

## Executive Summary

1. The purpose of this document is to consult the public on the key legislative amendments to the Insurance Companies Ordinance (“ICO”)(Cap. 41) for the establishment of an independent Insurance Authority (“IA”). We will take into account comments and views received in this consultation exercise in finalising these amendments with a view to introducing an Insurance Companies (Amendment) Bill (“Amendment Bill”) into the Legislative Council (“LegCo”) in 2013.
2. The Bureau published in June 2011 the Proposed Establishment of an IIA Consultation Conclusions and Detailed Proposals (“Detailed Proposals”) after completion of the public consultation exercise in 2010, the outcome of which indicated general public support for the establishment of an IIA. The legislative amendments proposed in this document are based on the Detailed Proposals, with elaboration after internal deliberation and industry feedback received during further engagement.
3. The main purposes of establishing an IIA to replace the existing Office of the Commissioner of Insurance (“OCI”), a government department headed by the Insurance Authority (“IA”), and introducing a statutory licensing regime for insurance intermediaries to replace the existing self-regulatory regime are to align with international practice that financial regulators should be financially and operationally independent of the Government, and modernise the insurance industry regulatory infrastructure to facilitate the stable development of the industry and provide better protection for policyholders. This will help reinforce Hong Kong’s position as an international financial centre.
4. The key legislative amendments cover the following areas:
  - (a) functions and governance structure of the IIA (Chapter 3);
  - (b) licensing regime for insurance intermediaries (Chapter 4);
  - (c) regulatory powers of the IIA (Chapter 5);
  - (d) regulatory arrangements for banks’ insurance intermediary activities (Chapter 6);
  - (e) the appellate mechanism and checks and balances (Chapter 7);
  - (f) levy and fees (Chapter 8); and

(g) transitional arrangements for pre-existing insurance intermediaries (Chapter 9).

5. On functions and governance structure, we propose to amend the ICO to establish the IIA as a body corporate. The governing board would consist of a chairman, the chief executive officer and not fewer than six directors (predominantly non-executive directors) from a cross-section of community including professionals, academics, and persons with knowledge of the insurance industry, all appointed by the Chief Executive (“CE”). To promote independence of the IIA, the Government will not be represented on the governing board. There will be two statutory Industry Advisory Committees, one on life insurance and the other on non-life insurance, to advise the governing board of the IIA on matters related to the insurance industry. The existing statutory functions of the IA will be expanded such that the IIA will assume the additional functions of regulating the conduct of insurance intermediaries, promoting insurance literacy of existing and potential policyholders, facilitating the development of the insurance industry, conducting thematic studies on insurance industry and assisting the Financial Secretary (“FS”) in maintaining the financial stability of Hong Kong. The statutory checks and balances commonly applicable to public bodies will be included in the Amendment Bill to enhance IIA’s accountability, including provisions on tabling of IIA’s annual report before LegCo and submission of IIA’s annual budget and corporate plan to the FS for approval. The practice and procedures of the use of the proposed regulatory powers would be subject to external scrutiny of an independent Process Review Panel set up by the CE. The IIA is also subject to the scrutiny of statutory bodies such as the Independent Commission Against Corruption, the Ombudsman, etc.
6. On the licensing framework for insurance intermediaries, we propose to introduce a new Part in the ICO to provide for the definition of regulated activities and offences of carrying on regulated activities without licence, five types of licences under two broad categories of insurance intermediaries (i.e. licensed insurance agents and licensed insurance brokers) (see paras. 7 – 8 below), licence application and renewal procedures, requirement for the appointment of responsible officers (“ROs”) by authorized insurers, licensed insurance agencies and licensed insurance broker companies, and establishment of a register of

insurance intermediaries for public inspection. The statutory licensing framework will replace the existing self-regulatory regime administered by the three Self-regulatory Organisations (“SROs”).

7. Specifically, we propose legislative amendments to the ICO to stipulate that a person would have to be licensed in order to carry on insurance intermediary activities which will be defined as regulated activities. A licensed insurance agent will be defined as a person who carries on or holds himself out to carry on any regulated activities as an agent of an authorized insurer. There will be three types of licensed agents, viz. licensed insurance agencies, licensed individual insurance agents and licensed technical representatives (“TRs”) (agent).
8. A licensed insurance broker will be defined as a person who carries on or holds himself out to carry on any regulated activities as an agent of an existing or potential policyholder. There will be two types of licensed brokers, viz. licensed insurance broker companies and licensed TRs (broker).
9. We have made it clear that it is not our intention to tighten the eligibility criteria for obtaining an insurance intermediary licence on introduction of the new regime. The IIA will follow the established practice to review the professional standards for insurance intermediaries from time to time in the light of local and international developments and consumer expectation. On this basis, the proposed eligibility criteria for obtaining a licence in the legislative proposals are modelled on the existing eligibility criteria for registration with the three SROs. Briefly, the basic requirements are “fit and proper” (honesty, integrity, reputation, professional competence, and financial soundness, etc.), passing the qualifying examination corresponding to the line(s) of business the insurance intermediary is licensed to carry on, appointment by an authorized insurer (only applicable to licensed insurance agencies and licensed individual insurance agents), engagement by a licensed insurance agency for TRs(agent) and by a licensed insurance broker company for TRs(broker), and, for licensed insurance brokers, satisfying the capital and net asset requirements in the ICO. In line with the intermediary regulatory regimes for other financial sectors, knowingly or recklessly submitting false or misleading information for application for grant or renewal of a licence will

be an offence.

10. We do not propose to create specific licences for sub-agencies or sub-agents. Licensed insurance intermediaries may make their own commercial arrangements to continue their mode of operation.
11. In line with the intermediary regulatory regime for other financial sectors in Hong Kong, we propose to stipulate in the ICO that each and every licensed insurance agency and licensed insurance broker company is required to appoint an RO who is its senior executive with the capacity and responsibility for ensuring that internal control and procedures are in place to guard against misconduct of the licensee itself and the insurance intermediaries tied to it. This requirement will also be applicable to each and every authorized insurer where its Chief Executive Officer, who is held responsible for the authorized insurer's insurance business in entirety, will be deemed as the RO for overseeing the conduct of the authorized insurer's appointed insurance agents and agencies. The appointment of an RO is subject to the approval of the IIA.
12. To ensure transparency, we propose to stipulate in the ICO that the IIA is required to maintain and establish a register of licensed insurance intermediaries for public inspection. Licensed insurance intermediaries and ROs are required to provide the IIA with the necessary information and inform it of any changes of particulars for maintaining and updating the register. Failure to do so without reasonable excuse will be an offence.
13. On regulatory and disciplinary powers, we propose to lay down in the ICO the broad principles of conduct requirements (i.e. acting honestly, fairly and competently in the best interest of existing or potential policyholders) to be observed by licensed insurance intermediaries, and promulgate the details in subsidiary legislation subject to negative vetting by LegCo. Interpretation of the conduct requirements will be assisted by non-statutory guidelines issued by the IIA under the ICO. Licensees will be subject to disciplinary sanctions, which include reprimand, pecuniary penalty, and suspension or revocation of licence, in proven cases of misconduct, not being fit and proper, or contravention of the ICO or licensing conditions.

14. To ensure that the IIA can perform its regulatory functions effectively, we propose the IIA should be vested with regulatory powers commonly available to other local financial regulators, including inspection, investigation, imposing disciplinary sanctions, and prosecuting offences summarily. The IIA may apply for court orders to compel compliance with requirements in relation to inspection and investigation and apply for a Magistrate's warrant to enter business premises to access, remove, and retain records and documents. The powers of inspection, investigation and imposing disciplinary sanctions will be applicable to the regulation of authorized insurers, in addition to the existing statutory prudential regulatory powers in the ICO. In line with the intermediary regulatory regimes for other financial sectors, we propose to make non-compliance with IIA's requirements related to inspection and investigation, or knowingly or recklessly providing false or misleading information in relation to inspection and investigation, an offence.
15. Given that one of IIA's key functions is the protection of policyholders, we propose to provide the IIA with a statutory power to suspend a licensee (or RO) from carrying on any, or any part of, a regulated activity for a specified period before the IIA has made a final determination on the disciplinary sanction to be imposed on the licensee (or RO, as the case may be) if the IIA is satisfied that it is in the public interest or the interests of existing and potential policyholders to do so, e.g. to halt further damage to be done by a licensee (or RO). This specified suspension power serves as a stopgap damage control measure to protect consumers in complicated or serious cases, especially when it may take quite some time to complete the due process for determining the disciplinary sanctions (see para. 16 below). The exercise of such a power will be subject to procedural safeguards such as the fair hearing requirement to ensure fair and reasonable treatment to the licensee (or RO) concerned.
16. To ensure fairness, transparency and due process, we propose to stipulate in the ICO the procedures for exercising disciplinary powers by the IIA. Proposed statutory safeguards include the fair hearing requirement, obligation of IIA to state the reasons for imposing disciplinary sanctions and to disclose the facts and rationale behind disciplinary decisions to the public where

appropriate, and right of appeal against IIA's specified regulatory decisions to the Insurance Appeals Tribunal ("IAT") chaired by a person eligible for appointment as a High Court Judge. The IIA will also establish a Disciplinary Committee to assist it in determining disciplinary sanctions.

17. The IIA is the primary and lead regulator for all licensed insurance intermediaries, and is the sole regulator to set conduct standards for and impose sanctions on all licensed insurance intermediaries. To ensure effective regulation of banks' insurance intermediary activities, we propose to empower the IIA to delegate, subject to the approval of the Chief Executive in Council ("CE in Council"), to the Hong Kong Monetary Authority ("HKMA") powers to inspect and investigate, as well as the specified suspension power explained in para. 15 above. The HKMA will be required to observe the statutory procedures in the ICO when exercising these powers. The IIA will be required to consult the HKMA on regulatory matters and decisions in respect of banks' insurance intermediary activities.
18. On funding mechanism, 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. We propose legislative amendments to empower the CE in Council to prescribe the levy and fees, and mandate the payment of them to the IIA, by subsidiary legislation which is subject to negative vetting by LegCo. On levy reduction, we propose to include express provisions in the ICO to require the IIA to 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.
19. On transitional arrangements for insurance intermediaries, we propose 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 establishment of the IIA will be deemed as licensees and their ROs under the new regime for 3 years starting from the date of the commencement of the Amendment Bill. Applications for registration not yet approved by the SROs before the inception of the IIA will not be covered by the deeming arrangement. We propose that although the IIA will not review the deemed licensees

proactively, it should have the power to vary, suspend or revoke a deemed licence if it is aware that the licence is based on a faulty registration approved by the SROs under the pre-IIA regime. Deemed licensees who wish to continue to be licensed after the transitional period may apply to the IIA for a licence before a specified date (say, 12 months before the end of the 3-year transitional period) to avoid bunching of applications towards the expiry of the transitional period.

20. There are a range of matters arising from the transition from a self-regulatory regime to a statutory licensing regime which we will need to address. We shall keep an open-mind on the detailed arrangements. For the sake of facilitating discussion with the industry, we have included in this document the broad approaches to handle the following transitional matters:

- (a) pre-IIA complaint and disciplinary cases which remain unresolved upon the inception of the IIA will be followed up by the IIA;
- (b) pre-IIA appeal cases not yet concluded upon the inception of the IIA will be taken up by the IAT;
- (c) pre-IIA sanctions imposed by SROs that remain unexpired upon the inception of the IIA will continue to have effect in the remainder period; and
- (d) pre-IIA notifications on changes of particulars and appointments of registrants and ROs not yet completed by the SROs before the inception of the IIA will fall outside the proposed deeming provisions.

In handling these pre-IIA cases, the general principle is to maintain fairness and reasonableness by taking into account the circumstances at the time of the occurrence of the event. As such, we propose that the IIA should adopt the new powers and procedures under the amended ICO but make reference to the pre-IIA standards and circumstances at the time of the occurrence of the event as far as practicable when determining a case, and not to retrospectively apply sanctions unavailable in the pre-IIA regime.

21. The establishment of the IIA is a major step towards the

modernization of the regulatory framework for the insurance industry to bring our regime in line with international practice. We will continue to engage the public and the industry in refining the legislative proposal.