.³

14. Insurers have expressed concerns that if an insurer’s CEO is to become an RO, he may be overburdened by the new responsibilities for ensuring conduct compliance, and that the CEO should be allowed to delegate such duties to another senior executive for operational considerations. On the other hand, there are views that the RO must be sufficiently senior (e.g. at least a director) to forestall the appointment of a junior executive as a scapegoat. On balance, we propose to refine our proposal to allow the appointment of an additional RO, subject to the following conditions –

- (i) prior approval of the IIA;
- (ii) the IIA is satisfied that the nominee for the additional RO meets the relevant requirements, e.g. fitness and propriety; and
- (iii) the two ROs are jointly and severally responsible for

² By corporate licensees, we refer to licensed insurance broker companies and licensed insurance agencies which can be a company, partnership or sole proprietorship.

³ For authorized insurers, the requirement is only applicable to tied agents appointed by the insurers.

fulfilling the statutory requirements on conduct compliance.

15. The industry has also suggested that it is too onerous to require ROs to use their best endeavours to secure observance of internal controls and procedures for conduct compliance by the corporate and its tied agents concerned. They have suggested that “reasonable endeavours” should be a more appropriate standard.

16. We recognize that “best endeavours” is a high standard. Nevertheless, we note that as established by case law, the standard of reasonableness has been introduced into the interpretation of “best endeavours”. This standard has been adopted for ROs under the statutory regime for regulating Mandatory Provident Fund (“MPF”) intermediaries. The relevant legislation was recently enacted in June 2012 and commenced in November 2012. We consider it inappropriate to adopt a lower standard for ROs for the insurance intermediaries and insurers. In fact, most of the MPF intermediaries are also insurance intermediaries. After reviewing the practice of other regulators, we propose that the future IIA should be required to promulgate guidelines to set out examples of actions that are expected to be taken by ROs. This would assist ROs in discharging their statutory duties. The actions required to be taken by a RO may include, among other things, documenting internal policies regarding conduct compliance, providing regular training to employees to promote conduct compliance, conducting regular internal assessment of conduct compliance and authorizing officers or an internal committee to escalate conduct issues to the senior management.

(f) Conduct Requirement of Insurance Intermediaries

17. We have proposed to set out the broad principles of conduct requirements for insurance intermediaries in the primary legislation and specify the compliance details by subsidiary legislation as well as guidelines to be issued by the IIA. There are views that it is impractical for insurance agents to observe the proposed statutory conduct requirement of “acting in the best interest of policyholders” because insurance agents, who are under a contractual principal-agent relationship with their appointing insurers, should act in the best interest of their appointing insurers.

18. Our policy objective is that an insurance intermediary should have regard to a policyholder’s interest before his own interest in the

selling process or providing after-sale administration services (e.g. advising on policy renewals, making claims, etc.), and when a conflict of interest arises, the insurance intermediary should disclose such a conflict to the policyholder so that the policyholder can make an informed decision. An insurance agent should also prioritise his client's interest over the interest of his appointing insurer in case there is any conflict. In fact, we are aware that "acting in the client's best interest" is an internationally-endorsed principle in recent reviews of regulation of insurance intermediaries in overseas jurisdictions. For example, the European Union's Insurance Mediation Directive II has also included the "acting in client's best interest" requirement. In addition, the same requirement has been adopted in the regulatory regime for MPF intermediaries. After considering the comments received, we propose to provide in the legislation that any contract term which contravenes the statutory "best interest" duty will be unenforceable. We have assured the insurance agents that codifying this principle in the statute will relieve them from any potential challenge from their insurers that may arise from their contractual obligation if they put clients' interest ahead of insurers' interest. In addition, we propose to require the IIA to issue a guideline to help insurance intermediaries understand and comply with the requirement.

(g) Inspection and Investigation Powers

19. The amendment bill will confer on the IIA new regulatory powers to enter into business premises to conduct inspection; to make enquiries and have access to business records; to conduct investigation; to make an application to the Court of First Instance for court orders to compel compliance with requirements; to apply to a Magistrate for a warrant to search for, seize or remove records or documents on reasonable grounds; to impose disciplinary sanctions; and to prosecute offences summarily. Where a person is convicted by the court as a result of the IIA's investigation, the court may order him to pay the IIA the whole or part of the cost and expenses of the investigation.

20. Apart from various technical comments on the operation of the inspection power and investigation power of the IIA, there are views that these powers to be given to the IIA could be too wide. We would point out that the proposed powers, statutory procedures governing the use of these powers and safeguards against abuse of these powers are similar to those under other financial regulatory regimes in Hong Kong and other international financial centres (see also checks and balances in paragraph 32).

21. One of our proposals is that during inspection or investigation by the IIA, if a person does not respond because he does not have the requested information, the inspector or investigator may, in writing, require the person to verify by a statutory declaration the fact and reason for not responding. In response to the view that a person's right to remain silent should be protected during inspection or investigation by the IIA, we propose to refine our proposal by, with reference to the relevant provisions under the Securities and Futures Ordinance (Cap. 571) and Mandatory Provident Fund Schemes Ordinance (Cap. 485), including a provision in the amendment bill that the responses or statements made by a person for the purpose of an inspection and investigation by the IIA shall not be admissible as self-incriminating evidence, except for the prosecution of criminal offences relating to perjury and the giving of false statements.

(h) Disciplinary Sanctions

22. We have proposed to empower the IIA to impose a range of disciplinary sanctions (viz. reprimand, fines, suspension of a licence, revocation of licence and prohibition of licence application within a specified period). The industry has expressed concern that the proposed upper limit of the pecuniary penalty⁴ is too high, and they have suggested that the legislation should provide for two different penalty maxima, one for corporates and the other for individuals. In fact, our proposal is comparable to the disciplinary sanctions under the regimes for intermediaries regulated by the Mandatory Provident Fund Schemes Authority and the Securities and Futures Commission. Furthermore, given that there is a wide spectrum of insurance intermediaries, ranging from individuals to banks and international insurance brokerage firms, the maximum pecuniary penalty level should have adequate deterrent effect. We therefore consider the proposed upper limit appropriate for our market landscape. We would emphasize that according to our proposal, the IIA has to publish a guideline on how it may impose a pecuniary penalty. The broad principles include proportionality to the severity of the misconduct, whether the licensee has made financial gains, and that the pecuniary penalty should not put the licensee into financial jeopardy. In addition, a person who is aggrieved by the IIA's decision on

⁴ The greater of –
– \$10,000,000; or
– three times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct.

disciplinary sanctions may appeal to the Insurance Appeals Tribunal (“IAT”) (see paragraph 30). It may confirm, vary or set aside the decision or remit the matter to the regulator with directions as appropriate.

(i) Specified Suspension Power

23. We have proposed to introduce a specified suspension power, as a stop gap policyholder protection measure, where the IIA⁵ may consider, in the interest of the public or policyholders, suspending a licensee (or RO) from carrying on a regulated activity (or any part of it) for a specified period of time if it is envisaged that the decision on disciplinary sanctions will not be readily available in a complicated case.

24. There are strong objections to the introduction of this power on the grounds that such a suspension, which has the effect of a punishment before a disciplinary decision, would compromise due process. Others demand more clarifications on the circumstances under which this power will be exercised, the procedures of exercising this power and safeguards against any abuse in exercising this power. After detailed consideration, we have decided not to pursue the introduction of this power. We will seek to enhance policyholder protection through other regulatory arrangements proposed for the IIA.

(j) Regulatory Arrangements for Banks’ Insurance Intermediary Activities

25. We have proposed that the IIA will, subject to the approval of the Chief Executive (“CE”) in Council, delegate its power of inspection and power of investigation to HKMA for the purpose of regulating banks’ insurance intermediary activities. The IIA will be the lead regulator for the insurance industry and responsible for setting the regulatory standards and determine all disciplinary sanctions, both for bank and non-bank insurance intermediaries.

26. There are concerns from the insurance industry that such arrangement may give rise to problems of regulatory inconsistency. Balancing this against the need to minimise regulatory duplication, we consider that the proposed regulatory arrangement is appropriate given HKMA’s role as the primary and lead regulator of banks. However, we are mindful of the need to ensure that the financial regulators, as at

⁵ Or the Hong Kong Monetary Authority (“HKMA”) under delegated power in respect of banks’ insurance intermediary activities, see paragraph 25.

present, should maintain close liaison and coordination to minimise regulatory overlap/underlap for effective regulation, and ensure consistency in their regulatory outcome for policyholder protection and prudential risk management.

(k) Transitional Arrangements for Insurance Intermediaries

27. We have proposed to introduce deeming provisions in the ICO to the effect that all pre-existing insurance intermediaries and their ROs (including chief executives for insurance broker companies) validly registered with the SROs before the IIA's establishment will be deemed as licensees and their ROs under the new regime for three years starting from the date of the commencement of the legislative amendments.

28. We have also proposed that pre-IIA complaints and disciplinary cases which remain unresolved upon the inception of the IIA should be followed up by the IIA, with reference to the pre-IIA standards and circumstances at the time of the occurrence of the event as far as practicable. In other words, the registration, supervisory, investigative and disciplinary functions of the SROs will be transferred to the IIA on its establishment. However, the IIA will not deal with applications for registration and notifications of change of particulars of registrants not yet finished by SROs. Applicants need to resubmit their applications or notifications to the IIA upon its inception.

29. Respondents generally support the proposed arrangements but some suggest that the IIA should take up applications and notifications not yet finished by the SROs. We consider our proposal reasonable, having regard to operational efficiency and the details of the transitional arrangements. Nevertheless, after considering some suggestions to secure a smooth transition, we propose to specifically provide in the amendment bill that –

- (i) the SROs should assist the Office of the Commissioner of Insurance and the IIA to compile the relevant records of current registration as well as existing and outstanding complaints and disciplinary cases; and
- (ii) the transfer of personal data for assisting the transitional arrangements will not breach the Personal Data (Privacy) Ordinance (“PDPO”) (Cap. 486).

(1) Appellate Mechanism and Other Checks and Balances

30. We have proposed to introduce a new Part in the ICO to establish the Insurance Appeals Tribunal (“IAT”) which may confirm, vary or set aside a decision by the IIA or HKMA or remit the matter to the regulator with directions. The list of specified regulatory decisions made in relation to insurers and intermediaries which will be subject to the IAT’s review will be provided in a Schedule to the ICO.

31. In addition to comments on the operation of the IAT, there are views that the IAT should include industry representatives and the Chief Justice instead of the Chief Executive should be the authority to appoint members and Chairman of the IAT. We have reviewed our proposal and note that it is in line with the operation of appeal tribunals set up under other financial regulatory regimes in Hong Kong. These tribunals have been operating smoothly and independently. Their membership includes market practitioners who will assist the tribunal chairmen to hear each appeal case. We consider it desirable to adopt a similar practice for the proposed IAT.

32. In response to comments that the powers to be conferred on the IIA could be too wide, we need to point out that apart from the proposal to establish an IAT, the following checks and balances to enhance the accountability of the IIA have been proposed –

- (a) the IIA would table its annual report before the Legislative Council (“LegCo”);
- (b) the annual budget and corporate plan of the IIA would be subject to the approval of the Financial Secretary;
- (c) some functions of the IIA would be non-delegable (i.e. such functions must be performed by the Board only and cannot be delegated by the Board to its members or committees or employees);
- (d) after the IIA has exercised its power to impose disciplinary sanctions against an authorized insurer or a licensed insurance intermediary, it would disclose to the public details of the relevant decision including the reasons and any material facts relating to the case;
- (e) an independent Process Review Panel would be established by the CE to review the internal process and procedures of the use of the proposed regulatory powers by the relevant regulators;
- (f) complaints against maladministration of the IIA (and HKMA in respect of its supervision of insurance intermediary activities of

- (g) banks) may be lodged with the Office of the Ombudsman; the Director of Audit may conduct value for money audit on the IIA; and
- (h) the IIA would be included into Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) as one of the public bodies and the Independent Commission Against Corruption would be able to examine the practices and procedures of the IIA to facilitate the discovery of corrupt practices; and
- (i) the use of personal data by the IIA would be in compliance with the PDPO.

(m) Levy and Fees

33. We have proposed that the IIA should have stable sources of revenue to fully recover its cost from the market as to achieve the objective of being financially independent of the Government. The major sources of revenues are as follows –

- (i) fixed and variable licence fees payable by insurers;
- (ii) licence fees payable by insurance intermediaries;
- (iii) user fees for providing specific services; and
- (iv) a levy of 0.1%⁶ on insurance premiums for all insurance policies⁷.

The long term target is for the IIA to meet 70% of its expenditure by levy and the remaining 30% by licence and user fees. The Government would provide a one-off lump sum of \$500 million to the IIA upon its inception to meet part of its expenses in the initial five years, during which both the variable licence fees payable by insurers and the levy will be collected in an incremental approach.

34. There are views that the levy should not be collected from the policyholders while some respondents propose that the levy should be

⁶ The IIA will adopt an incremental approach in achieving the target level of levy in the first five years after the IIA's establishment, in accordance with the following schedule –

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Market levy as a % on insurance premiums	0.04%	0.05%	0.06%	0.07%	0.085%	0.1%

⁷ The levy is subject to a cap on non-life insurance policies at \$5,000 and life insurance policies at \$100.

paid by insurance companies. Different caps and exemptions for the levy have also been proposed. Some respondents also suggest that the IIA should be funded entirely by the Government. We consider the original funding proposal appropriate because it ensures that the IIA has stable sources of income and will be financially independent of the Government. Given that one of the main objectives of the IIA is to protect policyholders, it is justified to recover its cost partly by collecting a levy on insurance premiums. Levy on insurance premiums is more transparent as the levy rate will be set out clearly in every insurance policy. If the levy is payable by the insurers, it is likely that the cost would be passed on to policyholders as a higher premium.

Way Forward

35. We plan to introduce the amendment bill into the LegCo in the 2013/14 legislative session with a view to setting up the IIA in 2015. We shall continue our dialogues with stakeholders, including insurance practitioners, to ensure that the bill will strike a reasonable balance between protecting policyholders and facilitating market innovation and sustainable development of the industry. We believe that the engagement efforts will help shape the proposed regulatory requirements such that they will be capable of effective enforcement by the IIA as well as compliance by the practitioners.

Financial Services and the Treasury Bureau
26 June 2013

Respondents

1. AIG United Guaranty Insurance (Asia) Limited
2. Allianz Global Corporate & Specialty AG
3. American International Assurance Company (Bermuda) Limited
4. Atlas Travel Limited
5. AXA China Region Insurance Company Limited
6. Business and Professionals Federation of Hong Kong
7. Benjamin Chan
8. Chan Yim Kwong
9. Chartis Insurance Hong Kong Limited
10. 張太
11. China Life Insurance (Overseas) Co. Ltd.
12. Clifford Chance
13. Coface
14. Consumer Council
15. Convoy Financial Services Limited
16. General Agents & Managers Association of Hong Kong
17. Hong Kong Chamber of Insurance Intermediaries
18. Hong Kong Chinese Civil Servants' Association (Insurance Officers Branch)
19. Hong Kong Insurance Practitioners General Union
20. Independent Commission Against Corruption
21. Independent Financial Advisors Association
22. Institute of Financial Planners of Hong Kong
23. Insurance & Financial Practitioners Alliance
24. Jeremy Hobbins
25. KSY Speciality Limited
26. David Lai
27. Henry Law
28. Lloyd's
29. Michael Lintern-Smith
30. Mandatory Provident Fund Schemes Authority
31. Manulife (International) Limited
32. Premier Financial Management Ltd.
33. Professional Insurance Brokers Association
34. Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)
35. Rich Virgo
36. Sun Life Hong Kong Limited
37. Swiss Reinsurance Company Ltd
38. Taiping Reinsurance Co., Ltd

39. The Employees' Compensation Insurance Residual Scheme Bureau Limited
40. The Hong Kong Association of Banks
41. The Hong Kong Confederation of Insurance Brokers
42. The Hong Kong Federation of Insurers
43. The Hong Kong General Insurance Agents Association Ltd.
44. The Insurance Agents Registration Board
45. The Insurance Claims Complaints Bureau
46. The Law Society of Hong Kong
47. The Life Underwriters Association of Hong Kong Limited
48. Alan Tsui
49. Mrs White
50. C.F. Yam
51. 甄明潔
52. Zurich Insurance (Hong Kong)
53. Multiple entries (Version 1)
54. Multiple entries (Version 2)
55. Multiple entries (Version 3)
56. Anonymous
57. Anonymous
58. Anonymous

**Consultation on Key Legislative Proposals on Establishment of an Independent Insurance Authority (“IIA”)
Administration’s Responses**

A. Comments related to the Key Legislative Proposals

Consultation Proposals	Respondents’ Views and Comments	Administration’s Response
Chapter 3 Functions and Governance Structure of the IIA		
<p>3.1 Functions of the IIA</p> <p>We proposed to amend section 4A(2) of the Insurance Companies Ordinance (“ICO”) (Cap. 41) to confer on the IIA the following additional functions –</p> <p>(a) to regulate the conduct of insurance intermediaries through a licensing regime;</p> <p>(b) to promote understanding by potential and existing insurance policyholders of insurance products and the insurance industry of Hong Kong;</p> <p>(c) to formulate effective regulatory strategies and facilitate sustainable market development of the insurance industry;</p> <p>(d) to conduct studies into matters affecting the insurance industry in Hong Kong; and</p> <p>(e) to assist the Financial Secretary (“FS”) in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the insurance industry.</p>	<p>a. Industry development and promotion should be one of the IIA’s functions. The work of promoting the insurance industry might however overlap with that of the Financial Services Development Council. [Business and Professionals Federation of Hong Kong, Lloyd’s, Taiping Reinsurance Co., Ltd, The Hong Kong Federation of Insurers, The Insurance Agents Registration Board, The Life Underwriters Association of Hong Kong Limited]</p> <p>b. The IIA should play an active role in enhancing consumer protection and education. [Institute of Financial Planners of Hong Kong, Zurich Insurance (Hong Kong)]</p> <p>c. Given that the IIA is an independent body, its functions should not include assisting the FS in maintaining the financial stability of Hong Kong. [Taiping Reinsurance Co., Ltd]</p>	<p>a. In our proposal, one of the IIA’s functions is to facilitate sustainable market development of the insurance industry. We propose to explicitly provide in the enabling legislation that promoting the competitiveness of the insurance industry in the global insurance market is one of the functions of the IIA.</p> <p>b. The IIA will enhance consumer protection by directly regulating insurance intermediaries through a licensing regime. In addition, one of the IIA’s functions is to promote understanding of insurance products and the insurance industry of Hong Kong by potential and existing policyholders.</p> <p>c. As one of the financial regulators, the IIA should have the responsibility to help maintain Hong Kong’s financial stability. This is in line with the functions of other financial regulators such as the Securities and Futures Commission (“SFC”), and we will maintain this function in the enabling legislation.</p>
<p>3.2 General Powers of the IIA</p> <p>We proposed to introduce an express provision in the ICO to set out –</p> <p>(a) The IIA may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.</p> <p>(b) Specifically, the IIA may –</p> <p>(i) hold, acquire, lease, sell, charge, dispose of or otherwise deal with all kinds of property, whether movable or</p>	<p>a. The Government should reconsider whether the IIA should be allowed to accept gifts. [Clifford Chance, Zurich Insurance (Hong Kong)]</p> <p>b. The IIA should be empowered to invest its funds lawfully and in any other manner approved by the Financial Secretary. [Mandatory Provident Fund Schemes Authority]</p>	<p>a. Noted. We will draw reference from relevant provisions governing other statutory bodies.</p> <p>b. We note that there is a similar provision in the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Cap. 485), and will empower the IIA to do so in the enabling legislation because it may invest part of the seed money provided by the Government for initial set-up to generate income.</p>

<p>immovable;</p> <p>(ii) enter into, carry out, assign or accept the assignment of, vary or rescind any contract, agreement, memorandum of understanding or other obligation;</p> <p>(iii) with the approval of the Financial Secretary, borrow money on security or other conditions;</p> <p>(iv) receive and expend moneys;</p> <p>(v) accept gifts;</p> <p>(vi) publish or otherwise make available materials indicating to the public any matter relating or incidental to the performance by the Authority of any of its functions;</p> <p>(vii) establish wholly-owned subsidiaries;</p> <p>(viii) do all such things as the Authority thinks fit in respect of its administration and management; and</p> <p>(ix) exercise such other powers as are conferred on the Authority under the ICO or any other Ordinance.</p>	<p>c. The IIA should be given power to take out insurance in respect of its activities. [Clifford Chance]</p> <p>d. The powers of the IIA are too wide. [Zurich Insurance (Hong Kong)]</p>	<p>c. Agreed. The IIA will be given such power.</p> <p>d. The IIA's powers are comparable to those of other financial regulators including the SFC and the Financial Reporting Council. We have also put in place an independent appeal mechanism so that an aggrieved party may challenge a decision made by the IIA.</p>
<p>3.3 Set-up of the IIA</p> <p>We proposed that the Chief Executive (“CE”) would appoint the Governing Board of the IIA which would comprise –</p> <p>(a) a chairman;</p> <p>(b) a chief executive officer; and</p> <p>(c) not fewer than six directors.</p> <p>The number of non-executive directors of the IIA should exceed the number of executive directors (which include the chief executive officer). Of the non-executive directors –</p> <p>(a) at least one but not more than two are to be appointed from amongst persons who, because of their knowledge of and experience in the insurance industry, appear to be suitable for such appointment; and</p> <p>(b) the other non-executive directors are to be appointed from amongst persons who,</p>	<p>a. More members of the Board should be recruited from the industry. [American International Assurance Company (Bermuda) Limited, AXA China Region Insurance Company Limited, Chartis Insurance Hong Kong Limited, China Life Insurance (Overseas) Co Ltd, General Agents & Managers Association of Hong Kong, Hong Kong Chamber of Insurance Intermediaries, Independent Financial Advisors Association, KSY Specialty Ltd, Manulife (International) Limited, Professional Insurance Brokers Association, Sun Life Hong Kong Limited, The Employees’ Compensation Insurance Residual Scheme Bureau Limited, The Hong Kong Confederation of Insurance Brokers, The Hong Kong Federation of Insurers, The Hong Kong General Insurance Agents Association Ltd, The Insurance Agents Registration Board, The Insurance Claims Complaints Bureau, The Life Underwriters Association of Hong Kong Limited, Zurich Insurance (Hong Kong), Multiple entries (Version 2)]</p>	<p>a. We note the industry, in particular the insurance intermediaries, are concerned that participation by the industry in the Board should be enhanced. That said, we attach great importance to the impartiality of the Board in exercising its regulatory powers. We now propose that the Board should include at least two persons who are appointed because of their knowledge and experience in the insurance industry.</p>

<p>either because of their knowledge in actuarial science, accountancy, law, consumer affairs, or because of their professional or occupational experience, appear to be suitable for such appointment.</p>	<p>b. The IIA Board should establish a more formal relationship with the Industry Advisory Committees (“IACs”), e.g. the Board should comprise chairmen or representatives of IACs. [Chartis Insurance Hong Kong Limited, Professional Insurance Brokers Association, The Insurance Agents Registration Board, The Insurance Claims Complaints Bureau]</p> <p>c. To reconsider whether all members of the Governing Board should be appointed by the CE and how to put in place appropriate checks and balances in the appointment process. There should be a reasonable proportion of directors with knowledge of and experience in the industry on the Board. [Clifford Chance]</p> <p>d. Clarification is sought on whether the IIA would recruit overseas staff, and, if so, how the IIA could ensure that these overseas staff understand the local culture and properly discharge their powers. [Zurich Insurance (Hong Kong)]</p> <p>e. To include a government representative on the Board. [KSY Specialty Ltd]</p> <p>f. Some members of the Board can be elected by the insurance functional constituency. [AXA China Region Insurance Company Limited]</p> <p>g. The Board should comprise of a maximum of 12 members instead of a minimum of 6. [Business and Professionals Federation of Hong Kong]</p>	<p>b. We will specify in the enabling legislation that the IACs are to advise the IIA on any matters in relation to insurance business (see item 3.4). We will also provide that the Board’s Chairman and the IIA’s chief executive officer will be ex-officio members of IACs.</p> <p>c. A similar appointment mechanism has been adopted in other regulatory bodies. We consider our proposal for the appointment mechanism reasonable. In light of stakeholders’ views, we now propose that the Board should include at least two persons who are appointed because of their knowledge and experience in the insurance industry.</p> <p>d. The IIA should conduct an open recruitment when hiring its staff. We envisage that the Board will lay down guidelines and procedures for the staff (be they local or overseas recruits) of the IIA to follow for discharging their duties and functions.</p> <p>e. Our proposal is appropriate on the consideration of ensuring the independence of the IIA.</p> <p>f. Not accepted. Non-executive directors are to be appointed on an ad personam basis to ensure independence. It is important that all Board Members are, and to be seen to be, impartial (rather than representing sectorial interests) so that they can discharge their duties effectively.</p> <p>g. Not accepted. We do not see any strong justification to cap the number of Board members at 12.</p>
<p>3.4 Industry Advisory Committees (“IACs”)</p> <p>We proposed that the IIA should establish at least two IACs to advise it on any matter it refers to them in relation to long term business and general</p>	<p>a. To establish an IAC for insurance intermediaries and small-and-medium enterprises. [Business and Professionals Federation of Hong Kong, Chartis Insurance Hong Kong Limited, Professional Insurance Brokers Association, The Hong Kong</p>	<p>a. The enabling legislation will provide that the IIA may, after consulting the FS, establish additional IACs when it considers necessary.</p>

<p>business.</p> <p>The IIA may, after consulting the Financial Secretary, establish additional IACs when it considers necessary.</p> <p>All members of the IACs shall be appointed by the Financial Secretary after consulting the IIA.</p>	<p>Confederation of Insurance Brokers]</p> <p>b. To appoint a representative from each major industry sector to each IAC. [Manulife (International) Limited]</p> <p>c. Trade associations of the insurance industry should be represented in the IACs. [KSY Specialty Ltd]</p> <p>d. Representatives from the insurance industry with professional knowledge and experience should be represented at the IAC, and this requirement be clearly stated in the enabling legislation. [The Employees' Compensation Insurance Residual Scheme Bureau Limited]</p>	<p>b. – c.</p> <p>We agree that the IAC should tap into the talents and experts of the industry. However, it may not be advisable to limit the flexibility in appointing an appropriate mix of talents by including such restrictions in the enabling legislation.</p> <p>d. It is natural that suitable persons with knowledge of the industry will be appointed to the IACs. There will be relevant specific provisions in the enabling legislation.</p>
<p>Others</p>	<p>a. Appropriate mechanisms should be put in place to ensure that if the IIA decides to give any directions to a committee, the decision should be made by persons without any conflict of interests. [Clifford Chance]</p>	<p>a. There will be provisions to deal with conflict of interests and disclosure of interest to ensure that decisions made by the IIA are impartial.</p>
<p>Chapter 4 Licensing Regime for Insurance Intermediaries</p>		
<p>4.1 Overall Framework</p> <p>We proposed to introduce new provisions to Part X of the ICO to replace the existing provisions on the self-regulation of insurance intermediaries. The key legislative proposals for these provisions would cover the following major areas –</p> <p>(a) definition of regulated activities;</p> <p>(b) offences against the carrying on of regulated activities without a licence;</p> <p>(c) operation of the licensing system, including –</p> <p>(i) the types of licensees under the new regime;</p>	<p>a. The proposed statutory regulatory regime on insurance intermediaries is too strict. [General Agents & Managers Association of Hong Kong, Hong Kong Insurance Practitioners General Union, Swiss Reinsurance Company Ltd]</p>	<p>a. One of the major objectives of establishing the IIA is to enhance the regulation of insurance intermediaries via a statutory licensing regime to replace the existing self-regulatory regime. In formulating the licensing and conduct requirements on insurance intermediaries, we have made reference not only to other financial regulatory regimes but also to the existing standards and requirements adopted by the Self-regulatory Organizations (“SROs”). We are mindful of the need to strike a reasonable balance between providing better protection to policyholders and minimising regulatory burden on the industry, in order to facilitate its sustainable development in the long run.</p>

<ul style="list-style-type: none"> (ii) the eligibility criteria for obtaining a licence; (iii) the appointment of ROs by authorized insurers, insurance agencies and insurance broker companies to oversee internal control and procedures for compliance by the insurance intermediaries they appointed or engaged; (iv) procedural matters on licence application and renewal, etc.; and (v) the requirement for the IIA to establish and maintain a register of licensees for public inspection. 		
<p>4.2 Definition of Regulated Activities</p> <p><u>Definitions of licensed insurance agent and licensed insurance broker</u></p> <p>We proposed to provide for two broad categories of licensed insurance intermediaries as follows –</p> <ul style="list-style-type: none"> (a) to define a <u>licensed insurance agent</u> as a person who carries on or holds himself out to carry on any regulated activity as an agent of an authorized insurer, and includes three types of licensees viz. licensed licensed insurance agencies, licensed individual insurance agents and licensed TRs (agent); and (b) to define a <u>licensed insurance broker</u> as a person who carries on or holds himself out to carry on any regulated activity as an agent of an existing or potential policyholder, and includes two types of licensees viz. licensed licensed insurance broker companies and licensed TRs (broker). <p><u>Regulated activities</u></p> <p>We proposed to define “regulated activities” (i.e.</p>	<ul style="list-style-type: none"> a. The proposed definition of “regulated activities” is cumbersome and should be refined and clarified. [Chartis Insurance Hong Kong Limited, Clifford Chance, Institute of Financial Planners of Hong Kong, KSY Speciality Limited, Professional Insurance Brokers Association, The Hong Kong Association of Banks, The Hong Kong Confederation of Insurance Brokers, The Law Society of Hong Kong, The Life Underwriters Association of Hong Kong Limited, Zurich Insurance (Hong Kong)] b. To clarify the proposals on exemption from licensing (para. 4.2.3(3)(d) of the consultation document) e.g. definition of “wholly incidental to the discharge of duties”, “back office administration”, and the treatment of different types of practitioners in the legal practice. [AXA China Region Insurance Company Limited, Chartis Insurance Hong Kong Limited, Convoy Financial Services Limited, KSY Speciality Limited, Mandatory Provident Fund Schemes Authority, The Hong Kong Confederation of Insurance Brokers, The Law Society of Hong Kong] c. To add that employers who knowingly allow a person to carry on regulated activities without a licence is an offence. [The Hong Kong Confederation of Insurance Brokers] 	<ul style="list-style-type: none"> a. – b. We consider that the proposed formulation of the definition of “regulated activities” is appropriate. The wording on exemption (i.e. “wholly incidental”) in the proposals is similar to that in other relevant provisions under the Securities and Futures Ordinance (“SFO”) (Cap. 571) and MPFSO. We will clarify that “back office administration” means clerical and administrative duties performed for an insurer or an insurance intermediary. c. An employer may attract criminal liabilities if he aids and abets an employee to carry on regulated activities without a licence.

<p>the scope of insurance intermediary activities which are subject to conduct regulation by the IIA) along the following line –</p> <p>(a) A person carries on a “regulated activity” if the person –</p> <ul style="list-style-type: none"> (i) negotiates or arranges a contract of insurance; (ii) invites or induces, or attempts to invite or induce, another person to enter into a contract of insurance (iii) invites or induces, or attempts to invite or induce, another person to make a material decision; or (iv) gives regulated advice. <p>(b) A person makes a material decision if he makes a decision as to any matter specified in (d) below.</p> <p>(c) A person gives regulated advice if he gives an opinion in relation to any matter specified in (d) below.</p> <p>(d) The following matters are specified for the purposes of (b) and (c) above –</p> <ul style="list-style-type: none"> (i) making of an insurance application or proposal; (ii) issuance, continuance or renewal of a contract of insurance or any supplementary contract attached thereto; (iii) cancellation, termination, surrender or assignment of a contract of insurance or any supplementary contract attached thereto; (iv) exercise of a right under a contract of insurance or any supplementary contract attached thereto; (v) changes of any terms and conditions of a contract of insurance or any supplementary contract attached thereto; or (vi) making or settlement of an insurance claim. 	<p>d. There might still be loopholes under the proposed statutory regime for non-licensed intermediation activities, such as those conducted by independent advisers and third party marketers. [The Hong Kong Confederation of Insurance Brokers]</p>	<p>d. Any person who carries on regulated activities without a licence commits an offence. Regulated activities include the act of inviting or inducing, or attempting to invite or induce another person to enter into a contract of insurance. Having other post/professional titles do not exempt a person from the licensing requirement.</p>
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Restriction on carrying on regulated activities

The proposals are along the following line –

- (a) A person must not carry on or hold himself out as carrying on any regulated activity, in the course of his business or employment or for reward, –
 - (i) as an agent of an authorized insurer, unless being a licensed insurance agent; or
 - (ii) as an agent of an existing or potential policyholder, unless being a licensed insurance broker.

- (b) A person who, without reasonable excuse, contravenes (a)(i) or (a)(ii) above commits an offence and is liable –
 - (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

- (c) Solicitors, counsels, accountants, trust companies, actuaries giving regulated advice wholly incidental to their professional practice / the discharge of their duties are exempted from restrictions under (a) above. Similar exemption is also applicable to loss adjusters / assessors, claims settling agents and persons providing ancillary services such as back office staff of an insurer or an insurance intermediary. Persons giving regulated advice through the mass media (i.e. publication that is made

<p>generally available to the public, television broadcast, etc.) are exempted as well.</p> <p><u>Conduct of activities outside Hong Kong</u></p> <p>We proposed to make it expressly clear that an insurance intermediary activity carried on outside Hong Kong but targeted at existing or potential policy holders of Hong Kong will be regarded as a regulated activity subject to the licensing regime.</p>		
<p>4.3 Operation of the Licensing Regime</p> <p>We proposed a licensing framework for insurance intermediaries as follows –</p> <p><u>Types of licensees</u></p> <p>There will be two broad categories of licensees, namely, licensed insurance agents and licensed insurance brokers.</p> <p>Licensed insurance agents (i.e. persons who are permitted to carry on a regulated activity as an agent of the insurer) include the following three types of licensees –</p> <p>(a) licensed individual insurance agents;</p> <p>(b) licensed insurance agencies; and</p> <p>(c) licensed TRs(agent).</p> <p>Licensed insurance brokers (i.e. persons who are permitted to carry on a regulated activity as an agent of a policyholder or a potential policyholder) include the following two types of licensees –</p> <p>(a) licensed insurance broker companies; and</p> <p>(b) licensed TRs(broker).</p> <p><u>Application for an insurance intermediary licence</u></p>	<p><u>Types of licensees</u></p> <p>a. To streamline the licensing regime to only three types of licences, namely insurance agents, insurance brokers and technical representatives (“TRs”). [The Law Society of Hong Kong]</p> <p>b. To adopt a two-tier licensing regime, i.e. one licence for institutions and another one for individuals. [The Hong Kong Confederation of Insurance Brokers]</p> <p>c. Currently, insurance agents are required to renew their registration every three years. Both insurance agents and brokers should be subject to the same renewal interval under the IIA regime. [Institute of Financial Planners of Hong Kong, The Hong Kong Confederation of Insurance Brokers, Anonymous]</p>	<p>a. – b.</p> <p>To ensure a smooth transition from the existing self-regulatory regime to the licensing regime, the proposed categorisation of licences largely mirror the existing registration system administered by the SROs. Re-categorising the licences may cause confusion and more importantly, undermine operational efficiency during the transition. We thus do not favour such a fundamental change. The IIA may explore room for streamlining after the transitional period. We will continue to listen to views from the industry in finalising the amendment bill to ensure a smooth migration of existing insurance intermediaries to the future regime.</p> <p>c. Agreed. We will provide in the enabling legislation that both insurance agents and insurance brokers will be subject to requirements to renew their licences every three years.</p>

<p>The legislation will stipulate the following with regard to the procedures for applications for an insurance intermediary licence –</p> <p>(a) applications should be made in the form and manner specified by the IIA;</p> <p>(b) applications should be accompanied by a fee (which will be waived in the first 5 years after the establishment of the IIA); and</p> <p>(c) the IIA may impose, amend or revoke any conditions to the licence as may be reasonable in the circumstances. Such decisions by the IIA will be appealable to the IAT. The also applies to deemed licensees in the case of deemed licences during the transitional period of three years from the commencement of the new licensing regime.</p> <p>Similar to the existing arrangements under the SRO regime, we proposed that licences for insurance agents are renewable every three years whereas there would be no renewal requirement for the licences for insurance brokers.</p> <p>We also proposed that a person commits an offence if, in connection with an application for the grant or renewal of a licence, the person knowingly or recklessly makes a false or misleading statement in a material particular or omits a material particular from a statement with a result that the statement is rendered false or misleading.</p>	<p><u>Application for an insurance intermediary licence</u></p> <p>d. On the IIA’s power to impose, amend or revoke licensing conditions, –</p> <p>(i) there should be due procedures (e.g. opportunity to be heard) before imposing or amending any licensing conditions; [The Hong Kong Association of Banks]</p> <p>(ii) licensees should be allowed reasonable time to fulfill any new or amended licensing conditions; and [Professional Insurance Brokers Association]</p> <p>(iii) there should be subsidiary legislation or guidelines on the conditions which the IIA may impose, and such guidelines should be circulated to the industry for comment before publication. [The Law Society of Hong Kong]</p> <p>e. The IIA should ensure that temporary extension of a licence (before the licence is renewed or a renewal is refused by the IIA) will not be abused. [Clifford Chance]</p> <p>f. It would be unfair to only waive fees for insurance intermediaries for 5 years but not for insurers. [Anonymous]</p>	<p>d. The proposal to empower the IIA, being the licensing authority for all insurance intermediaries, to impose, amend or revoke licensing conditions is in line with the regulatory regime for securities and MPF intermediaries under the SFO and MPFSO respectively.</p> <p>There will be an appeal mechanism (i.e. the Insurance Appeals Tribunal which would be chaired by a person eligible for appointment as a High Court judge and consist of two market practitioners in each hearing) for an aggrieved party to challenge a decision made by the IIA. The IIA would also issue guidelines to explain the relevant licensing conditions.</p> <p>e. Noted. This “temporary extension” is to cater for the scenario where the IIA cannot complete processing an application for renewal upon expiry of a licence. In this connection, we do not see any significant risk of it being abused.</p> <p>f. We propose a 5-year fee waiver on insurance intermediaries with a view to mitigating the impact on them upon the transition from the existing self-regulatory regime for insurance intermediaries to the licensing regime. Insurers are paying authorization fees under the existing ICO and we do not contemplate any increase in fees on establishment of the IIA. We thus do not see the need for a similar treatment for them which need not go through such a transition.</p>
<p><u>Eligibility criteria</u></p> <p>We proposed that, similar to the existing registration regime administered by the SROs,</p>	<p><u>Eligibility criteria</u></p> <p>g. On the “fit and proper criteria” –</p> <p>(i) the proposed criteria are too onerous;</p>	<p>g. When formulating the factors which the IIA should have regard to in the enabling legislation, we have made</p>

<p>applicants for insurance intermediary licences will be required to fulfil the following eligibility criteria –</p> <p>(a) to be considered as “fit and proper” persons by the IIA which shall have regard to the relevant factors specified in the legislation and codes/guidelines to be promulgated by the IIA under the legislation;</p> <p>(b) for applicants who are individuals (viz. individual insurance agents, TRs(agent) and TRs(broker)), they have passed the qualifying examinations as specified by the IIA, on the basis of which the IIA will determine the line(s) of insurance business which the applicant may engage in if a licence is granted;</p> <p>(c) for applicants to be a licensed insurance agency or a licensed individual insurance agent, they are appointed by at least one authorized insurer; and</p> <p>(d) for applicants to be a TR(agent) or TR(broker), they are engaged by a licensed insurance agency or a licensed insurance broker company, as the case may be.</p> <p>We also proposed that all licensed insurance broker companies should be limited companies. There will be no changes to the existing statutory requirements for authorization of insurance brokers under ICO for the purpose of establishing the IIA (e.g. eligibility criteria in respect of capital and net assets, professional indemnity insurance, keeping of separate client accounts, and keeping of proper books and accounts).</p> <p>Further to (a) above, we proposed that in considering whether a person is “fit and proper”, the IIA may, in addition to any other matter that it considers relevant, have regard to the following –</p> <p>(i) the educational or other qualifications or experience of the person; the person’s ability to carry on a regulated activity</p>	<p>[The Hong Kong Association of Banks, The Hong Kong Federation of Insurers]</p> <p>(ii) the criteria in relation to insolvency (para. 4.3.3(6)(v) – (vi) of the consultation document) should follow the existing standards of the Hong Kong Confederation of Insurance Brokers; [KSY Speciality Limited]</p> <p>(iii) details on what constitutes “internal control procedures and risk management systems” (para. 4.3.3(6)(ix) of the consultation document) should be provided; and [Professional Insurance Brokers Association]</p> <p>(iv) if a large corporation has separate entities operating as brokers and agents, there should be a guidance on segregating the operations of these two entities to avoid any conflict of interests. [Zurich Insurance (Hong Kong)]</p> <p>h. The required qualification/standards under the eligibility criteria, in particular those for new entrants, should be raised. [Consumer Council]</p> <p>i. Licensees should be required to obtain a professional qualification and join a professional body. [Institute of Financial Planners of Hong Kong]</p> <p>j. Licensing, examination and education requirements of insurance practitioners should be continuously reviewed. [Institute of Financial Planners of Hong Kong]</p> <p>k. To abolish the requirement for an insurance agent to obtain the prior agreement of his first principal insurer before he can be appointed by his second principal. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p> <p>l. It would be unnecessary to revoke the licence of a TR(broker) if he is not engaged by a broker company</p>	<p>reference to other financial regulatory regimes as well as the standards adopted by SROs. The IIA would also promulgate codes or guidelines to elaborate the details. Regarding (iv), the IIA would issue guidelines to require that, to avoid conflict of interests, corporations should establish “Chinese Walls” if they have entities operating as insurance brokers and insurance agents.</p> <p>h. – j. To minimise the impact on pre-existing insurance intermediaries, we do not propose to introduce any changes to the eligibility criteria for insurance intermediaries upon the establishment of the IIA. We believe that in discharging its functions, the IIA would review the professional standards and training needs for intermediaries from time to time in light of local and international insurance market developments and expectation of policyholders.</p> <p>k. Noted. This is a contractual arrangement between an insurer and its agents. We believe that this should be left to the industry to decide.</p> <p>l. We consider our proposal reasonable. It aligns with the intermediary regulatory regime under the MPFSO.</p>
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<p>competently, honestly and fairly;</p> <p>(ii) the reputation, character, reliability and financial integrity of the person;</p> <p>(iii) whether the person has failed to comply with any requirement imposed under the ICO or any relevant regulations;</p> <p>(iv) whether the person, in case of an individual, is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6), is subject to receivership or other similar proceedings, or has failed to meet any judgment debt;</p> <p>(v) whether the person, in case of an individual, has ever been a shadow director, director, company secretary or a member of the senior management of a corporation that has become insolvent;</p> <p>(vi) whether the person, in case of a corporation, is in liquidation or is the subject of a winding up order, is subject to receivership, administration, or other similar proceedings, has failed to meet any judgment debt, or is unable to meet any financial or capital requirements applicable to it;</p> <p>(vii) a decision made in respect of the person by the HKMA, SFC, Mandatory Provident Fund Authority (“MPFA”), or any other authority or regulatory organisation, whether in Hong Kong or elsewhere, which, in the IIA’s opinion, performs a function similar to the functions of the IIA;</p> <p>(viii) any information, whether provided by the person or not, relating to</p> <ul style="list-style-type: none"> – where such consideration relates to an insurance agency licence or an insurance broker company licence, or an application for the licence, any other person who is or is to be employed by, or associated with (including any other person who will be acting for or on behalf of), the person for the purposes of the regulated activity for which the licence is granted or the application is 	<p>for 90 days. [Professional Insurance Brokers Association]</p> <p>m. A TR(broker) should be allowed to be engaged by more than one broker company. [The Hong Kong Confederation of Insurance Brokers]</p> <p>n. To clarify the rationale of not creating specific licences for sub-agents and sub-agencies, as well as technical representatives appointed by individual agents. [The Insurance Agents Registration Board]</p>	<p>Nevertheless, we will give positive consideration to extending the time limit so as to facilitate compliance by the industry.</p> <p>m. Not accepted. We do not see strong justification to allow a TR(broker) to carry on regulated activities on behalf of more than one broker company, as this may bring confusion to policyholders.</p> <p>n. We do not see the need to create specific licences for sub-agents and sub-agencies, given their eligibility criteria are not different from those of individual agents and insurance agencies respectively. .</p> <p>We note that currently there are only very few technical representatives appointed by individual agents. They will be licensed as individual insurance agents under the IIA regime to continue their business practice.</p>
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<p>made (as the case may be); or</p> <ul style="list-style-type: none"> - where the person is a corporation in a group of companies, <ul style="list-style-type: none"> (A) any other corporation in the same group of companies; (B) any substantial shareholder or officer of the corporation or any corporation referred to in (A) above; <p>(ix) where such consideration relates to a licence of an insurance agency or an insurance broker company, whether the person has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements under any of the relevant provisions;</p> <p>(x) the state of affairs of any other business which the person carries on or propose to carry on;</p> <p>(xi) whether the person has ever been convicted of any criminal offence in Hong Kong or elsewhere.</p> <p><i>Continued compliance after grant of licence</i></p> <p>The grant of a licence is conditioned on the licensee's continued compliance with the eligibility criteria and licensing conditions, if any, during the validity period of a licence.</p> <p>We proposed that if a licensed insurance agency or a licensed individual insurance agent ceases to be appointed by at least one authorized insurer, the relevant licence will be deemed to be suspended as from the date on which the cessation takes effect and will be deemed to be revoked thereafter if the licensee concerned has not been appointed by any authorized insurer within 90 days from that date. Similarly, if a licensed TR (agent) or a licensed TR (broker) ceases to be engaged by a licensed insurance agency or a licensed insurance broker company</p>		
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<p>(as the case may be), the relevant licence will be deemed to be suspended as from the date on which the disengagement takes effect and will be deemed to be revoked thereafter if the licensed TR (agent) or licensed TR (broker) has not been engaged by any licensed insurance agency or any licensed insurance broker company (as the case may be) within 90 days after that date.</p> <p><u>Preservation of existing industry practices with regard to sub-agents and sub-agencies</u></p> <p>We proposed that the business practice of insurance agencies engaging Insurance Agents Registration Board (“IARB”) registrants as their sub-agents and sub-agencies can continue after implementation of the new regime. An individual who has obtained a licence as a licensed individual insurance agent and a business entity which has obtained a licence as a licensed insurance agency may choose to operate as a sub-agent or a sub-agency respectively of a licensed insurance agency through their own commercial arrangements.</p>		
<p>4.4 Register of Licensed Insurance Intermediaries</p> <p>We proposed that the IIA should establish and keep a register of licensed insurance intermediaries containing –</p> <ul style="list-style-type: none"> (i) the name and business address of each licensee; (ii) such conditions of the licence of each licensee; (iii) in relation to each licensed insurance agency or licensed individual insurance agent, the name of its appointing authorized insurer(s); (iv) in relation to each licensed TR(agent) or licensed TR(broker), the name of the licensed insurance agency or licensed insurance broker company which engages the TR; 	<ul style="list-style-type: none"> a. The 7-day requirement on notification of changes in particulars should be removed or extended. [AXA China Region Insurance Company Limited, Convoy Financial Services Limited, Hong Kong Chamber of Insurance Intermediaries, Professional Insurance Brokers Association, The Hong Kong Confederation of Insurance Brokers, The Life Underwriters Association of Hong Kong Limited] b. Objection to the suggestion of keeping in the IIA’s register a record of disciplinary actions imposed on an intermediary in the past five years. [Hong Kong Chamber of Insurance Intermediaries, The Life Underwriters Association of Hong Kong Limited, Multiple entries (version 1)] c. An insurer should be required to notify the IIA of the 	<p>a. – d.</p> <p>The proposals are formulated with reference to the intermediary regulatory regime under the SFO and MPFSO. We consider it reasonable to require the IIA to maintain a register which contain updated and relevant particulars of licensees for inspection by existing and potential policyholders and the public as a whole. Nevertheless, we are prepared to give positive consideration to relaxing the requirement of making notification of changes in seven days to facilitate compliance by the industry.</p>

<p>(v) in relation to each licensed insurance agency and licensed insurance broker company, the name and business address of its RO;</p> <p>(vi) the line(s) of business which each licensee is eligible to carry on;</p> <p>(vii) a record of specified suspension imposed on the licensee or RO by the IIA or HKMA within the last 5 years;</p> <p>(viii) a record of every disciplinary action taken against the licensee or RO by the IIA or SROs within the last 5 years;</p> <p>(ix) if the licence of a person or the approval of a person as an RO is suspended, the period of the suspension; and</p> <p>(x) such other particulars as may be prescribed by regulations.</p> <p>A copy of the register or part of it that is certified by the IIA is admissible in evidence in any criminal or civil proceedings.</p> <p>Apart from the above, we proposed that there should be new provisions in the ICO along the following line –</p> <p>(a) for the purpose of ascertaining the identity or particulars of a licensee, at all reasonable times, a member of the public may inspect the register free of charge and obtain a copy of an entry in or extract of the register on payment of a prescribed fee to the IIA;</p> <p>(b) the IIA may require licensees to submit relevant information for the purpose of maintaining the register;</p> <p>(c) licensees are mandated to inform the IIA of changes in their particulars (e.g. name and business address) within 7 days beginning on the date of change;</p> <p>(d) authorized insurers are mandated to inform the IIA of the cessation of their appointment of a licensed individual insurance agent or a licensed insurance agency within 7 business days after such termination of appointment;</p>	<p>appointment of an insurance agent seven days before the intended appointment instead of after the appointment. [The Hong Kong Confederation of Insurance Brokers]</p> <p>d. The penalty relating to the failure to notify the IIA of the termination of appointment of insurance intermediaries should be lowered. [The Hong Kong Confederation of Insurance Brokers]</p> <p>e. The requirement for the IIA to make the register available through the internet should be reconsidered because the IIA may fail to do so for some reasons. [The Law Society of Hong Kong]</p> <p>f. The register should also contain information on the appointment of sub-agents. [Clifford Chance]</p>	<p>e. The IIA should maintain such a register to allow the public to check the status of an intermediary conveniently. We consider this requirement reasonable.</p> <p>f. Under the IIA regime, individual insurance agents (as long as they are properly licensed) may act as sub-agents of another licensed intermediaries as a commercial arrangement. The register will therefore contain all relevant information related to a licensed agent (whether he is employed as a sub-agent or not). Therefore, it is not necessary to create a separate category for “sub-agents” in the register.</p>
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<p>(e) licensed insurance agencies and licensed insurance broker companies are mandated to inform the IIA of the cessation of engagement of a licensed TR(agent) or licensed TR(broker) within 7 business days after such cessation of appointment;</p> <p>(f) licensees are mandated to inform the IIA of their cessation of business before the date of cessation; and</p> <p>(g) contravention of (c) – (f) above, without reasonable excuse, will constitute an offence.</p>		
<p>4.5 Appointment of Responsible Officers (“ROs”)</p> <p><u>Approval of ROs</u> We proposed new provisions along the following line –</p> <p>(a) the chief executive officer of an authorized insurer shall be deemed to be the RO of the authorized insurer; and</p> <p>(b) an eligible appointee of an RO of a licensed insurance agency or a licensed insurance broker company should be a licensed TR(agent) or licensed TR(broker) (as the case may be) who is responsible for the conduct of the whole of the corporate licensee’s business in relation to a regulated activity as an insurance agent or insurance broker (as the case may be).</p> <p><u>Suspension or revocation of licence if no RO</u></p> <p>We proposed that the IIA may suspend the licence of a corporate licensee (and hence its licensed TRs) if it ceases to have an RO, and may revoke its licence (and those of its licensed TRs) if an RO is not in place within a period of 90 days.</p> <p><u>Conduct requirements for authorized insurers, corporate licensees and their ROs</u></p> <p>We proposed new provisions in the ICO along the</p>	<p>a. It would not be practical to have the chief executive officer of an insurer as its RO. [American International Assurance Company (Bermuda) Limited, AXA China Region Insurance Company Limited, Institute of Financial Planners of Hong Kong, Sun Life Hong Kong Limited, Taiping Reinsurance Co., Ltd, The Employees’ Compensation Insurance Residual Scheme Bureau Limited, The Hong Kong Association of Banks, The Hong Kong Confederation of Insurance Brokers, The Hong Kong Federation of Insurers, The Law Society of Hong Kong, Zurich Insurance (Hong Kong)]</p> <p>b. On the responsibilities and appointment of ROs of insurers –</p> <p>(i) the responsibilities imposed on the RO are too onerous; [Anonymous]</p> <p>(ii) the RO should be allowed to delegate his responsibilities to another person subject to approval by the IIA; [The Employees’ Compensation Insurance Residual Scheme Bureau Limited]</p> <p>(iii) the meaning of “sufficient resource” should be clarified; and [Zurich Insurance (Hong Kong)]</p> <p>(iv) provisions should be included in the legislation to specify that consideration would be given to whether an internal system and controls has been put in place when determining whether the RO</p>	<p>a. – b.</p> <p>Our policy intent is that there should be a senior executive in an insurer with the capacity and responsibility to ensure that internal control and procedures are in place and observed by the insurance agents appointed by that insurer. At present, an insurer’s chief executive officer is held responsible for its insurance business in entirety (i.e. including its agency business) under the ICO. We have thus proposed the automatic appointment mechanism. We propose to require the IIA to issue guidelines to set out examples of actions that are expected to be taken by ROs to facilitate their compliance. These may include, among other things, documenting internal policies relating to conduct compliance, providing regular training to employees to promote conduct compliance, conducting regular internal assessment of conduct compliance, and authorizing officers or an internal committee to escalate conduct issues to the senior management.</p>

<p>following line -</p> <p>(a) An authorized insurer or a corporate licensee –</p> <p>(i) must establish and maintain proper procedures for securing compliance by the licensed insurance agencies and licensed individual insurance agents appointed insurer or the licensees engaged by the corporate licensee (as the case may be), with the conduct requirements;</p> <p>(ii) must use its best endeavours to secure observance by the licensed insurance agencies and licensed individual insurance agents appointed insurer or the licensees engaged by the corporate licensee (as the case may be) of the controls and procedures established under (i) above;</p> <p>(iii) must ensure that its RO has sufficient authority within the authorized insurer or corporate licensee (as the case may be) for carrying out the responsibilities set out in (b) below); and</p> <p>(iv) must provide its RO with sufficient resources and support for carrying out the responsibilities set out in (b) below.</p> <p>(b) An RO of an authorized insurer or a corporate licensee must use his best endeavours to carry out the following responsibilities –</p> <p>(i) to ensure that the authorized insurer or corporate licensee (as the case may be) has established and maintained proper controls and procedures for securing compliance by the licensed insurance agencies and licensed individual insurance agents appointed insurer or the licensees engaged by the corporate licensee (as the case may be), with the conduct</p>	<p>has discharged his duties. [Zurich Insurance (Hong Kong)]</p> <p>c. The term “controller” instead of “chief executive officer” should be used to designate the RO of an insurer. [Zurich Insurance (Hong Kong)]</p> <p>d. To ensure that an RO must be a senior staff member of the corporation (i.e. chief executive officer or executive director). [Institute of Financial Planners of Hong Kong]</p> <p>e. To allow the appointment of more than one RO. [American International Assurance Company (Bermuda) Limited, AXA China Region Insurance Company Limited, Institute of Financial Planners of Hong Kong, Sun Life Hong Kong Limited, Taiping Reinsurance Co., Ltd, The Employees’ Compensation Insurance Residual Scheme Bureau Limited, The Hong Kong Association of Banks, The Hong Kong Confederation of Insurance Brokers, The Hong Kong Federation of Insurers, The Law Society of Hong Kong, Zurich Insurance (Hong Kong)]</p> <p>f. To clarify the rationale of requiring an RO of a corporate licensee to be a licensed TR at the same time. [The Insurance Agents Registration Board]</p> <p>g. Intermediaries should have statutory responsibilities for assisting the RO of their appointing insurer in discharging his duty. [Zurich Insurance (Hong Kong)]</p>	<p>c. We will use the term “chief executive” which is currently adopted in the ICO. This will also help highlight that an RO is responsible for ensuring compliance with the conduct requirements by the agents.</p> <p>d. Our proposal requires that an RO must satisfy the IIA that he is responsible for the conduct of the whole of the corporate licensee’s business in relation to a regulated activity. We also require that corporate licensees must ensure their ROs have sufficient authority and resources for carrying out their responsibilities.</p> <p>e. Accepted. We will revise the amendment bill to allow the appointment of more than one RO subject to the approval of the IIA.</p> <p>f. We believe that an RO should have relevant professional knowledge to discharge his duties to implement internal control and procedures in relation to the conduct of the TRs engaged by the corporate licensee. Indeed, under the existing registration system administered by the IARB, the ROs of insurance agencies are required to meet the qualifications equivalent to those of a TR or an individual insurance agent.</p> <p>g. Under our proposal, licensed insurance intermediaries are already required to observe statutory conduct requirements and remain to be fit and proper. They will be subject to appropriate disciplinary sanctions if they fail to do so. We do not see any strong justification for</p>
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<p>requirements; and</p> <p>(ii) to ensure that the authorized insurer or corporate licensee uses its best endeavours to secure observance by the licensed insurance agencies and licensed individual insurance agents appointed insurer or the licensees engaged by the corporate licensee (as the case may be) of the controls and procedures established under (i) above.</p>	<p>h. Further guidance should be provided on how IIA may have the power to deem an insurance intermediary as ceasing to have an RO. [Clifford Chance]</p> <p>i. The IIA should devise a set of (minimum) standard of controls and procedures for insurers. [Zurich Insurance (Hong Kong)]</p> <p>j. It was too onerous to require insurers, corporate licensees and ROs to use “best endeavours” to ensure compliance with the conduct requirements. [Chartis Insurance Hong Kong Limited, The Hong Kong Association of Banks, The Hong Kong Federation of Insurers]</p>	<p>imposing the proposed statutory duty on the licensed intermediaries.</p> <p>h. – i. The IIA may issue guidelines as and when necessary.</p> <p>j. We recognize that the standard of using “best endeavours” is high. Our policy objective is that insurers, corporate licensees and ROs should try their best in promoting and ensuring compliance with conduct requirements. In fact, this standard has been adopted under the statutory regime for regulating MPF intermediaries. There seems to be little justifications for adopting a lower standard for the regime for insurance intermediaries.</p> <p>We propose to require the IIA to issue guidelines to set out examples of actions that are expected to be taken by ROs to facilitate their compliance. These may include, among other things, documenting internal policies relating to conduct compliance, providing regular training to employees to promote conduct compliance, conducting regular internal assessment of conduct compliance, and authorizing officers or an internal committee to escalate conduct issues to the senior management.</p>
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Chapter 5 Regulatory Powers of the IIA

Regulation of Insurance Intermediaries

<p>5.1 Conduct Requirements</p> <p>We proposed to introduce a new provision in the ICO to set out the broad principles of conduct requirements on insurance intermediaries along the line that when carrying on a regulated activity, a licensed insurance intermediary –</p> <p>(i) must act honestly, fairly, in the best interests</p>	<p>a. The requirement to “act in the best interests of policyholders” (para. 5.1.2 (i) of the consultation document) is not suitable for insurance agents, given that they act as agents of and hence owe fiduciary duties to their appointing insurers. Distinction should be made between insurance agents and insurance brokers on this front. [AXA China Region Insurance Company Limited,</p>	<p>a. “Acting in the best interest of clients” is a requirement adopted in the statutory regulatory regime for MPF intermediaries. It is also an internationally-endorsed principle. For example, the European Union Insurance Mediation Directive II has also included this principle. The protection accorded to policyholders in Hong Kong should not be lower than the international standard.</p>
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<p>of the policyholder or potential policyholder, and with integrity;</p> <p>(ii) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;</p> <p>(iii) may advise only on matters for which the licensed insurance intermediary is competent to advise;</p> <p>(iv) must have such regard to the particular circumstances of the policyholder or potential policyholder as is necessary for ensuring that the regulated activity is appropriate to the policyholder or potential policyholder ;</p> <p>(v) must make such disclosure of information to the policyholder or potential policyholder as is necessary for the policyholder or potential policyholder to be sufficiently informed for the purpose of making any material decision;</p> <p>(vi) must use best endeavours to avoid a conflict between the interests of the licensed insurance intermediary and the interests of the policyholder or potential policyholder and, in the case of such a conflict, must disclose the conflict to the policyholder or potential policyholder;</p> <p>(vii) must ensure that policyholder’s assets are promptly and properly accounted for; and</p> <p>(viii) must comply with other conduct requirements that are prescribed by regulations made by the IIA.</p> <p>We envisage that the IIA will issue guidelines, which are not subsidiary legislation, under section 4A(3) of the ICO to facilitate insurance intermediaries’ compliance with the broad principles of conduct requirements. The IIA will consult HKMA before publishing guidelines in so far as they apply to banks’ insurance intermediary activities.</p>	<p>Chartis Insurance Hong Kong Limited, Clifford Chance, General Agents & Managers Association of Hong Kong, Manulife (International) Limited, Professional Insurance Brokers Association, Sun Life Hong Kong Limited, The Law Society of Hong Kong, The Life Underwriters Association of Hong Kong Limited, Zurich Insurance (Hong Kong), Multiple entries (version 1), Multiple entries (version 2)]</p> <p>b. The “best endeavours” (para. 5.1.2 (vi) of the consultation document) requirement might give rise to difficulty and it should be replaced by requiring an RO to make “reasonable endeavours”. [Clifford Chance, Zurich Insurance (Hong Kong), Anonymous]</p> <p>c. To replace “competent to advise” in the requirement that an intermediary “may advise only on matters for which he is competent to advise” (para. 5.1.2 (iii) of the consultation document) by “licensed to advise”, or it would imply that there is potential for a licensed insurance intermediary not being competent to advise. [AXA China Region Insurance Company Limited]</p> <p>d. The industry should be involved in the drafting of conduct guidelines. [American International Assurance Company (Bermuda) Limited, AXA China Region Insurance Company Limited, Institute of Financial Planners of Hong Kong]</p> <p>e. Conduct requirements should be set out in non-statutory guidelines instead of the legislation. [American International Assurance Company (Bermuda) Limited, Clifford Chance, The Hong Kong Association of Banks]</p>	<p>Acting in the best interest of customers means an insurance agent will accord his customers’ interests prior to his own. An insurance agent should also prioritise his client’s interest over the interest of his appointing insurer in case there is any conflict. We will provide in the legislation that any contract term which contravenes the statutory “best interest” duty will be unenforceable. The IIA may issue guidelines to assist insurance intermediaries to observe this requirement.</p> <p>b. The “best endeavour” standard is high. Nevertheless, we note that as established by case law, the standard of reasonableness has been introduced into the interpretation of “best endeavours”. In fact, this standard has been adopted for ROs under the statutory regime for regulating the MPF intermediaries which was recently enacted in June 2012 and commenced in November 2012. There seems to be little justifications for adopting a lower standard for ROs under the IIA regime. We propose to ask the IIA to issue guidelines to set out how ROs may discharge their duties.</p> <p>c. Not accepted. This requirement is already adopted in the MPFSO for the regulation of MPF intermediaries, and we do not see any major issue in the implementation of this requirement.</p> <p>d. – f. Details of the conduct requirements will be set out in non-statutory guidelines by the IIA with reference to the existing codes and guidelines adopted by the SROs, and the industry would be consulted in the process.</p>
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	<p>f. To adopt the existing code of practice in the future IIA regime. [Multiple entries (version 1)]</p> <p>g. The IIA should ensure that insurance brokers and insurance agents would be provided with adequate training, and proper redress and complaint handling mechanisms are in place to minimize the risk of mis-selling. [Lloyd’s]</p> <p>h. The conduct requirements should make reference to those under the MPF regime, instead of the securities and banking regimes. [Clifford Chance]</p>	<p>g. Licensed insurance intermediaries will be required to receive training to fulfill the continuing professional requirements. The IIA will be handling all complaints related to regulated activities carried on by licensed insurance intermediaries.</p> <p>h. Noted. While we will make reference to the MPF regime, we do not see any justification for excluding the securities and banking regimes.</p>
<p>5.2 Enforcement of Conduct Regulation of Insurance Intermediaries</p> <p>We proposed to confer on the IIA the following regulatory powers –</p> <p>(a) to initiate inspection / enter into business premises of regulated entities to conduct inspection;</p> <p>(b) to initiate investigations / enter into business premises of regulated entities to conduct investigations;</p> <p>(c) to make enquiries and have access to records and documents;</p> <p>(d) to make an application to the Court of First Instance for court orders to compel compliance with requirements;</p> <p>(e) to apply to a Magistrate for a warrant to search for, seize or remove records or documents on reasonable grounds; and</p> <p>(f) to prosecute offences summarily.</p> <p>Furthermore, we proposed that after the commencement of disciplinary proceedings, the IIA may, in the interest of existing or potential policyholders or the general public, suspend a</p>	<p>a. There should be more safeguards in the provisions on inspection and investigation to protect the interests of the regulated persons, e.g. an inspector or investigation must have worked in the insurance industry for certain years before . [Zurich Insurance (Hong Kong)]</p> <p>b. “Business records” (para. 5.2.2 (a) of the consultation document) should be defined to refer only to those relating to regulated activities, given that bank intermediaries also conduct other business. [The Hong Kong Association of Banks]</p> <p>c. The subject of investigation should not bear the costs of investigation. [General Agents & Managers Association of Hong Kong, The Life Underwriters Association of Hong Kong Limited, Multiple entries (version 1)]</p> <p>d. Insurance intermediaries’ right to remain silent should be preserved.</p>	<p>a. The legislative proposals on inspection and investigation and built-in safeguards are modeled on other financial regulatory regimes under the SFO and MPFSO. We consider our proposals reasonable as these regulatory regimes have been operating smoothly, and it is important to ensure consistency for participants in different sectors of our financial services industry.</p> <p>b. We do not consider it necessary to narrow the scope of “business records” because in our proposals, an inspector will be given access to business records or make enquiries concerning business records only for the purpose of ascertaining a licensee’s compliance with the ICO.</p> <p>c. We have not proposed that the subject of investigation should be responsible for the costs of investigation. We proposed that in criminal proceedings, if a person is convicted by a court on a prosecution instituted as a result of the findings of an investigation, the court may order him to pay the IIA the whole or part of the investigation costs. This is in line with the regulatory regime under the SFO.</p> <p>d. During the inspection or investigation process, a person may not give any answer to inquiries for the reason that</p>

<p>licensed insurance intermediary (or an RO) from carrying on any, or any part of, a regulated activity for a specified period prior to its decision on the disciplinary sanctions to be imposed on the intermediary (or an RO) concerned. This specified suspension power is also proposed to be delegated to HKMA for the regulation of intermediary activities of banks. In exercising this power, the IIA or HKMA (as the case may be) would need to follow due process and procedures prescribed in the legislation, including the requirements to –</p> <p>(a) give the licensed insurance intermediary (or the RO) concerned an opportunity of being heard;</p> <p>(b) inform the licensed insurance intermediary (or the RO) concerned of the reasons for imposing the suspension and the duration and terms of the suspension to be imposed; and</p> <p>(c) disclose to the public the details of the decision of imposing the suspension and any material facts relating to the case.</p> <p>HKMA would consult the IIA when exercising this delegated power and the IIA would consult the HKMA if it exercises this power in respect of banks’ insurance intermediary activities. The decision to impose specified suspension is subject to appeal to the Insurance Appeals Tribunal.</p> <p>With reference to the AMLO and the MPFSO, we proposed that the following criminal offences should be provided in the legislation –</p> <p>(a) failure to comply with the requirements in relation to inspection and investigation</p>	<p>[Michael Lintern-Smith]</p> <p>e. Objection to the specified suspension power. [Professional Insurance Brokers Association]</p> <p>f. There should be more safeguards against the use of specified suspension power. [American International Assurance Company (Bermuda) Limited, AXA China Region Insurance Company Limited, General Agents & Managers Association of Hong Kong, Hong Kong Chamber of Insurance Intermediaries, Institute of Financial Planners of Hong Kong, Professional Insurance Brokers Association, Sun Life Hong Kong Limited, The Hong Kong Federation of Insurers, The Hong Kong General Insurance Agents Association Ltd, The Life Underwriters Association of Hong Kong Limited]</p> <p>g. Policyholders should be allowed to void a contract or transaction when the relevant intermediary is suspended. [The Hong Kong Confederation of Insurance Brokers]</p> <p>h. An IIA employee is provided with the right of audience before the Court for the purpose of prosecution even if he is not qualified to practise law. Similar to legal practitioners as officers of the Court, such IIA employee should owe a duty to the Court which overrides their duties owed to a client. [AXA China Region Insurance Company Limited]</p>	<p>the information concerned is not within his knowledge. In this case, he will have to verify that reason and fact by a statutory declaration. We would, modeling on similar provisions under the SFO and MPFSO, clarify in the enabling legislation that responses or statements made by a person for the purpose of an inspection or investigation shall not be admissible in evidence against that person in criminal proceedings, except for the prosecution of criminal offences relating to perjury and the giving of false statements¹.</p> <p>e. – g. After detailed consideration, we have decided not to pursue the introduction of this power. We will seek to enhance policyholder protection through other regulatory arrangements proposed for the IIA.</p> <p>h. Noted. Our proposal is in line with the arrangement under the SFO.</p>
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¹ In general, the inspection and investigation powers are exercised by the IIA for the purpose of ensuring compliance with conduct requirements, and non-compliance would lead to disciplinary sanctions but not criminal liabilities.

<p>imposed by the IIA without reasonable excuse;</p> <p>(b) knowingly or recklessly providing false or misleading information in purported compliance with a requirement in relation to inspection and investigation imposed by the IIA;</p> <p>(c) failure to comply with a requirement in relation to inspection and investigation imposed by the IIA or providing false or misleading information or causing/allowing a company to do the above, with an intent to defraud; and</p> <p>(d) destruction, falsification concealment or disposal of any record or document required by an inspector or investigator, with an intent to conceal.</p> <p>With reference to the SFO, we proposed that where a person is convicted by the court as a result of the findings of the IIA’s investigation, the court may order the person to pay the IIA the whole or a part of the costs and expenses of the investigation.</p>		
<p>5.3 Disciplinary Sanctions</p> <p>We proposed to introduce a new part in the ICO in relation to disciplinary sanctions and the procedural safeguards in respect of the IIA’s exercising the disciplinary powers along the following line –</p> <p><u>Definition of Misconduct</u></p> <p>“Misconduct” means –</p> <p>(i) a contravention of any provisions of the ICO;</p> <p>(ii) a contravention of any of the terms and conditions of any licence granted under the ICO;</p> <p>(iii) a contravention of any other condition imposed under or pursuant to any provision</p>	<p>a. The definition of “misconduct” is too broad and should be refined. [Sun Life Hong Kong Limited, The Law Society of Hong Kong, The Life Underwriters Association of Hong Kong Limited]</p> <p>b. To delete “(iv) an act or omission relating to the carrying on of any regulated activity which, in the opinion of the IIA, is or is likely to be prejudicial to the interest of policyholders or potential policyholders or the public interest” from the definition of “misconduct” since this is already covered in (i) to (iii) (para. 5.3.3 (1)(a) of the consultation document). [AXA China Region Insurance Company Limited]</p> <p>c. The proposed maximum level of pecuniary penalty (i.e. the greater of \$10 million or three times the profit gained or loss avoided as a result of the misconduct) is</p>	<p>a. – b.</p> <p>The proposed definition of “misconduct” is modeled on that under the SFO for the regulation of SFC’s licensees. For effective regulation of licensees and protection of policyholders, we consider it necessary that the scope should be wide enough to catch all situations whereby the act of insurance intermediaries or ROs may be prejudicial to the interest of policyholders or the public.</p> <p>c. The proposed maximum level of pecuniary penalty is the same as that under the regulatory regimes for intermediaries under the MPFSO and SFO. In view of</p>

<p>of the ICO; or</p> <p>(iv) an act or omission relating to the carrying on of any regulated activity which, in the opinion of the IIA, is or is likely to be prejudicial to the interest of policyholders or potential policyholders or the public interest, and “guilty of misconduct” shall be construed accordingly.</p> <p><u>Disciplinary action in respect of licensed insurance intermediaries and ROs</u></p> <p>(a) The IIA may exercise any one or more of the powers specified (b) below if –</p> <p>(i) a regulated person (i.e. a licensed insurance intermediary or an RO) is, or was at any time, guilty of misconduct; or</p> <p>(ii) the IIA is of the opinion that a regulated person is not a fit and proper person to be or to remain a regulated person.</p> <p>(b) The powers referred to in (a) above are –</p> <p>(i) where the regulated person is a licensed insurance intermediary –</p> <ul style="list-style-type: none"> - to revoke the licence of the regulated person, whether in relation to carrying on all or any, or any part of all or any, of the regulated activities for which the regulated person is licensed; - to suspend the licence of the regulated person in relation to carrying on the whole or part of the regulated activity for which the regulated person is licensed; for such period or until the occurrence of such event, as the IIA may specify; - to prohibit the regulated person from applying to be licensed for carrying on the whole or part of the regulated activity for which the regulated person is licensed; for such period or 	<p>excessive. There should be different layers of penalties commensurate with the severity of the types of offence committed.</p> <p>[Atlas Travel Limited, AXA China Region Insurance Company Limited, Chartis Insurance Hong Kong Limited, Clifford Chance, General Agents & Manager Association of Hong Kong, Hong Kong Chamber of Insurance Intermediaries, KSY Specialty Ltd, Manulife International Limited, Professional Insurance Brokers Association, Sun Life Hong Kong Limited, Taiping Reinsurance Co., Ltd, The Confederation of Insurance Brokers, The Hong Kong Federation of Insurers, The Hong Kong General Insurance Agents Association Ltd, The Insurance Agents Registration Board, The Life Underwriters Association of Hong Kong Limited, Zurich Insurance (Hong Kong), Multiple entries (version 1), Multiple entries (version 2),Anonymous]</p> <p>d. Not to include reprimand as a disciplinary sanction. [Hong Kong Chamber of Insurance Intermediaries, The Confederation of Insurance Brokers, The Life Underwriters Association of Hong Kong Limited]</p> <p>e. The IIA should be able to reprieve disciplinary actions. [General Agents & Manager Association of Hong Kong, Multiple entries (version 1)]</p> <p>f. A settling process should be included as a possible option for handling misconduct. [American International Assurance Company (Bermuda) Limited]</p> <p>g. There should be restrictions on disclosure of details of a disciplinary case to the public. [Clifford Chance, General Agents & Manager Association of Hong Kong]</p>	<p>the wide spectrum of insurance intermediaries (some of which are banks and international brokerage firms), the maximum fine level must have adequate deterrent effect.</p> <p>Under our proposal, the IIA is required to publish a guideline before it may impose a pecuniary penalty. The guiding principles in determining a pecuniary penalty would include the proportionality of penalty to the severity of the misconduct, whether the insurance intermediary has made financial gains by his act, and that the fine should not put the insurance intermediary into financial jeopardy.</p> <p>d. Not accepted. Issuing a reprimand is already one of the disciplinary sanctions under the existing self-regulatory regime. It is also a disciplinary sanction for the regulation of intermediaries under the SFO and MPFSO.</p> <p>e. Noted. According to our proposals, the IIA should have the power to determine the time at which the disciplinary decision is to take effect and the terms of such decision.</p> <p>f. Agreed. According to our proposals (para. 5.3.3(6) of the consultation document), when contemplating exercising any disciplinary power, the IIA may take additional action as it considers appropriate and by agreement with the regulated person in question, where it considers appropriate to do so in the interests of existing and potential policyholders or in the public interest.</p> <p>g. Similar to other financial regulatory regimes including those under the SFO and the MPFSO, the IIA may disclose to the public details of a disciplinary decision, the reasons for which it is made and any material facts relating to the case. We consider that this power is necessary for enhancing transparency of a regulator’s</p>
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<p>until the occurrence of such event as the IIA may specify;</p> <p>(ii) where the regulated person is an RO –</p> <ul style="list-style-type: none"> - to revoke the approval of the regulated person as an RO; - to suspend the approval of the regulated person as an RO; for such period or until the occurrence of such event, as the IIA may specify; - to prohibit the regulated person from applying to be approved as an RO for such period or until the occurrence of such event as the IIA may specify; <p>(iii) to reprimand the regulated person publicly or privately;</p> <p>(iv) to order the regulated person to pay a pecuniary penalty, separately or in addition to any other sanctions, not exceeding the amount which is the greater of –</p> <ul style="list-style-type: none"> - \$10,000,000; or - three times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of the other conduct of the regulated person which leads the IIA to form the opinion referred to in (a)(ii) above (as the case may be). <p><u>Procedural requirements in respect of exercise of powers</u></p> <p>(a) The IIA must not exercise any disciplinary power on a regulated person without first giving him a reasonable opportunity of being heard.</p> <p>(b) If the IIA decides to exercise any disciplinary power, the IIA must inform the regulated person concerned its decision to do so by notice in writing.</p> <p>(c) The IIA must consult HKMA before</p>	<p>h. Any pecuniary penalty paid to the IIA should be injected to the operating funds of the IIA so that the levy rate could be reduced. [Zurich Insurance (Hong Kong)]</p> <p>i. The requirement on transfer of records relating to policyholders should only applicable to insurance brokers. [Zurich Insurance (Hong Kong)]</p> <p>j. Existing members of the IARB’s disciplinary and appeals committees should be involved in the IIA’s disciplinary procedures and be appointed to the Insurance Appeals Tribunal (“IAT”). [Multiple entries (version 2)]</p> <p>k. The staff of the IIA/HKMA should not sit on any internal set-up which recommends disciplinary decisions to the IIA Board, and an independent legal practitioner may be involved. [Michael Lintern-Smith]</p> <p>l. There may be conflict of interests if the disciplinary procedures and the investigation are both carried out by the same IIA officers. [Professional Insurance Brokers Association]</p> <p>m. The role of the Expert Panel should be clarified. [Professional Insurance Brokers Association]</p> <p>n. To consider making better use of the Expert Panel. [Clifford Chance]</p>	<p>decisions. It would be a useful tool for the market and the public to monitor the work of the IIA so that its independence and impartiality could be ensured for the benefit of both insurance intermediaries and policyholders.</p> <p>h. Similar to other financial regulators, any pecuniary penalty imposed by the IIA would be paid into the general revenue. If the penalty were paid to the IIA, there could be concerns that the IIA may not exercise its power impartially.</p> <p>i. Not accepted. As a policyholder protection measure, it is important for the IIA to request a licensee, be it a licensed insurance agent or a licensed insurance broker, to transfer records to policyholders in case it is suspended.</p> <p>j. – k. We do not consider that the internal disciplinary process of the IIA should involve outside members from the industry in order not to compromise the IIA’s impartiality and to avoid any conflicts of interest. However, we believe that the IIA would benefit from industry expert advice on new products and practices in considering disciplinary cases. Hence we propose to establish an Expert Panel from which the IIA may seek advice. The Expert Panel will comprise members with industry knowledge.</p> <p>l. Agreed. The IIA would promulgate internal guidelines to require that officers involved in an investigation not to participate in the making of disciplinary decision for the same case.</p> <p>m. – n. The Expert Panel will comprise members from the industry. In considering a disciplinary case, the IIA may seek advice from the Expert Panel, on a need basis, on the nature of a specific product, related industry practices or experiences, to facilitate its deliberation during the disciplinary process.</p>
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exercising any disciplinary power in respect of a bank in relation to its insurance intermediary activities.

Guidelines for exercise of powers to impose a pecuniary penalty

- (a) The IIA must not impose a pecuniary penalty unless it has published relevant guidelines to indicate the manner in which it proposes to exercise such power; and it has had regard to such guidelines in exercising such power.
- (b) The guidelines published under (a) above must include the following as factors that the IIA must take into account in exercising its powers to impose a pecuniary penalty –
 - (i) whether the conduct of the regulated person in question was intentional, reckless or negligent;
 - (ii) whether the conduct caused loss to, or imposed costs on, any other person;
 - (iii) whether the conduct damaged the integrity of the insurance industry; and
 - (iv) whether the conduct resulted in a benefit to the regulated person or any other person.

Effect of suspension

- (a) If a licence of a licensed insurance intermediary or approval of a person as an RO is suspended, the licensed insurance intermediary or the RO, during the suspension period, is to continue to be regarded as licensed or to be such an RO for the purposes of the relevant provisions of the ICO, but not those mentioned in paras. 4.2.3, 4.5.1 4.5.3 of the consultation document, which relate to a licensed insurance intermediary or an RO; and required to comply with the relevant

<p>provisions of the ICO relating to a licensed insurance intermediary or an RO as would apply to a licensed insurance intermediary or an RO were the licence/approval not so suspended.</p> <p>(b) A licence of a licensed insurance intermediary or approval of an RO may be revoked despite that the licence or approval is suspended at the time of the revocation, and such revocation is without prejudice to the power of the IIA to make any other disciplinary decision in respect of the same misconduct.</p> <p><u>General provision relating to the exercise of disciplinary powers</u></p> <p>(a) If at any time the IIA is contemplating exercising any disciplinary power, it may, where it considers it appropriate to do so in the interests of existing policyholders or potential policyholders or in the public interest, by agreement with the regulated person in question –</p> <p>(i) exercise any power that the IIA may exercise in respect of the regulated person; and</p> <p>(ii) take such additional action as it considers appropriate in the circumstances of the case.</p> <p>(b) The IIA must comply with the requirements of giving the regulated an opportunity to be heard and give him a written notice when exercises any power or takes any additional action in respect of a person, unless the person agrees otherwise.</p> <p>(c) In reaching a decision on whether to exercise a disciplinary power, the IIA may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.</p> <p>(d) The IIA must consult HKMA when</p>		
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<p>exercising the power under (a) above in respect of a bank in relation to its insurance intermediary activities.</p> <p><u>Revocation and suspension does not avoid or affect agreement</u></p> <p>The revocation or suspension of a licence of a licensed insurance intermediary does not operate so as to –</p> <ul style="list-style-type: none"> (i) avoid or affect an agreement, transaction or arrangement entered into by the licensed insurance intermediary, regardless of whether it was entered into before or after the revocation or suspension; or (ii) affect a right, obligation or liability arising under the agreement, transaction or arrangement. <p><u>Requirement to transfer records on revocation or suspension of licence</u></p> <ul style="list-style-type: none"> (a) If a licence of a licensed insurance intermediary is revoked or suspended, the IIA may require the licensed insurance intermediary to transfer to any of his policyholder such records relating to the policyholder’s assets or to the affairs of the policyholder. (b) A person who fails to comply with a requirement under (a) above with a reasonable excuse commits an offence. <p><u>Permission to carry on business operations on revocation or suspension of licence</u></p> <p>If the licence of a licensed insurance intermediary is revoked or suspended, the IIA may permit the licensed insurance intermediary, –</p> <ul style="list-style-type: none"> (i) in the case of a revocation, to carry on business operations for the purpose of closing down the business connected with the revocation; or 		
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<p>(ii) in the case of a suspension, to carry on only essential business operations for the protection of the interests of the policyholders of the licensed insurance intermediary during the period of suspension.</p>		
<p>Others</p>	<p>a. To set out clearly the circumstances and procedures for taking actions against insurance intermediaries to avoid the IIA's exercising of power inappropriately. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p> <p>b. To set up a complaint handling mechanism for insurance intermediaries to seek redress for unreasonable exploitation by insurers. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p> <p>c. Insurers are treating insurance intermediaries unfairly, e.g. termination of agency contract without reason. The IIA should regularly meet with insurance intermediaries to better understand unfair industry practices. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p> <p>d. The IIA should require insurers to treat their tied insurance intermediaries fairly. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p> <p>e. Insurers should be liable for the actions of agents working for them. [Retail, Commerce and Clothing Industries General Union (Insurance and Finance Practitioners Solidarity Sector)]</p>	<p>a. – d. The powers and conditions under which the IIA's powers can be exercised will be set out clearly in the enabling legislation. There will also be a statutory appeal mechanism under the enabling legislation. While the IIA aims to help ensure the professional standards of intermediaries and attaches importance to recruiting new talents to the insurance industry, disputes between insurers and intermediaries concerning employment matters can be addressed by other existing platforms.</p> <p>e. Under section 68 of the ICO, an insurer is not able to exclude or limit its liability for the actions of its appointed insurance agents (including self-employed agents appointed by the insurer) in the dealings for the issue of a contract of insurance and insurance business relating to the contract. This will remain unchanged under the IIA regime.</p>

<i>Regulation of Insurers</i>		
<p>5.4 Additional Power of the IIA to Regulate Insurers</p>		
<p><u>Powers of inspection and investigation</u></p>		
<p>We proposed to confer on the IIA the following regulatory powers –</p> <ul style="list-style-type: none"> (a) to initiate inspection / enter into business premises of regulated entities to conduct inspection; (b) to initiate investigations / enter into business premises of regulated entities to conduct investigations; (c) to make enquiries and have access to records and documents; (d) to make an application to the Court of First Instance for court orders to compel compliance with requirements; (e) to apply to a Magistrate for a warrant to search for, seize or remove records or documents on reasonable grounds; and (f) to prosecute offences summarily. 	<ul style="list-style-type: none"> a. An advance notice should be given to insurers before an inspector can access to business record of that insurer, and defences available to the insurer is unclear. [Zurich Insurance (Hong Kong)] b. Since the IIA is empowered to “do all such things as are necessary for, or incidental or conducive to, the performance of its functions”, there should be clarification regarding the obligations of insurers in this context. [Manulife (International) Limited] 	<p>a. – b.</p> <p>Similar to other financial regulatory regimes under the SFO and MPFSO, for the purpose of ascertaining compliance with the legislation, inspectors have the power to have access to regulatees’ business record at any reasonable time.</p> <p>The obligations of insurers in respect of inspection and investigation conducted by the IIA are set out in the proposals under para. 5.4.3 of the consultation document. As for available defences, an insurer would be given an opportunity to be heard before the IIA decides on whether to impose on it any disciplinary sanction arising from alleged misconduct. We have also put in place an appeal mechanism so that an aggrieved party may challenge a decision made by the IIA. During the course of appeal, the aggrieved party may apply for stay of the decision.</p>
<p>We also proposed that the following criminal offences should be provided in the legislation –</p>		
<ul style="list-style-type: none"> (a) failure to comply with the requirements in relation to inspection and investigation imposed by the IIA without reasonable excuse; (b) knowingly or recklessly providing false or misleading information in purported compliance with a requirement in relation to inspection and investigation imposed by the IIA; (c) failure to comply with a requirement in relation to inspection and investigation imposed by the IIA or providing false or misleading information or causing/allowing a company to do the above, with an intent to defraud; and (d) destruction, falsification concealment or 		

<p>disposal of any record or document required by an inspector or investigator, with an intent to conceal.</p> <p>With reference to the SFO, we proposed that where a person is convicted by the court as a result of the findings of the IIA’s investigation, the court may order the person to pay the IIA the whole or a part of the costs and expenses of the investigation.</p> <p><u>Disciplinary actions in respect of insurers</u></p> <p>“Misconduct” means –</p> <p>(i) a contravention of any provisions of the ICO;</p> <p>(ii) a contravention of any of the terms and conditions of any authorization granted under section 8 of the ICO;</p> <p>(iii) a contravention of any other condition imposed on an authorized insurer under or pursuant to any provision of the ICO; or</p> <p>(iv) an act or omission relating to the carrying on of any class or classes of insurance business by an authorized insurer which, in the opinion of the IIA, is or is likely to be prejudicial to the interest of policyholders or potential policyholders or the public interest,</p> <p>and “guilty of misconduct” shall be construed accordingly.</p> <p>(b) The IIA may exercise any one or more of the powers specified in (c) below if –</p> <p>(i) an authorized insurer is, or was at any time, guilty of misconduct; or</p> <p>(ii) the IIA is of the opinion that any person who is a director or controller of an authorized insurer is not a fit and proper person to hold the position held by the person.</p> <p>(c) The powers referred to in (b) above are –</p> <p>(i) to revoke the authorization of the</p>	<p>c. To reconsider the definition of “misconduct” for insurers. [Zurich Insurance (Hong Kong)]</p> <p>d. The IIA should tighten regulation on insurers with a focus on products. [The Life Underwriters Association of Hong Kong Limited]</p> <p>e. Insurers should be held responsible for disputes concerning policies. [張太]</p> <p>f. The power to revoke an insurer’s authorization on disciplinary grounds is unnecessarily wide and complex.</p>	<p>c. The proposed definition of “misconduct” is modeled on that under the SFO for the regulation of its licensees. We consider that it is appropriate for the conduct regulation of authorized insurers.</p> <p>d. An insurance policy is a contract between an insurer and a policyholder. Policyholders can choose appropriate insurance policies according to their own needs. Given that considerations by each policyholder can be very different, the IIA will not be in a position to regulate insurance product by imposing requirement or restrictions on the terms and conditions. Indeed, under section 26(3A) of the ICO, the Insurance Authority should not exercise its power to require an insurer to amend an insurance policy or a class of policies. We do not propose any change to this approach under the IIA regime.</p> <p>e. Noted. Insurers’ responsibilities should be assessed on a case-by-case basis.</p> <p>f. We consider that this power is necessary for effective regulation. Before exercising this power, the IIA will</p>
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<p>authorized insurer, whether in relation to all or any, or any part of all or any, of the class or classes of insurance business for which the authorized insurer is authorized to carry on;</p> <p>(ii) to suspend the authorization of the authorized insurer, whether in relation to all or any, or any part of all or any, of the class or classes of insurance business for which the authorized insurer is authorized to carry on, for such period or until the occurrence of such event, as the IIA may specify;</p> <p>(iii) to reprimand the authorized insurer publicly or privately;</p> <p>(iv) to prohibit the authorized insurer from applying to be authorized to carry on any class of business, for such period or until the occurrence of such event, as the IIA may specify; and</p> <p>(v) to order the authorized insurer to pay a pecuniary penalty not exceeding the amount which is the greater of –</p> <ul style="list-style-type: none"> - \$10,000,000; or - three times the amount of the profit gained or loss avoided by the authorized insurer as a result of his misconduct, or of the other conduct of the authorized insurer which leads the IIA to form the opinion referred to in (a)(ii) above (as the case may be). 	<p>[The Law Society of Hong Kong]</p> <p>g. Regarding the proposal that if authorization of an insurer is suspended, the authorized insurer, during the suspension period, is to continue to be regarded as authorized for the purposes of the relevant provisions of the ICO, and required to comply with the relevant provisions of the ICO, it should be clearly stated which provisions of the ICO are relevant in this context, and the effect of the continuation, e.g. whether an insurer is allowed to issue new business.</p> <p>[Zurich Insurance (Hong Kong)]</p> <p>h. Given the proposal that in the case of a suspension, the IIA may by notice in writing permit the authorized insurer to carry on essential business operations for the protection of the interests of the policyholders or potential policyholders (para. 5.4.3(15)(a)(ii) of the consultation document), it is necessary to provide the details of “essential business operations” in this context.</p> <p>[Zurich Insurance (Hong Kong)]</p>	<p>give the affected insurer an opportunity of being heard, and the insurer may appeal to the IAT against the IIA’s decision.</p> <p>g. – h.</p> <p>The policy intent behind these provisions is to better protect the interests of policyholders. The relevant provisions and conditions will need to be determined by the IIA on a case-by-case basis. It is therefore not possible to make the requested specifications in the enabling provision which only provides a framework for the IIA to exercise this power.</p>
<p><u>Procedural requirements in respect of exercise of disciplinary powers</u></p> <p>(a) The IIA must not exercise any disciplinary power on a regulated person without first giving him a reasonable opportunity of being heard.</p> <p>(b) If the IIA decides to exercise any disciplinary power, the IIA must inform the regulated person concerned its decision to do so by</p>		

notice in writing.

Guidelines for exercise of powers to impose a pecuniary penalty

- (a) The IIA must not impose a pecuniary penalty unless it has published relevant guidelines to indicate the manner in which it proposes to exercise such power; and it has had regard to such guidelines in exercising such power.
- (b) The guidelines published under (a) above must include the following as factors that the IIA must take into account in exercising its powers to impose a pecuniary penalty –
 - (i) whether the conduct of the insurer in question was intentional, reckless or negligent;
 - (ii) whether the conduct caused loss to, or imposed costs on, any other person;
 - (iii) whether the conduct damaged the integrity of the insurance industry; and
 - (iv) whether the conduct resulted in a benefit to the regulated person or any other person.

Effect of suspension

- (a) If authorization of an authorized insurer is suspended, during the suspension period, it is to continue to be regarded as authorized for the purposes of the relevant provisions of the ICO which relate to an authorized insurer (but excluding those related to restrictions on conducting insurance business without authorization and the requirements for the appointment of an RO); and required to comply with the relevant provisions of the ICO relating to an authorized insurer as would apply to an authorized insurer were the authorization not so suspended.

<p>(b) An authorization of an authorized insurer may be revoked despite that the authorization is suspended at the time of the revocation, and such revocation is without prejudice to the power of the IIA to make any other disciplinary decision in respect of the same misconduct.</p> <p><u>General provision relating to the exercise of disciplinary powers</u></p> <p>(a) If at any time the IIA is contemplating exercising any disciplinary power, it may, where it considers it appropriate to do so in the interests of existing policyholders or potential policyholders or in the public interest, by agreement with the authorized insurer in question –</p> <p>(i) exercise any power that the IIA may exercise in respect of the authorized insurer; and</p> <p>(ii) take such additional action as it considers appropriate in the circumstances of the case.</p> <p>(b) The IIA must comply with the requirements of giving the authorized insurer an opportunity to be heard and give it a written notice when exercises any power or takes any additional action in respect of a person, unless the it agrees otherwise.</p> <p>(c) In reaching a decision on whether to exercise a disciplinary power, the IIA may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.</p> <p><u>Revocation and suspension does not avoid or affect agreement</u></p> <p>The revocation or suspension of an authorization of an authorized insurer does not operate so as to –</p>	<p>i. If the IIA is allowed to “take such additional action as it considers appropriate in the circumstances of the case” (para. 5.4.3(12)(a) of the consultation document), it may allow IIA to threaten to impose severe sanctions on an authorized insurer in order to encourage that insurer to give up its rights to seek redress in order to settle for more lenient sanctions. The IIA should be prevented (as part of the settlement package) from suggesting to the insurer to take any steps or make any settlement which could not be compelled as part of the disciplinary process, or give up rights to seek review.</p> <p>[AXA China Region Insurance Company Limited]</p>	<p>i. The proposals specify clearly that the exercise of such powers of the IIA is subject to agreement with the authorized insurer in question. Furthermore, we have also put in place an appeal mechanism so that an aggrieved party may challenge a decision made by the IIA. We do not consider that there is a risk of the IIA compelling an authorized insurer to take any additional action.</p>
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<p>(i) avoid or affect an agreement, transaction or arrangement entered into by the authorized insurer, regardless of whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or</p> <p>(ii) affect a right, obligation or liability arising under the agreement, transaction or arrangement.</p>		
<p><u>Requirement to transfer records on revocation or suspension of authorization</u></p> <p>(a) If an authorization of an authorized insurer is revoked or suspended, the IIA may require the authorized insurer to transfer to any policyholder of the authorized insurer such records relating to the policyholder's assets or to the affairs of the policyholder held at any time for the policyholder.</p> <p>(b) A person who, without reasonable excuse, fails to comply with a requirement under (a) above commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.</p>	<p>j. Given that a transfer of record would affect the insurer's services to and agreement with the policyholders, it appears that the following two proposed requirements are incompatible –</p> <p>(i) the IIA may require an insurer whose authorization has been revoked or suspended to transfer to its policyholders such records relating to the policyholders' assets or to the affairs of the policyholders (para. 5.4.3(14)(a) of the consultation document); and [Zurich Insurance (Hong Kong)]</p> <p>(ii) the revocation or suspension of an authorization would not affect any agreement made by the insurer (para. 5.4.3(13) of the consultation document). [Zurich Insurance (Hong Kong)]</p>	<p>j. Our intent for both proposals is to protect the rights of policyholders in relation to their insurance policies when the authorization of the relevant insurer is being suspended or revoked. The proposal under para. 5.4.3(13) of the consultation document prescribes that the policies issued by the insurer would remain valid and unaffected, while that under para. 5.4.3(14) gives the IIA a power to transfer to policyholders the records which are related to their assets or affairs. It is unlikely that the transfer of records will affect an agreement/insurance contract.</p>
<p><u>Permission to carry on business operations on revocation or suspension of authorization</u></p> <p>If an authorization of an authorized insurer is revoked or suspended, the IIA may permit the authorized insurer, –</p> <p>(i) in the case of a revocation, to carry on business operations for the purpose of closing down the business connected with the revocation; or</p> <p>(ii) in the case of a suspension, to carry on essential business operations for the protection of the interests of the policyholders or potential policyholders of the authorized insurer.</p>	<p>k. The requirement to transfer records in the case of an insurer's authorization being revoked or suspended may interfere with proper record management and undermine an insurer's ability to comply with contractual commitments. [The Hong Kong Federation of Insurers]</p>	<p>k. Agreed. We will make it clear in the enabling legislation that the insurer needs only to transfer a copy of the relevant record, but not the original.</p>

Chapter 6 Regulatory Arrangements for Banks' Insurance Intermediary Activities		
<p>We proposed to introduce new provisions in the ICO in respect of delegation of functions to HKMA along the following line –</p> <p>(a) the IIA may, subject to the approval of the CE in Council, delegate its power of inspection, power of investigation and specified suspension power to HKMA for the purpose of regulating any regulated activity carried on by an authorized institution (i.e. a bank) and licensed insurance intermediaries engaged by it;</p> <p>(b) the CE in Council may, after consultation with the IIA and HKMA, impose conditions on the approval of a delegation; vary or remove any of the conditions of the approval or add further conditions of the approval; or withdraw the approval;</p> <p>(c) any such delegation does not prevent the IIA from performing the function delegated;</p> <p>(d) if HKMA purports to act pursuant to such delegation, HKMA is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation; and</p> <p>(e) without prejudice to (d) above, if there is a delegation in respect of a power of the IIA, any reference in the ICO to the IIA in connection with the exercise of the power (including the grounds for and effect of exercising such power) is, unless the context otherwise requires, to be construed accordingly.</p> <p>Further to (a) above, we also proposed to specify in the ICO that HKMA would be required to consult the IIA before it exercises the specified suspension power, while the IIA would be</p>	<p>a. Objection to the proposal of delegating the specified suspension power to HKMA. [American International Assurance Company (Bermuda) Limited, Business and Professionals Federation of Hong Kong, Independent Financial Advisors Association, Lloyd's, Professional Insurance Brokers Association, The Hong Kong Confederation of Insurance Brokers, The Hong Kong General Insurance Agents Association Ltd, The Law Society of Hong Kong, The Life Underwriters Association of Hong Kong Limited, Anonymous]</p> <p>b. The conditions of exercising the specified suspension power should be further specified. [The Hong Kong Association of Banks]</p> <p>c. It is important to ensure a level playing field between the banking and non-banking sectors. [The Hong Kong Association of Banks]</p> <p>d. The details of implementation of the delegation model should be set out in the legislation or a memorandum of understanding. [The Hong Kong Association of Banks]</p> <p>e. To specify in the legislation that the IIA will consult HKMA before exercising regulatory powers against bank intermediaries. [The Hong Kong Association of Banks]</p> <p>f. The IIA should seek the Court's approval before entering premises of bank intermediaries. [The Hong Kong Association of Banks]</p>	<p>a. – b. We have decided not to pursue the introduction of this power.</p> <p>c. The IIA will be the authority to set standards and requirements for the conduct of all insurance intermediary activities and to make all disciplinary decisions, either for bank or non-bank insurance intermediaries. For different business environments and clientele, the IIA may impose different requirements as required in order to better protect the interests of potential policyholders.</p> <p>d. This is in line with our proposal, and we will proceed accordingly.</p> <p>e. This is in line with our proposal, and we will proceed accordingly.</p> <p>f. We do not consider this suggestion appropriate as it would lead to different treatment between bank and non-bank insurance intermediaries. There is also no such requirement under the Banking Ordinance.</p>

<p>required to consult HKMA before it exercises such power in respect of banks' insurance intermediary activities.</p>		
<p>Chapter 7 Appellate Mechanism and Checks and Balances</p>		
<p>7.1 Insurance Appeals Tribunal (“IAT”)</p> <p>We proposed to introduce a new Part in the ICO on the establishment of the IAT, covering the following –</p> <p>(i) the IAT shall consist of a chairman and two other members appointed by the CE. The chairman shall be a person eligible for appointment as a judge of the High Court;</p> <p>(ii) a person who is aggrieved by a specified regulatory decision made by the IIA or HKMA in respect of the person may apply to the IAT for a review of the decision within the period ending 21 days after the notice informing the person of the decision has been sent. On the application of the aggrieved party, the IAT may extend the eligibility period to apply for a review after the parties to the review have been given a reasonable opportunity to tender their views on the application to the IAT and if the IAT is satisfied that there is a good cause for granting the extension;</p> <p>(iii) the IAT may confirm, vary or set aside the decision or remit the matter to the IIA or HKMA with directions as appropriate;</p> <p>(iv) the IAT must give the parties to the review a reasonable opportunity to be heard during a review;</p> <p>(v) the IAT has powers to obtain evidence, including ordering a person to attend before it to give evidence, and to prohibit the disclosure of evidence it receives at any sitting which is held in private;</p> <p>(vi) a person commits an offence if he, without reasonable excuse, fails to comply with an order or a requirement of the IAT (e.g. to answer truthfully any question the IAT</p>	<p>a. The proposed appellate mechanism is too complicated and costly, and an Appeals Committee whose decision is final should be established instead. [Michael Lintern-Smith, Professional Insurance Brokers Association]</p> <p>b. Appointments to the IAT should be made by the Chief Justice. [American International Assurance Company (Bermuda) Limited]</p> <p>c. There should be industry representatives in the IAT. [General Agents & Manager Association of Hong Kong]</p> <p>d. When handling cases involving potentially severe misconduct or disciplinary actions, the IAT should raise the burden of proof of the complainant as appropriate. [General Agents & Manager Association of Hong Kong]</p> <p>e. To clarify whether the records and findings of cases handled by the IAT in an appeal would be made available to the public. [Zurich Insurance (Hong Kong)]</p> <p>f. Separate rules and procedures should be formulated regarding the making of an appeal to the IAT. [Zurich Insurance (Hong Kong)]</p> <p>g. There should be further elaboration on the operation of the IAT. [Manulife International Limited]</p> <p>h. Both sides of a case should have equal right to appeal a decision. [張太]</p>	<p>a. – b. Our proposal is modelled on the Securities and Futures Appeals Tribunal (“SFAT”) under the SFO.</p> <p>c. The IAT will be chaired by a person eligible for appointment as a High Court judge. The chairperson will be assisted by two market practitioners in each of the IAT’s hearing.</p> <p>d. The IAT reviews the IIA’s decisions instead of dealing with complainants. In reviewing a case, the IAT would consider if the IIA had made the decision on the strength of evidence adduced.</p> <p>e. Sittings of the IAT will be held in public unless the IAT determines that in the interests of justice a sitting or any part thereof shall be held in private.</p> <p>f. – g. As set out in para. 7.1.3(1)(d) of the consultation document, the procedural matters in relation to the IAT will be set out in a new Schedule to the ICO. It will be modelled on Schedule 8 to the SFO.</p> <p>h. It is our proposal that an aggrieved party who is dissatisfied with a determination of the IAT may appeal to the Court of Appeal on a question of law, fact, or mixed law and fact.</p>

<p>considers appropriate) for the purpose of a review. In addition, the IAT has the same powers as the Court of First Instance to punish for contempt; and</p> <p>(vii) the provisions on the proceedings and appointment of members of the IAT and the list of specified regulatory decisions made in relation to insurers and insurance intermediaries (e.g. refusal to authorize a company to carry on insurance business or to grant or renew an insurance intermediary licence etc.) which will be subject to review by the IAT will be provided in two separate Schedules to the ICO.</p> <p>We also proposed to delete all existing provisions in the ICO which provide for the application for and handling of appeals.</p>	<p>i. To make non-compliance with IAT procedural orders an offence is too draconian. [Professional Insurance Brokers Association]</p>	<p>i. Our proposal has made reference to the Securities and Futures Appeals Tribunal under the SFO and the MPF Schemes Appeal Board under the MPFSO. We believe that such provisions are necessary to ensure a fair appellate process.</p>
<p>7.2 Other Checks and Balances</p> <p>We proposed to introduce the following checks and balances by introducing new provisions in the ICO –</p> <p>(a) to require the IIA to table its annual report before the Legislative Council;</p> <p>(b) to require that the IIA’s annual budget and corporate plan be subject to the approval of the Financial Secretary;</p> <p>(c) to require the IIA to, after it has exercised its disciplinary power against an authorized insurer or a licensed insurance intermediary, disclose to the public details of the relevant decision including the reasons and any material facts relating to the case; and</p> <p>(d) with reference to Part 2 of Schedule 2 to the SFO, to specify the non-delegable functions in a Schedule.</p>	<p>a. Proper safeguards should be put in place to ensure information obtained during an investigation is not made public without the express consent of the person being investigated. [Clifford Chance]</p>	<p>a. The staff of the IIA will also be subject to confidentiality requirements in carrying out their duties. Disciplinary decisions by the IIA in relation to authorized insurers or licensed insurance intermediaries and relevant information on the cases will be disclosed to the public only after completion of the due process, including giving the relevant authorized insurers/licensed insurance intermediaries an opportunity to be heard.</p>

<p>In addition, we proposed to make the following legislative amendments –</p> <p>(a) to amend Schedule 1 to the Ombudsman Ordinance (Cap. 397) include the IIA as an organisation to which the Ordinance apply; and</p> <p>(b) to amend Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) to include the IIA as an organisation to which the Ordinance apply.</p> <p>We also proposed the following checks and balances which do not require legislative amendments –</p> <p>(a) an independent Process Review Panel be established by the CE to review the internal process and procedures of the use of the regulatory powers by the relevant regulators;</p> <p>(b) complaints against maladministration of the relevant regulatory may be lodged with the Office of the Ombudsman; and</p> <p>(c) the Director of Audit may conduct value for money audit on the IIA.</p>		
<p>Chapter 8 Levy and Fees</p>		
<p>The IIA would be self-financed with income streams from licence fees, service charges on insurers and licensees, and a levy of 0.1% on premiums of all insurance policies. In this connection, we proposed to amend the ICO along the following line to empower the CE in Council to make regulations on fees and levy which are subsidiary legislation subject to negative vetting by LegCo –</p> <p>1. <u>Regulations on fees</u></p>	<p>a. Levy should not be collected from policyholders. [Business and Professionals Federation of Hong Kong, Consumer Council, General Agents & Managers Association of Hong Kong, The Life Underwriters Association of Hong Kong Limited]</p> <p>b. Levy should only be collected from insurers. [KSY Speciality Limited, The Hong Kong Confederation of Insurance Brokers]</p>	<p>a. – b.</p> <p>Given that one of the main objectives of the IIA is to protect policyholders through, among other things, putting in place a statutory licensing system for insurance intermediaries, we consider that it is justified to recover its cost partly by collecting a levy from policyholders. It would also enhance transparency to have a levy rate set out clearly in every insurance policy for collection of levy from policyholders.</p>

<p>(a) the CE in Council may make regulations to –</p> <p>(i) require and provide for the payment to the IIA of, and prescribe, fees ; and</p> <p>(ii) provide for the payment to the IIA of, and prescribe, fees (however described) which the ICO provides are, or may be, prescribed, specified or provided for by the regulations;</p> <p>(b) fees prescribed by regulations may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the IIA (or a Committee established by the IIA) in providing the services or performing the functions to which the fees relate.</p> <p>(c) fees prescribed by regulations is not to be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the IIA (or a Committee established by IIA) in providing the services or performing the functions to which the fees relate.</p> <p>(d) The regulations made may provide –</p> <p>(i) that the amount of any fee shall be fixed by reference to a scale set out in the regulations;</p> <p>(ii) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;</p> <p>(iii) that the payment of any fee shall be waived, either generally or in a particular case, whether or not it is otherwise specified as being payable under the ICO; and</p> <p>(iv) for the payment of fees annually or at other intervals.</p> <p>(e) The IIA may recover the amount of any fees payable under the regulations as a civil debt due to it.</p>	<p>c. The IIA should be funded mainly by the Government. [American International Assurance Company (Bermuda) Limited, Hong Kong Chamber of Insurance Intermediaries, Professional Insurance Brokers Association]</p> <p>d. To cap the levy charged on non-life insurance policies. [Coface, Lloyd’s]</p> <p>e. To exempt some risks/businesses from paying levy, including non-Hong Kong situ risks and Marine, Aviation and Transportation business, overseas business, Class G or H insurance policies which are used as underlying funds of constituent funds of MPF schemes, and contribution of retirement schemes. [American International Assurance Company (Bermuda) Limited, AXA China Regional Insurance Company Limited, Lloyd’s, Swiss Reinsurance Company Ltd]</p> <p>f. Levy on captive insurance arrangements, single premium investment policies and reinsurance treaties of different nature and scale may be inappropriate. [The Law Society of Hong Kong]</p> <p>g. To clarify the levy collection procedures. [Manulife (International) Limited, The Hong Kong Confederation of Insurance Brokers, Zurich Insurance (Hong Kong)]</p> <p>h. Licence fees on insurers are reasonable and acceptable. [Coface]</p> <p>i. The proposal that an insurer will need to pay a variable licence fee of 0.0039% calculated on the basis of its liabilities is unfair to reinsurance companies. As reinsurance companies will also underwrite overseas risk, subjecting reinsurance companies to the same fee calculation method means that their overseas liabilities (which may have been levied by an overseas jurisdiction</p>	<p>c. According to international practice, a financial regulator should be financially independent of the Government in order to ensure its autonomy. In our proposal, the Government would provide a lump sum of HKD 500 million to the IIA upon its inception to meet part of its expenses in the initial five years before it can meet the long term target of meeting 70% of expenditure by levy and 30% by licence and user fees.</p> <p>d. – f. We have proposed that the levy on both non-life and life insurance policies would be capped.</p> <p>The IIA would also review the levy levels once its reserve has reached a level equivalent to 24 months of its operating expense after deducting depreciation and all provisions.</p> <p>g. The levy would be payable by policyholders and be collected from the insurers or insurance intermediaries by the IIA. The detailed procedures will be set out in regulations made by the CE in Council.</p> <p>h. – i. We note that overseas regulators also do not exclude reinsurance contract, and will maintain our proposals.</p>
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<p>2. <u>Order for levies</u></p> <p>(a) By order published in the Gazette, the CE in Council may specify a levy (if any) at any rate be payable to the IIA for every contract of insurance entered into. In the order, the CE in Council may specify the party from which the levy payable shall be collected from.</p> <p>(b) Each authorized insurer shall collect, account for, and pay to the IIA, the levy (if any) payable under (a) above.</p> <p>(c) The IIA may recover the amount of any levy payable as a civil debt due to it.</p> <p>(d) The CE in Council may make regulations for –</p> <ul style="list-style-type: none"> (i) the payment of levies; (ii) the imposition of charges or penalties for late payment of such levies; and (iii) the keeping, examination and audit of the accounts of authorized insurers and licensed intermediaries relating to the collection and payment to the IIA of such levies. <p>3. <u>Reduction of levies</u></p> <p>(a) If during a financial year of the IIA –</p> <ul style="list-style-type: none"> (i) the reserves of the IIA, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and (ii) the IIA has no outstanding borrowings, the IIA shall consult the Financial Secretary with a view to recommending to the CE in 	<p>already) will also be into account when calculating its licence fee. [Taiping Reinsurance Co., Ltd]</p> <p>j. The IIA should consider how to handle structural deficits and whether the IIA’s debt should be guaranteed by the government (in order to lower the borrowing cost). [Swiss Reinsurance Co., Ltd]</p> <p>k. Licence fees on insurance intermediaries after the 5-year waiver should not exceed the current levels. [Professional Insurance Brokers Association]</p> <p>1. The fee structure should be designed and finalised with caution as it may affect the insuring public. [The Hong Kong Association of Banks]</p>	<p>j. – k.</p> <p>Noted. To align with international regulatory practice and to ensure its autonomy, the IIA should be financially independent from the Government.</p> <p>According to the indicative projection², the IIA is estimated to have a surplus in its sixth year of operation even if the licence fees on insurance intermediaries are to be maintained at the current level. In future, licence fees to be collected by the IIA will be prescribed in regulations which will be subject to negative vetting by LegCo.</p> <p>1. Agreed.</p>
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² Annex C of the consultation conclusion and detailed proposals issued in June 2011.

<p>Council that the rate of a levy be reduced.</p> <p>(b) The IIA may, after consulting the Financial Secretary, recommend to the CE in Council that the rate of a levy be reduced.</p>		
<p>Chapter 9 Transitional Arrangement for Insurance Arrangement for Insurance Intermediaries</p>		
<p>9.1 Deeming provision</p> <p>We proposed to introduce transitional provisions to give effect to the following –</p> <p>(a) pre-existing insurance intermediaries validly registered with the SROs will be deemed as licensees for 3 years from the commencement of the new licensing regime. The IIA will not re-examine the deemed licences proactively. However, during the transitional period, if the IIA is aware of a faulty registration previously approved by an SRO, the IIA may vary, suspend, or revoke the deemed licence based on the faulty registration as appropriate. If the deemed licensees wish to continue with their business after the three-year transitional period, they should submit an application for a new licence to the IIA before a specified date to be stipulated in the legislation (say, 12 months before expiry of the 3-year transitional period);</p> <p>(b) where a deemed licensee has submitted a licence application containing all requisite information to the IIA before the specified date referred to in (a) above, the said deemed licensee will be permitted to continue to carry on the relevant regulated activities until the IIA has made a decision on the application, provided that the deemed licensee continues to meet relevant obligations under the new legislation; and</p> <p>(c) a deemed licensee may opt to exit the</p>	<p>a. To clarify whether TRs who has already been exempted from meeting the education qualification requirements in the 1990s would continue to be exempted from meeting the same under the IIA regime. [KSY Speciality Limited]</p> <p>b. The grandfathering of existing agents should not apply to bankrupt agents. [Anonymous]</p> <p>c. There may be a rush of applications to the SROs and the same to the IIA before and after the transition, thus creating a backlog. [Manulife (International) Limited]</p>	<p>a. Exemptions applicable to pre-existing SRO registrants will continue to apply under the IIA regime.</p> <p>b. We have proposed that all pre-existing insurance intermediaries validly registered with the SROs will be deemed as licensees for 3 years. At the same time, they will have to observe the “fit and proper” and conduct requirements under the IIA regime.</p> <p>c. We will work closely with the SROs to ensure a smooth transition.</p>

<p>licensing regime upon cessation of business by notifying the IIA in a form specified by the IIA.</p>		
<p>9.2 Other transitional matters</p> <p>We proposed that the IIA legislation should also contain express legislative provisions on the following transitional matters –</p> <p>(a) Pre-IIA complaint and disciplinary cases</p> <p>Upon its inception, the IIA should take up complaints and disciplinary cases not yet concluded by the SROs, and that any complaints made thereafter about alleged misconduct that occurred before the IIA’s inception should be handled by the IIA. The IIA will be the “one-stop shop” for handling all these cases.</p> <p>All such cases should be followed up and considered by the IIA according to the conduct standards and available sanctions prevailing at the time when the misconduct occurred as far as practicable, and the IIA should act in accordance with the statutory powers and procedures under the IIA legislation in conducting the investigation. In this regard, the range of sanctions which the IIA may impose in relation to these pre-IIA cases will be the same as those that could have been imposed by the SROs under the self-regulatory regime.</p> <p>(b) Pre-IIA appeal cases</p> <p>Pre-IIA appeal cases not yet concluded by the SROs before establishment of the IIA should be taken up by the IAT, and an aggrieved insurance intermediary may appeal against a pre-IIA decision made by an SRO on registration application or alleged misconduct to the IAT. The IAT should refer to the relevant factors to be considered in handling appeal cases at the time of</p>	<p>a. Disagree to the proposal that the IIA and IAT should take up pre-IIA complaint cases and appeals respectively. [Professional Insurance Brokers Association, The Hong Kong General Insurance Agents Association Ltd.]</p> <p>b. There should be provisions to allow exchange of information between the SROs and the IIA for implementing the transitional arrangements. [Mandatory Provident Fund Schemes Authority, Manulife (International) Limited, The Hong Kong Confederation of Insurance Brokers, The Hong Kong Federation of Insurers]</p> <p>c. The operational efficiency of SROs should be ensured before their regulatory functions are transferred to the IIA. [Professional Insurance Brokers Association]</p> <p>d. The IIA should follow up on applications and notifications that have not been completed before the transition. If not, the documentation and administrative requirements should be waived. [The Hong Kong Association of Banks]</p>	<p>a. After the inception of the IIA, the SROs will cease to have regulatory functions over insurance intermediaries. Our proposal is necessary to safeguard policyholders’ right to seek redress in cases relating to insurance intermediary misconduct. There are also similar overseas practices.</p> <p>b. Agreed. We will include relevant provisions to the enabling legislation.</p> <p>c. Noted.</p> <p>d. It will be more appropriate to require pre-existing insurance intermediaries to re-submit to the IIA direct the outstanding applications and notification not yet completed by the SROs before the IIA’s inception. We consider that this proposal would also be administratively convenient. We will work with SROs on the detailed transitional arrangement to minimize inconvenience of applicants.</p>

the pre-IIA event concerned as far as practicable when making a determination, and it should consider the pre-IIA appeal cases in accordance with procedures for handling appeals in the IIA legislation. In case the IAT reverses a pre-IIA decision made by an SRO to refuse a person's registration application or to revoke a person's SRO registration, the person concerned will be covered by the deeming provision to become a deemed licensee under the IIA regime upon the date of the IAT's relevant decision.

(c) Effect of pre-IIA disciplinary sanctions after inception of IIA

Disciplinary sanctions imposed by the SROs that remain unexpired upon establishment of the IIA (e.g. suspension of registration of an insurance intermediary) should continue to have effect on the intermediary concerned for the remainder period.

If there are fines imposed by an SRO which remain outstanding upon establishment of the IIA, we propose that they should be treated as debts of the intermediary concerned to the SRO and to be settled between these two parties. Where a deemed licensee is involved in a case of outstanding fines, the continued failure by the deemed licensee to pay the outstanding fines to the SRO concerned will be recorded in the IIA register of insurance intermediaries for public information, same as where a new licensee in future fails to settle the fines imposed by the IIA.

(d) Outstanding pre-IIA notifications on changes of particulars and appointments of registrants and ROs

The IIA legislation should contain an express provision to deem all pre-IIA notifications of changes of particulars and appointments of registrants and ROs (including chief executives of

<p>registered insurance broker companies) that have been processed and validly registered with the SROs concerned before establishment of the IIA as valid under the new regime. Outstanding cases not yet completed by the SROs before establishment of the IIA will fall outside the proposed deeming provision. The notifications should be submitted to the IIA direct under the new regime.</p>		
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B. Comments not related to the Key Legislative Proposals

Other Comments	Respondents' Views and Comments	Administration's Response
Risk-based capital ("RBC") framework for insurers	<p>a. To provide more information on the RBC system. [C.F. Yam, Coface, The Insurance Claims Complaints Bureau, The Hong Kong Federation of Insurers, The Insurance Agents Registration Board]</p> <p>b. A risk-based supervisory approach should be adopted. [Institute of Financial Planners of Hong Kong]</p> <p>c. Not to put detailed requirements for calculating insurance reserves and RBC requirements in the primary legislation. [Manulife (International) Limited, The Hong Kong Federation of Insurers]</p>	<p>a – c. The current exercise in establishing the IIA will not involve establishing a RBC framework. The Office of the Commissioner of Insurance ("OCI") has commissioned a consultancy study on the RBC framework for the insurance business in Hong Kong. The Administration plans to consult the industry on the consultant's preliminary recommendations within 2013. The consultant is expected to complete the study in mid-2014, after which the OCI will examine the recommended framework and develop specific details for further industry consultation.</p>
Complaint handling, Financial Dispute Resolution Centre ("FDRC") and Insurance Claims Compensation Bureau ("ICCB")	<p>a. The IIA should fix a post-sale period during which IIA will accept complaints. [Hong Kong Chamber of Insurance Intermediaries]</p> <p>b. To set a limit of 18 months for handling a complaint. [張太]</p> <p>c. The IIA should consider joining the FDRC. [Institute of Financial Planners of Hong Kong]</p> <p>d. The Government should give an early and clear indication on ICCB's future role and responsibility. [The Insurance Claims Complaints Bureau]</p>	<p>a. Not accepted. We do not consider this proposal would be conducive to effective policyholder protection, given that a policyholder may only find out a problem long after he has procured an insurance policy. There is also no such time limit under the existing SRO regime.</p> <p>b. Not accepted. We do not consider it appropriate to impose a time limit on the IIA for handling complaints as their scale and scope may vary significantly.</p> <p>c. The FDRC provides an alternative non-statutory resolution mechanism for disputes on insurance claims. The Administration will continue to discuss with the insurance industry and the FDRC on whether to expand FDRC's ambit to cover insurance companies.</p> <p>d. We are discussing with the three existing SROs and the Hong Kong Federation of Insurers the role of ICCB and FDRC and would keep an open mind on the way forward.</p>
Privacy	<p>a. To clarify whether the destruction of documents/records in accordance with Data Protection Principle 2 under the Personal Data Privacy Ordinance ("PDPO") (Cap. 486) would not be penalized unless there is intention to</p>	<p>a. The handling of personal data by insurers and insurance intermediaries should be in compliance with the PDPO. However, it is our proposal that destruction, falsification concealment or disposal of any record or document</p>

	<p>conceal from an investigation or violate the law. [Convoy Financial Services Limited]</p>	<p>required by an inspector or investigator, with an intent to conceal, is a criminal offence. Our proposal is in line with that under the MPFSO and SFO.</p>
Other Comments	<p>a. To publicize statistics of insurers in newspapers quarterly to increase transparency and enhance corporate governance. [甄明潔]</p> <p>b. Mortgage insurers are subject to prudential regulation by the OCI. Meanwhile, HKMA's requirements on banks' mortgage loan business may impact the demand for mortgage insurance. The IIA and HKMA should enter into an memorandum of understanding on mortgage insurance to enhance cooperation and facilitate exchange of information between the two bodies. [AIG United Guaranty Insurance (Asia) Limited]</p> <p>c. There should be stricter regulation on the credit period during which insurance intermediaries should pay insurers the premium payment. [Allianz Global Corporate & Specialty AG]</p> <p>d. Policyholders should be given a receipt for every payment they make and annual statements for their policies. [甄明潔]</p>	<p>a. The IIA will publish market data regularly to keep the public informed of the latest developments in the insurance sectors. The IIA will decide the most appropriate channels for distributing and publishing the information.</p> <p>b. Noted.</p> <p>c. – d. Noted. We believe these are commercial arrangements which should be decided by insurers, insurance intermediaries and their clients.</p>