

**For discussion  
on 6 January 2014**

**Legislative Council  
Panel on Financial Affairs**

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

**PURPOSE**

This paper seeks Members' view on the proposed retention of a supernumerary post of Assistant Commissioner of Insurance ("ACI") (D2) in the Office of the Commissioner of Insurance ("OCI") of the Financial Services Branch under the Financial Services and the Treasury Bureau ("FSTB") for about 17 months from 25 May 2014 to 31 October 2015 for, among other things, the continual performance of new regulatory functions stipulated in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO") implemented since 1 April 2012 and the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 ("MPFS (Amendment) Ordinance") implemented since 1 November 2012.

**BACKGROUND**

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

2. The AMLO has come into operation since 1 April 2012. The AMLO stipulates the customer due diligence ("CDD") measures and record-keeping requirements to be undertaken by financial institutions in line with the international Anti-Money Laundering ("AML")/Counter-Terrorist Financing ("CTF") standards as promulgated by the Financial Action Task Force ("FATF"), the standard setting body for the international AML/CTF standards. The Insurance Authority ("IA") is the relevant authority under the AMLO to supervise compliance by insurers

and insurance intermediaries viz. insurance brokers and insurance agents (collectively referred to as “insurance institutions” hereafter) with the statutory CDD and record-keeping obligations. Under the AMLO, the IA is empowered to conduct routine inspections on insurance institutions, investigate suspected breaches, impose disciplinary sanctions and initiate prosecution against criminal offences committed by insurance institutions. The IA is also empowered to issue guidelines on the details in respect of the statutory CDD and record-keeping obligations to facilitate compliance by insurance institutions.

### *MPFS (Amendment) Ordinance*

3. Separately, the Government enacted the MPFS (Amendment) Ordinance for the purpose of, among other things, enhancing the regulation of the sales and marketing activities of, and the giving of advice by, MPF intermediaries in implementing the Employee Choice Arrangement<sup>1</sup>. The Ordinance has become effective since 1 November 2012. Under the MPFS (Amendment) Ordinance, the IA is given the statutory role as the frontline regulator responsible for the supervision and investigation of registered Mandatory Provident Fund (“MPF”) intermediaries whose main line of business is in the insurance sector. The IA would help ensure compliance by MPF intermediaries from the insurance sector with the conduct and other relevant statutory requirements specified in the MPFS (Amendment) Ordinance<sup>2</sup>. In performing these regulatory functions, the IA is to maintain close liaison with the Mandatory Provident Fund Schemes Authority and other frontline regulators. The IA has assumed the supervisory and enforcement duties under the new statutory regime since 1 November 2012.

## **JUSTIFICATION**

4. The enforcement duties in respect of AML/CTF regulatory regime on insurance institutions and compliance with conduct requirements regarding MPF intermediaries from the insurance sector are long-term regulatory commitments of the IA. In view of the scale and complexity of the requisite work involved, the Finance Committee (“FC”) approved on 25 May 2012 the creation of one supernumerary directorate post of ACI in

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<sup>1</sup> The Employee Choice Arrangement allows MPF scheme members to transfer accrued benefits derived from their mandatory contributions during current employment to an MPF scheme of their own choice once a year.

<sup>2</sup> The Mandatory Provident Fund Schemes Authority has issued guidelines on the compliance with the conduct requirements specified in the MPFS (Amendment) Ordinance.

OCI (designated as ACI(Enforcement) (“ACI(E)”) for 24 months with immediate effect. The Administration has reviewed the operational needs of the post and considered it necessary to retain the post so as to provide regulatory steer and direction as well as to oversee all the relevant supervisory and enforcement duties as elaborated in the ensuing paragraphs.

#### *Performing AML regulatory functions*

5. To implement the AML regulatory functions, the IA has to carry out inspections and investigations on insurance institutions, and follow up those investigations which require further action that might lead to subsequent disciplinary actions and/or prosecutions. The IA has started rolling out on-site inspections and off-site reviews on insurance institutions for AML/CTF compliance. There is a large number of entities involved (currently 154 insurers and about 79,335 insurance intermediaries (including individuals and companies)) and continual and ongoing efforts are required from the relevant AML Team of the OCI under the regulatory oversight of ACI(E).

6. In addition, regulatory inputs will be required from the OCI for the forthcoming territory-wide risk assessment exercise for AML/CTF purpose, proposed legislative amendments to AMLO to align with the revised FATF recommendations, and preparation for the FATF mutual evaluation exercise on technical compliance and effectiveness scheduled for 2015-16.

#### *Frontline regulator for MPF intermediaries*

7. There are currently 387 corporate MPF intermediaries and some 31,830 individual MPF intermediaries. Among the corporate and individual MPF intermediaries, about 86% (i.e. 331) and 79% of them (i.e. some 25,020) respectively have their main line of business in the insurance sector. At present, the IA does not exercise direct regulation of insurance intermediaries as they are supervised by three Self-regulatory Organisations (“SROs”)<sup>3</sup>. With the implementation of the new statutory regulatory regime on MPF intermediaries, the IA has commenced routine inspections on MPF intermediaries from the insurance sector, and investigations into their non-compliance, for enhancing investor protection.

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<sup>3</sup> The three insurance SROs are the Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

### *Implementation of the AML and MPF regulatory regime*

8. The ACI(E) post is to provide continual steer and directives to the AML and MPF Intermediaries Teams in implementing the regulatory regimes for performing the AML and MPF tasks, including reviewing industry guidelines/codes and procedural guides; setting out on-site inspection systems and planning; designing and carrying out an investigation strategy and imposing disciplinary sanctions as necessary; overseeing staff training; as well as acting as the subject directorate officer to liaise with both Hong Kong and overseas regulators on AML and MPF intermediaries matters.

### *Other duties*

9. The post of ACI(E) also oversees the Insurance Intermediaries Team of the OCI to monitor the operation of the current self-regulatory regime for insurance intermediaries. Under the legislative proposals for the establishment of an independent Insurance Authority (“IIA”), a statutory licensing regime for insurance intermediaries will replace the current self-regulatory regime administered by the three SROs.

10. ACI(E) has been leading the Insurance Intermediaries Team to support the FSTB in preparing for the transition from the self-regulatory regime to the new statutory licensing regime. The scope of work will cover the preparatory work for the future transfer of relevant regulatory data of insurance intermediaries from the three SROs to the IIA, as well as consolidating existing codes of conduct and supervising guidelines published by the three SROs to facilitate the work of the IIA in future.

### *Retention of the post of ACI(E)*

11. We propose that the supernumerary post of ACI(E) be retained for about 17 months from 25 May 2014 to 31 October 2015 upon approval by FC to continue to oversee the performance of the relevant regulatory duties and head the AML Team and the MPF Intermediaries Team in OCI. While such regulatory commitments are long-term in nature, taking into account the Administration’s plan to establish the IIA in 2015, we consider our proposed retention period appropriate. The continual need for the post will be reviewed in light of the progress of the establishment of the IIA.

12. The proposed job description of the post of ACI(E) is at **Annex A**. An organisation chart of OCI showing the proposed retention of the post of ACI(E) is at **Annex B**.

### *Non-directorate support*

13. The post of ACI(E) is supported by an MPF Intermediary Team, an AML Team and an expanded Insurance Intermediaries Team comprising Insurance Officers and other supporting staff.

### **ALTERNATIVES CONSIDERED**

14. Absorbing the duties of ACI(E) by other colleagues in OCI upon lapse of the post on 25 May 2014 is not feasible.

15. At present, there are three other ACIs in OCI: ACI (Policy and Development) (“ACI(P)”), ACI (General Business) (“ACI(G)”) and ACI (Long Term Business) (“ACI(L)”). ACI(P) is responsible for overseeing policy and legislative matters. ACI(P) is heavily engaged in a number of important initiatives, including the development of a Risk-based Capital Framework for Insurance Business with a view to aligning Hong Kong’s capital adequacy and solvency regime with the international trend for insurance regulation; providing input to FSTB on the establishment of a Policyholder’s Protection Fund as well as the IIA and drawing up relevant implementation details; participating in the International Association of Insurance Supervisors in relation to cross-border supervision matters; and liaising with the China Insurance Regulatory Commission and the insurance industry regarding the Mainland and Hong Kong Closer Economic Partnership Arrangement measures and Mainland/Hong Kong co-operation.

16. ACI(G) and ACI(L) are responsible for monitoring general business insurers and long term business insurers respectively. The capacity of the General Business Division and Long Term Business Division under these two respective ACIs have already been over-stretched because of increasing workload in enhancing the monitoring of the financial position of insurers closely and conducting more frequent inspections on and stress testing of insurers.

17. We have critically examined whether these three ACIs can absorb the additional work of ACI(E). As the workload of these Divisions has increased significantly in recent years as explained in paragraphs 15 and 16 above and there is no indication that the situation would change in the near term, it will not be operationally feasible for these three ACIs to take up the additional duties of the post of ACI(E) without seriously affecting the discharge of their current duties.

## **FINANCIAL IMPLICATIONS**

18. The proposed retention of the supernumerary post of ACI(E) will bring about an additional notional annual mid-point salary of \$1,739,400. The full annual average staff cost of the proposal, including salaries and staff on-cost, is \$3,159,000. Subject to the Finance Committee's approval of the supernumerary directorate post, we will include the necessary provision in the draft Estimates of 2014-15 and 2015-16 to meet the cost of the proposal. The provision for the non-directorate support will be absorbed from within the existing resources of FSTB.

## **ADVICE SOUGHT**

19. Members are invited to comment on the proposal. Subject to Members' views, we will seek the recommendation of the Establishment Subcommittee in March 2014 and approval from the FC in May 2014.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
24 December 2013**

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

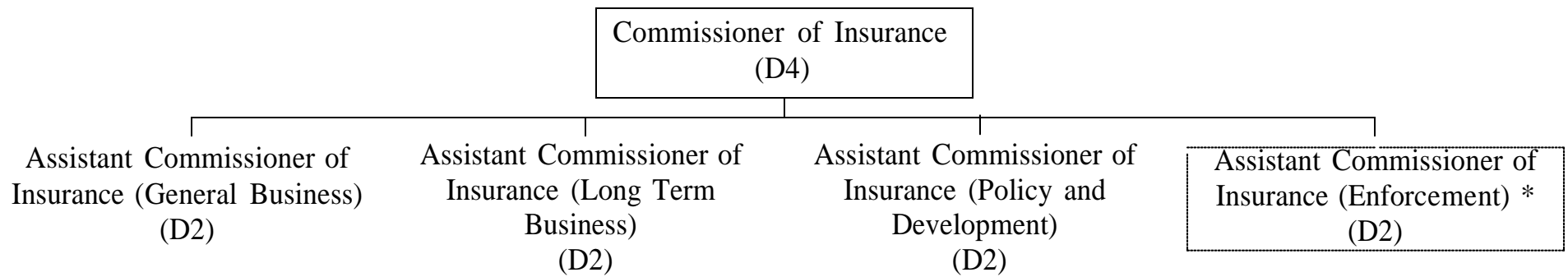
**Rank** : Assistant Commissioner of Insurance (D2)

**Responsible to** : Commissioner of Insurance

**Main Duties and Responsibilities –**

1. To oversee the implementation of the Anti-Money Laundering (“AML”) regulatory regime for the insurance sector under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”), including inspection on compliance of insurance institutions, investigation of non-compliance cases, disciplinary process and prosecution of insurance institutions.
2. To liaise with the insurance industry on the latter’s compliance with the statutory AML requirements and review the industry guidelines issued under the AMLO to promote and facilitate compliance by insurance institutions.
3. To implement the system for supervision of Mandatory Provident Fund (“MPF”) intermediaries from the insurance sector under the new statutory regulatory regime, including compliance monitoring, inspection, complaints handling, and investigation.
4. To represent the Insurance Authority in the liaison with other AML and MPF intermediaries regulators.
5. To support the Financial Services and the Treasury Bureau in liaising with the self-regulatory organisations and other industry stakeholders on the transitional arrangements for establishing the independent Insurance Authority (“IA”), including overseeing the smooth transfer of registration/disciplinary data of insurance intermediaries, the establishment of an insurance intermediaries computerized system and consolidation of existing codes of conduct requirements for insurance intermediaries for the IA’s reference.

**Existing Organization Chart of the Office of the Commissioner of Insurance**



\* Supernumerary directorate post to be retained