

Position Paper of the Hong Kong Federation of Insurers on the Proposed Establishment of an Independent Insurance Authority

Foreword

1. The Hong Kong Federation of Insurers (HKFI), established in 1988, is the representative body of 133 Hong Kong authorized insurers, 90 in general insurance business and 43 in long-term insurance business. They combine to contribute more than 90% of the gross premiums written in the Hong Kong market. Under the present regulatory regime as authorized by the Insurance Authority (IA), the Insurance Agents Registration Board (IARB) was set up by the HKFI to register and regulate the conduct of insurance agents, responsible officers and technical representatives. The HKFI also helps administer the Insurance Claims Complaints Bureau and the Employees' Compensation Insurance Residual Scheme Bureau.
2. On 12 July 2010, the Financial Services and the Treasury Bureau (FSTB) released a public consultation paper entitled, "Proposed Establishment of an Independent Insurance Authority". The consultation paper proposes the establishment of an independent Insurance Authority (IIA) in line with international practices. Specifically, it seeks to improve the regulation of insurers and place insurance intermediaries under the IIA's direct supervision. Supervision of intermediaries in the banking channels will be "out-sourced" to the Hong Kong Monetary Authority (HKMA).
3. The IIA will be governed by a board of non-industry members and financed through a funding mechanism comprising licence fees, user fees and a levy on insurance premiums. Apart from regulating insurers and insurance intermediaries, the proposed IIA will also take a more active role in consumer education and conduct studies and research related to the development of the insurance market.
4. The Governing Committee of HKFI has set up a special task force to study the above proposals, collect views from member companies and come up with a consolidated industry response. Details of the position of the HKFI are set out in this paper. For ease of reference, the paper is divided into four major headings: (a) Executive Summary; (b) Major Issues and Concerns; (c) Detailed Responses to 11 Questions Posed in the Consultation Paper; and (d) Suggested Way Forward.
5. This paper will be uploaded to the HKFI website. We welcome feedback from members of the insurance industry. Your written comments can be forwarded to:

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Executive Summary

1. The HKFI supports in principle the proposed establishment of the IIA to help improve and strengthen the present regulatory regime for better consumer protection and the healthy development of the insurance industry in the long term.
2. This is a major restructuring of the regulatory framework with far-reaching implications for the industry and the insuring public. The success of the exercise depends on the clarity and consistency of the objectives to be achieved, the practicality of the execution and transition plans and the full support of all stakeholders including the various self-regulatory organizations (SROs) and intermediary bodies.
3. The Consultation Paper, as it stands, suggests merely a broad direction and framework for constructing a new and more progressive regulatory regime. More details and substance of the proposed changes are required to explain exactly what needs to be done and why.
4. While it would be necessary to take heed of international practices in this exercise, we should not lose sight of the need to preserve the good elements of our existing system and particularly those components that have proved to be working well over the years under the close supervision of the IA. The IARB in its present form has been functioning effectively. It has provided a fair and robust system for handling complaints against sales misconduct. The system, broadly speaking, is trusted by consumers and intermediaries.
5. That said, we see room for improvement of the present SRO regime. For one thing, the existence of three separate SROs, i.e. the IARB, the Hong Kong Confederation of Insurance Brokers (CIB) and the Professional Insurance Brokers Association (PIBA), leaves much to be desired. So we would propose consolidating the three SROs into one body, placing it under the direct supervision of the present IA in the near term and integrating it ultimately with the future IIA.
6. The process of change should be managed properly and carefully to ensure a smooth transition. In this regard, the HKFI is keen to work with the Government to provide the necessary support and professional input. Specifically, we would suggest the immediate setting up of a working group chaired by the IA and comprising representatives from HKFI and interested parties to formulate the relevant details of the restructuring. The working group should be asked to suggest a concrete plan setting out, with a clear set of milestones, how the proposed changes are to be implemented.
7. Consideration should also be given to the merits of establishing a provisional IIA to help achieve a smooth, seamless transition and avoid any undue uncertainty, which might be detrimental to market confidence and stability.
8. We welcome this opportunity to upgrade the present regulatory framework, improve the ecology of the industry and lay a firm groundwork for the purpose of

sustaining Hong Kong's position as a world class financial centre. We believe the future IIA can and should act as a catalyst to help propel the industry to new heights.

9. The HKFI feels strongly that before initiating the legislative process, the Government should conduct further consultation on details of the proposed changes related to the establishment of the IIA. We hope the next round of consultation can commence by early 2011 to allow sufficient time for informed discussion among all stakeholders.

Major Issues and Concerns

1. Self-regulatory Regime

- 1.1 The Consultation Paper's narrative on the origin of the present self-regulatory regime needs to be supplemented with the following key points:
 - (a) the present system comprising the three SROs, namely the IARB, the CIB and the PIBA, was set up by the industry in 1990's with the support of the IA;
 - (b) the authority and responsibilities of regulating insurance intermediaries are delegated to the three SROs under the Insurance Companies Ordinance (ICO) (Chapter 41);
 - (c) the codes of conduct of the SROs have been endorsed by the IA and any amendment to the codes must have the IA's prior written approval;
 - (d) in respect of the operation of IARB, the IA is kept fully informed of the progress and outcome of such complaint cases;
 - (e) the IARB is chaired by a former Legislative Councillor, Mr Ambrose Cheung, and has eight members. Five non-industry members constitute the majority (see Annex 1) and include representatives of the Consumer Council and the Hong Kong Institute of Certified Public Accountants. The three industry members on the IARB provide valuable advice on industry best practices and adhere to a clear set of rules governing conflicts of interest (Annex 2);
 - (f) the IARB has adopted a set of penalty guidelines for different types of misconduct in the interests of transparency and consistency (Annex 3);
 - (g) there is also a well-established appeal mechanism. The Appeals Tribunal consists primarily of reputable members of the legal profession whose appointment has to be approved by the IA (Annex 4);
 - (h) over the past ten years, the IARB has processed 12,000 cases with 4,865 agents/responsible officers/technical representatives disciplined for various types of misconduct and failure to comply with the Continued Professional Development (CPD) requirement. The penalties imposed range from reprimand to suspension of registration for life. Of the 4,865 disciplinary cases referred to above, 4,198 are related exclusively to CPD compliance.

- 1.2 The system has worked well and has been effective and fair in handling complaints against sales misconduct. It has earned the trust and support of member companies, intermediary bodies, the IA, the Consumer Council and the insuring public who are ready to approach the IARB to seek redress for their grievances. The credibility of the IARB is built and anchored upon its ability to set genuine complaints apart from those which are frivolous and to impose appropriate penalties to ensure justice is done and provide the necessary deterrence.
- 1.3 With a permanent staff of six officers and an annual budget below HK\$10 million, the system has proved cost-effective. This is made possible primarily because of the generous support of, and the pro bono services provided by, both industry and non-industry members of the IARB and Appeals Tribunal.
- 1.4 The volume of complaints noted above should be considered in the light of the phenomenal growth of the market in the recent years with the number of life insurance policies in-force today exceeding nine million and almost one million new policies issued each year.
- 1.5 The industry has spared no efforts over the years to strengthen the control of business conduct and protect the bona fide interests of the insuring public. Notable examples include the voluntary introduction of Cooling-off Right Initiative, Customer Protection Declaration, Needs Analysis, Sales Illustrations, Know Your Client Requirements, risk disclosure requirement, suitability test, after-sales calls for vulnerable groups, etc. We are also working closely with the Securities and Futures Commission (SFC) to provide a Key Facts Statement to ensure the proper selling of investment-linked assurance (ILAS) products with clear and simple highlights on the nature of the product and potential counter-party risks.
- 1.6 That said, it is acknowledged that the present system is not entirely free of certain actual or perceived weaknesses. In particular:
 - (a) the independence of IARB may be questioned at times because members of the IARB are appointed by the HKFI;
 - (b) due to limited staff resources, investigation by the IARB must presently be confined mainly to review of paper documents;
 - (c) for consumers, the existence of three separate SROs may be somewhat confusing, and the situation is not helped by their different structures, modes of operation and penalty regimes.
- 1.7 The present system should be suitably reformed and brought into line with international practices and societal expectations. The change, however, should not involve throwing away the good parts of the present system, and in particular the platform by which industry members can now play a critical role in providing professional advice and support and promoting compliance. Instead, we would recommend a "CPI" approach involving:

- Consolidating the existing three SROs into one body;
 - Placing the consolidated body under the direct supervision of the present IA;
 - Integrating it with the future IIA in the long term.
- 1.8 We would suggest that members of the consolidated disciplinary body be appointed by the present IA and ultimately the future IIA. And the present secretariats and compliance team of staff should become part of the Authority's operation, thereby reinforcing public perception of their impartiality and independence. This approach would also help preserve the regulatory expertise and experience accumulated by the industry over the years and ensure a smooth and less costly migration from the present SRO regime to the new system of direct supervision.
- 1.9 The Insurance Claims Complaints Bureau (ICCB) is part and parcel of the self-regulatory regime. The Consultation Paper, however, says practically nothing on this subject. Our view is that the Insurance Claims Complaints Panel (ICCP), an independent body set up by the industry and chaired by Mr Michael Tsui for years, has been doing a great job offering a low cost and effective mechanism to resolve disputes related to personal insurance claims; see Annex 5.
- 1.10 The matter is being carefully reviewed by the ICCB in the context of the proposed establishment of the Financial Dispute Resolution Centre. We feel that with the proposed establishment of the IIA, we should take a fresh look at the issue and work out the best way forward for strengthening consumer protection. The ICCB will provide a separate submission to the Government on this issue in due course.
2. HKMA to Regulate Bancassurance
- 2.1 We strongly object to this proposal. The client profile of a bank does not, as suggested in the Consultation Paper, differ significantly from other distribution channels. Moreover, banks have now become more innovative and physically mobile by conducting sales process away from counters, thus effectively blurring the lines and boundaries between banks and other channels of distribution. The HKMA does not have any expertise in insurance. To take up the job, they would need to invest extra resources in manpower and system, and the ultimate cost would be transferred to consumers.
- 2.2 The two-tier system of administering the sales code, whichever way one looks at it, is confusing to consumers. To allow the HKMA to impose extra conduct requirements may inadvertently send an erroneous message that consumers get better or different protection by purchasing products from banks. It would also create the potential for inconsistent, unnecessary and excessive regulations and duplication of efforts. We want to see a one-stop system run by a single, institutional regulator, capable of taking a holistic view of the big picture and striking a proper balance to provide a level playing field and a "right" touch for robust consumer protection while not stifling the growth of the market.

2.3 In short, we should maintain the present system of putting all insurance sales channels under the direct supervision of one regulator, now the IA and the future IIA. Outsourcing the regulation of banking channels to the HKMA would create dual supervision causing confusion to consumers, unnecessary wastage of resources and, above all, the risk of inconsistent, unnecessary and excessive regulations.

3. Sales of ILAS Products

3.1 ILAS is an insurance product heavily linked to the performance of the underlying funds. While the conduct of sales intermediaries is subject to the ICO regime, the approval of related marketing materials comes under the SFC. This is an anomaly which should be removed in line with the declared objective of the present exercise of ensuring better consumer protection and consistency of regulatory control. When a consumer lodges a complaint related to an ILAS product, it very often touches on the sales conduct, the provision of advice and the marketing materials. Hence it would be logical for such a complaint, as in the case of a non-linked life insurance product, to be handled by one regulatory authority for the sake of clarity, efficiency and consistency.

3.2 We would therefore suggest that the SFC consider inviting the future IIA to help enforce the rules governing the approval of ILAS marketing materials. With this approach, the SFC can still set compliance standards and retain its role as the ultimate gate-keeper. The future IIA would only act with powers delegated by the SFC to enforce the relevant rules, and complaints related to ILAS products could be dealt with under and within one single regulatory body. Or alternatively, the relevant SFO and ICO should be appropriately amended to bring the regulatory control over the selling of ILAS and approval of the related marketing materials under the direct purview of IIA. Obviously, this would be good for consumers, product providers and intermediaries and thus be a sensible and pragmatic way to bridge the existing regulatory gap.

3.3 Sales of ILAS products and the related regulatory control remain an issue of considerable concern to the industry. We fully appreciate the complexity of the issue involved as it cuts across the ambits of more than one regulator. The present exercise, as it stands, offers a good opportunity for the Government to study how best the various supervisory powers should be re-defined to accord intermediaries selling such products the right professional status in the interests of regulatory clarity.

4. Prudential Supervision

4.1 Public confidence in insurance depends very much on the ability of insurers to make good their promises. Financial soundness and solvency of insurers, therefore, is the key to the stability of the insurance market. While we understand that the present exercise has chosen to focus on market conduct, we consider it timely and necessary to review the present prudential supervision regime, identify areas of deficiency and explore practical options of improvement in the long-term having regard to international standards and best practices.

- 4.2 Compared with other financial institutions, the insurance sector came through the latest global financial crisis in good shape. In the context of capital and solvency requirements, insurers around the world are trying to highlight their uniqueness and distinction from the banking sector. This issue has become more pressing as markets in places like Europe are debating the merits of introducing Solvency II capital requirements. If Hong Kong really wants to become the preferred regional insurance centre, the Government would need to provide, sooner rather than later, a clear roadmap with a concrete timeframe on how the market should prepare and position itself to stay competitive and attractive.
- 4.3 Good market conduct and sound prudential supervision go hand in hand to ensure the continued success of the insurance industry. Any financial market in the present day, as shaped by the unstoppable process of globalization, can have drastic and monumental changes overnight. Regulators must have sufficient powers in their tool-box to handle and respond forcefully and promptly to such challenges to protect the integrity of the market and the interests of consumers. Seen in this light, the future IIA ought to be given well-defined and adequate powers to amend the relevant regulatory rules on prudential supervision as and when the circumstances so require. As to how best this can be achieved and the industry should be consulted in the process, we would defer to the IA to suggest the proper way forward.
5. Expanded Functions of the Proposed IIA
- 5.1 We endorse the idea of expanding the role of the proposed IIA to assume a more active role in consumer education and conducting thematic research beneficial to the development of the market and the industry.
- 5.2 Consumers should be encouraged to make informed choices and decisions. Better consumer education, as we know, helps reduce complaints and promote the taking out of adequate insurance for proper risk management. This is good but not good enough. Industry figures show the rising and deteriorating trend of insurance fraud, both opportune and organized. Insurance fraud, if not controlled and dealt with effectively, may undermine the normal functioning of the market and the cost has to be shared eventually by all consumers. Leakage of the system arising from fraud must be plugged. On this issue, we would look to the future IIA for strong leadership and proactive intervention.
- 5.3 As for thematic research, there are a number of areas which require immediate attention. Resources should be earmarked for subjects like developing Hong Kong into a captive/reinsurance and maritime insurance centre, fraud prevention, consumer education, manpower development, etc.
- 5.4 The future IIA, in our view, should not merely conduct research but also take ownership of implementing follow-up work recommended in such studies. To help the industry grow, it is no longer sufficient for the IIA to act simply as a watchdog for consumer protection. It should assume a bigger role as a shepherd and a market facilitator/enabler providing advice on, and impetus to, the development of the market

to maintain and promote Hong Kong as a truly international insurance centre.

- 5.5 The industry is built on its professionalism and its ability to attract, train and retain quality people. We attach great importance to professional training for insurance intermediaries. The future IIA, if we may suggest, should play a more active part in overseeing the administration of the Continued Professional Development (CPD) programmes and the early establishment of a Qualification Framework (QF) for the insurance sector. In addition to ensuring CPD compliance in terms of fulfilling the required hours of studies, the core contents of the programmes should be enriched accordingly to strengthen professional ethics and upgrade the knowledge and skills of insurance intermediaries to understand and meet the needs of consumers.
- 5.6 On the agenda of the Government for some time has been the proposed establishment of a Policyholders' Protection Fund (PPF). The exercise has been accelerated following the collapse of Lehman Brothers in 2008 as part of the Government's initiatives to help restore consumer confidence. The HKFI endorses and supports the setting up of the proposed PPF. We are now working with the Government's appointed consultant to try and come up with a simple and workable scheme. It would be a logical step, in our view, for the future IIA to assume the responsibility of overseeing the efficient running of the PPF.
- 5.7 Set up by the Government since January 2002, the Facility for Terrorism Risks has collected levies of over HK\$800 million from the EC insurance market. The Government has indicated repeatedly that it will withdraw the Facility anytime the market itself can provide the required reinsurance cover. Perhaps the future IIA should actively explore practical options of the market taking over the provision of such facility.
- 5.8 In performing its expanded roles, it is suggested in the Consultation Paper that the IIA be given a range of additional powers of intervention including, for example, supervisory sanctions like reprimand and fines. This is an area which requires further consideration to ascertain the necessity of IIA being vested with such powers for fulfilling its supervisory duties. On this point, member companies of the HKFI would like to have a separate discussion with the IA to try and reach some common understanding before the matter is taken further.

6. Governance and Competence

- 6.1 The future IIA signifies a major transformation of the regulatory regime of the insurance sector. Leadership with the required competence and a good understanding of the insurance business at the board level is essential to the success of this huge undertaking. The industry is willing and ready to be part of the solution.
- 6.2 We hope the Government will appoint a member from each of the General Insurance Council (GIC) and the Life Insurance Council (LIC) to the IIA Governing Board to provide professional input and help ensure the practicability of any policy initiatives related to market conduct and prudential supervision. The presence of industry

members on the Governing Board by itself would not give rise to issues of conflicts of interest. Such matters, as experience has shown, can be dealt with effectively by proper rules on secrecy and declarations of interest.

6.3 The suggestion above may be considered problematic. If so, we would suggest co-opting GIC and LIC members to sit on:

(a) the various committees of the IIA Governing Board to advise on matters related to market conduct and prudential supervision; and

(b) the Advisory Committee for tapping industry views on matters related to consumer protection and the long-term development of the industry.

7. Insurance Companies Ordinance (Chapter 41)

7.1 At present, all insurance related activities are regulated by the *ICO* enacted more than two decades ago. The business landscape over the years has undergone tremendous changes. Clear examples are the growing bancassurance market, appointment of Technical Representatives, proliferation of tele-marketing/electronic marketing and the increased popularity of ILAS products. On the other hand, in terms of prudential supervision, the emphasis has shifted from traditional asset/liability matching to different approaches involving risk-based capital requirements, principles-based risk management and mark-to-market accounting.

7.2 The present *ICO* deals mainly with authorization, regulation of insurers and intermediaries, asset/liability matching, winding up of insurers, information disclosure, reporting requirements, powers of intervention, etc.

7.3 At the risk of stating the obvious, the *ICO* is grossly outdated. It needs to be revamped with a completely new set of policy objectives to provide the market with an effective legal framework that protects consumers and provides the right kind of control and supervision to encourage sensible risk management and innovations beneficial to consumers and the industry.

7.4 Market discipline and vibrancy of the market are not mutually exclusive. They are, in fact, two sides of the same coin. The proposed legislative reform, if done right, should provide a better and more dependable basis for aligning, and striking a proper balance between, these two fundamental policy objectives. As an industry we always support better, proportionate regulation.

7.5 Two decades ago, the insurance industry hired less than 30,000 people and the premiums collected represented less than 3% of the GDP. Nowadays, with a workforce of over 80,000 and annualized insurance premiums representing over 11% of the local GDP, the industry has come a long way. And the present legal framework, whichever way one looks at it, has become increasingly unfit for its intended purpose.

7.6 Changes to the legal framework can be effected in the next few years by the present IA or after the setting up of the proposed IIA. Either way, we need to start conducting an in-depth review of the present *ICO*, identify the gaps and pool ideas from all interested parties on how best to take the matter forward. This is a critically important subject which the present consultation has failed to address and focus on. The matter before us, if we may say so, is of no less importance and urgency than that of the proposed IIA. We earnestly hope to see this crucial missing link duly covered in the next stage of consultation.

8. Funding Mechanism

8.1 The present IA is patently under-resourced in terms of staffing and financial support. Constrained by bureaucratic rules and regulations, it is not given sufficient latitude, for example, to compete in the market to hire qualified actuaries to help carry out its statutory duties. With the setting up of the IIA and the financial autonomy it enjoys, this problem should disappear. This we fully welcome and look forward to it.

8.2 In principle, we agree that the future IIA should have more financial independence, however, we feel that a continued contribution from the Government would be appropriate in order that the IIA is not totally dependent on the industry for funding. Before deciding on the actual funding mechanism, however, we need to examine in detail the size, structure and cost of the future set-up of the IIA. Such details are missing from the Consultation Paper. Accordingly, we would reserve our comments as regards the appropriateness or otherwise of the proposal to increase the number of staff from the present IA of 123 to 237 in the future IIA. This is particularly the case because, if our proposal regarding consolidation of the SROs is adopted, the future IIA could rely on the consolidated body to perform the required disciplinary work, which we envisage would be less costly but equally if not more effective.

8.3 Any funding mechanism should be fair and transparent and should not undermine the competitiveness of Hong Kong's insurance market. The method of calculation should be easily understood and consistently applied across the board for the sake of fairness and to avoid double-counting. There are many considerations in setting up the charging mechanism including equity between those funding the IIA and ensuring that business does not migrate away from Hong Kong to for example, Macau or Singapore.

8.4 On the issue of market competitiveness, we have grave concerns over the proposed levy of 0.1% on all policies. Firstly, the levy applies to all insurance policies, irrespective of whether they are direct business or reinsurance. In other words, the same amount of premium will be subject to levy in the direct business level and then at the reinsurance level. As such, there would be an obvious element of double-counting. Our recommendation, see below, is to avoid such double counting.

8.5 Secondly, the premium of some policies, such as major infrastructure projects, could amount to tens of millions dollars. The 0.1% levy will put additional burdens on such policyholders. This together with the levy at the reinsurance level may force

corporate clients with large premium policies to place their business elsewhere, such as Singapore and London.

- 8.6 It is not clear why the intermediaries' fees should be waived for five years when they are already paying fees through their current SROs.
- 8.7 In addition, millions of personal line policies, such as travel insurance, are sold at a premium of \$100 or so per policy. The administration cost for levying these low premium policies could be much higher than, and hugely disproportionate to, the actual amount of levies collected.
- 8.8 As for the calculation method of the variable licensing fees, our comments are as follows:
- (a) If individual liabilities mean incurred claim liabilities, they would comprise (i) estimated ultimate payments, less payments to date or (ii) case reserve (assigned by adjuster or formula), + Bulk or IBNR reserve, theoretically separate but usually combined Incurred But Not Enough Reported (IBNER) and Incurred But Not Reported (or Recorded) reserve. Besides, they should include associated expenses, possibly split into Allocable to claim (ALAE) and Not allocable to claim (ULAE). There are inherent uncertainties in the estimation of claim liabilities and the true value can only be ascertained after all outstanding claims are settled.
 - (b) Currently, there is neither standard methodology nor compliance requirement in relation to the estimation of claim liabilities and it is often a subjective estimation based on the circumstances of the claim, experience of the claims manager, and the reserving philosophy of individual companies. Such inherent uncertainties render it unsuitable to be used as a fair basis on which contributions are levied.
 - (c) There are other objective bases, e.g. Net Written Premium, which offer much greater clarity and certainty for the purpose of calculating contributions.
 - (d) It needs to be considered whether it is appropriate to charge the relevant fees based on the risk characteristics of the entity being supervised eg should a company with 150% solvency ratio pay more than a company with 1000% solvency ratio?
 - (e) Equity between life and non-life insurers needs to be considered and between current and new policyholders.
- 8.9 To conclude, we would suggest:
- (a) exempting the 0.1% levy on non-Hong Kong policies and all reinsurance treaties and facultative reinsurance to avoid double counting and the risk of business moving to other territories;
 - (b) setting a cap of levy at \$xxx for all policies (to be decided);

- (c) waiving the levy for policy premiums lower than \$xxx (to be decided);
- (d) for the variable licence fee we believe that a significant amount of additional analysis is required in order to establish an equitable arrangement – some of the issues are set out above especially in section 8.7;
- (e) defining who is expected to pay the 0.1% levy, i.e. the policyholder or the insurer.

8.9 In case it is deemed appropriate for the IIA to base the variable fee on insurance liabilities, the definition of such liabilities and the corresponding calculation method would need to be standardized and stipulated clearly. Again, issues of equity need to be considered.

Detailed Responses to the 11 Questions Posed in the Consultation Paper

1. The Consultation Paper raises 11 specific questions. These questions have been circulated to all of our member companies for review. Their consolidated comments are set out in Annex 6 for easy reference.
2. Member companies generally support the proposed establishment of an IIA. However, they have expressed concerns about the lack of details in the Consultation Paper and the potential cost involved in running the new set-up. And the message we have heard loud and clear is that they unanimously support a second round of consultation on those crucial areas referred to above.

Suggested Way Forward

1. The philosophy and fabric of the insurance industry's regulatory framework will be substantially transformed following the establishment of the IIA. While we see the need for and support the proposed changes, we are anxious to obtain more specific details about the proposal and to ascertain how best the exercise should be taken forward. As noted above, the Consultation Paper merely provides a general policy framework without giving much information on key aspects.
2. In our recent discussions with the IA, we have been given to understand that the Government is prepared to consider positively the ideas put forward by the HKFI in this paper. Some of the recommendations, if adopted, might involve a substantial change of approach to the setting up of the proposed IIA. That being the case, and in order to have a smooth transition, we would suggest the Government conduct a further round of consultation with stakeholders on details of the proposed restructuring and the ultimate regulatory framework.
3. The idea of establishing an independent and accountable IA has been on the Government's agenda since 2003. Apparently there is no compelling urgency to rush this through. The important thing is to take a prudent, pragmatic approach and proceed carefully to avoid any mis-step. Getting it right from day one should be our number one priority.

4. The Mandatory Provident Fund Authority (MPFA) has lately decided to put a sudden stop to the introduction of employees' choice, causing much confusion to the market. The proposed re-structuring of the insurance regulatory regime, as we all know, is far more complicated than the above project. So we need to tread cautiously and allow sufficient time to work out methodically all the fine details to avoid a repeat of the problem faced by the MPFA.
5. The process of change has to be managed and co-ordinated. Stakeholders should also be kept well informed throughout the process. Good communication on the major changes involved would be essential for the parties concerned including, needless to say, member companies of HKFI and intermediary bodies. Mindful of all this and in light of our experience with the proposed establishment of the PPF and the healthcare financing reform, we would suggest the formation in the near future of a working group chaired by the IA and comprising representatives from the HKFI to oversee and help map out:
 - (a) details of the second round consultation on the key issues and concerns raised;
 - (b) the drafting of a detailed plan of transition and migration from the present IA to the future IIA;
 - (c) the implementation of the transitional arrangements including the eventual integration of the consolidated SROs with the future IIA.
6. Last but not the least, we would suggest consideration be given to the setting up of a provisional body of the IIA. This body should be allowed to run for a period of time before the permanent IIA commences operation. After all, changes of this nature and magnitude would require proper calibration of all components to ensure that the IIA is off to a good start. In suggesting this idea, we are guided by considerations of similar restructuring exercises as in the case of the Provisional Airport Authority, Provisional Hospital Authority, Provisional Urban Renewal Authority, and the Provisional Construction Industry Co-ordination Board.

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Representative of the Life Underwriters Association of Hong Kong Limited

Proceeding Rules of the IARB

1. The IARB was established in 1993 within the HKFI for the purpose of implementing and administering the Code of Practice for Administration of Insurance Agents.
2. The quorum for a meeting shall be three Members of the IARB.
3. If the Chairman is unable to chair any meeting of the IARB, Members of the IARB present shall elect a Chairman for that particular meeting.
4. In order to avoid any conflict of interest, a Member of the IARB, who has an interest financially or otherwise, i.e, being one of the relevant insurer(s) in the subject matter or who is personally acquainted with the insurance agent being complained of or the complainant, shall declare a conflict of interest and be excused from the meeting pursuant to Article 51 of the Articles of Association of the HKFI.
5. Decisions, recommendations and/or representations by the IARB should preferably be by consensus, failing which the same shall be passed or carried by a majority of votes of the Members present at any meeting of the IARB. In the case of an equality of votes, the Chairman shall have a casting vote.
6. The IARB may establish a Panel or Panels which shall consist of at least one IARB Member. A Panel shall consider and deal with such matters and things referred to it by the IARB. The Board may delegate any of its powers to the Panels as it thinks fit and any Panel so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the IARB.

17 May 2007

Notes to Members of the Insurance Agents Registration Board

1. The terms of reference of the Board is governed by the Code of Practice for the Administration of Insurance Agents. As such, all judgement made should be based on the Code and its relevant Guidance Notes.
2. No alternate is permissible.
3. If a Member is unable to attend a Board meeting, he/she is most welcome to send in written comments to the Secretary General before the meeting.
4. Members are advised to review all the paper documents before attending a Board meeting.
5. In arriving at a fair and impartial decision, Members should take into account as to whether or not the following aspects have been fully observed:
 - I. the point of law;
 - II. the rule of natural justice; and
 - III. sufficiency of evidence.
6. The information provided by the insurance agents being complained of and the complaint concerned is protected under the Personal Data (Privacy) Ordinance. All Members should treat such information strictly confidential and should not disclose any of such information to a third party. All meeting papers should be returned to the Secretariat for safekeeping after a meeting.

17 May 2007

	Common types of misconduct 常見違規行為類別	General point of reference of disciplinary action (period of termination of registration) 一般紀律行動 (撤銷登記時間)	In breach of 違反	
			Code of Practice for the Administration of Insurance Agents 《保險代理管理守則》	Other Codes/Guidelines 其他守則/指引
1	Use of document containing inaccurate information 行使載有不正確資料的文件	1 to 3 years 一至三年	74/78 & 58(g)	
2	Mishandling of clients' premium or monies 不當處理客戶保費或款項	1 to 3 years 一至三年	74/78 & 58(g)	Guidance Note 指引 (5)
3	Breach of the Code of Practice for Life Insurance Replacement 違反《壽險轉保守則》	1 to 3 years 一至三年	80(i), 80(k) & 58(g)	Guidance Note 指引 (4) & Code of Practice for Life Insurance Replacement 《壽險轉保守則》
4	Twisting of policies 誤導轉保	3 years 三年	80(i), 80(k) & 58(g)	Guidance Note 指引 (4) & Code of Practice for Life Insurance Replacement 《壽險轉保守則》
5	Understating disadvantages on Customer Protection Declaration Form 於《客戶保障聲明書》少報弊端	1 to 2 years 一至兩年	58(g)	Guidance Note 指引 (4) & Code of Practice for Life Insurance Replacement 《壽險轉保守則》
6	Obtaining benefit by improper / unauthorized means 不正確地/未經允許取得利益	1 to 3 years 一至三年	74/78 & 58(g)	
7	Making inaccurate or misleading representation on policy sold outside Hong Kong 於香港境外銷售保單而作出不正確或誤導陳述	3 years 三年	74/78 & 58(g)	
8	Making inaccurate or misleading declaration / representation 作出不正確或誤導聲明/陳述	1 to 3 years 一至三年	74/78 & 58(g)	
9	Aiding others to make inaccurate or misleading declaration / representation 協助他人作出不正確或誤導聲明/陳述	2 years 兩年	74/78 & 58(g)	
10	Effecting policy without authority 未經授權為客戶投購保險	1 to 3 years 一至三年	74/78 & 58(g)	
11	Failure to make reasonable effort to ensure the policy meets the needs of the policyholder 沒有盡力確保保單符合保單持有人的需要	1 year 一年	76(f)/80(d)/80(f) & 58(g)	
12	Requesting clients to sign blank or incomplete forms 要求客戶簽署空白或尚未填妥的表格	1 to 3 years 一至三年	58(g)	Guidance Note 指引 (4)
13	Failure to take reasonable effort to deliver policy within the cooling-off period 沒有盡力於冷靜期內送交保單	depending on the circumstances 視乎情況	58(g)	Cooling-off initiative 《「冷靜期」權益》
14	Failure to disclose previous records of bankruptcy, criminal offence or disciplinary action taken by other professional bodies 沒有披露曾經破產、被判犯刑事罪行或遭專業團體紀律處分的紀錄	depending on the circumstances 視乎情況	58(g)	
	Other circumstances 其他情況			
15	Having been declared bankrupt 曾宣布破產	until bankruptcy order is discharged / debts are repaid unless there are exceptional circumstances 直至破產令撤銷/債務清還 (除非情況特殊)	58(a)	
16	Having been convicted of a criminal offence or disciplined by a professional body 曾被判刑事罪名成立或曾遭專業團體紀律處分	depending on the seriousness of offence / severity of penalty 視乎罪行/紀律處分的嚴重程度	58(d)/58(e)	

THE APPEALS TRIBUNAL

MEMBERS

Frederick H F Chan 陳慶輝
Barrister-at-law

Pamela S Chan, BBS, JP 陳黃穗

K M Chong 莊啟文
Barrister-at-law

Alfred K C Fung 馮國礎
Barrister-at-law

Lester G Huang, JP 黃嘉純
Solicitor

Ernest C M Koo 古澤銘
Barrister-at-law

Larry L K Kwok, BBS, JP 郭琳廣
Solicitor

K M Li 李介明

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Selwyn Yu 余承章
Barrister-at-law

Roger K C Yung 翁國忠
Solicitor

**Claims Complaints Handled by
the Insurance Claims Complaints Panel during the past 10 Years**

Year	No of cases handled for the year	Compensation awarded through ICCPanel (HK\$)
2009	575	3,020,000
2008	484	2,140,000
2007	427	3,210,000
2006	485	2,830,000
2005	404	3,220,000
2004	351	2,660,000
2003	283	3,550,000
2002	339	3,150,000
2001	325	2,890,000
2000	232	1,910,000
Total	3,905	28,580,000

Specific replies to the 11 questions raised in the Consultation Paper

1. *Do you agree that an independent IA should be established along the principles set out in paragraph 2.6?*
 - We support in principle the proposed establishment of the IIA to help improve the present regulatory framework for better customer protection and healthy and sustainable development of the industry. However, it is important that more details need to be worked out for further consultation with the public before any decision is made.
 - However, the establishment of the IIA should go hand in hand with the review of the Insurance Companies Ordinance so as to align Hong Kong's insurance regulation with that of other major insurance markets.

2. *Do you think that there are other important principles in addition to those set out in paragraph 2.6 that the Administration should adopt in working out the detailed legislative proposals for the establishment of the independent IA? If so, what are they?*
 - Other guiding principles should be to ensure that the improved framework will be cost-effective, have the full support of the industry, prevent unwarranted hiring and excessive regulation, work and interface with other financial regulators, help tackle insurance fraud and promote public confidence in insurance and the concept of consumers taking their fair share of responsibilities in making purchase decisions, etc.
 - It is also important to ensure that regulation will not be onerous and stifle innovation required for market efficiency. The same regulation standard should also be applied equally across all distribution channels so as to achieve a level playing field.

3. *Do you agree that the independent IA should have an expanded role beyond the existing functions of the IA as set out in paragraph 3.1? If so, do you agree that the independent IA should assume the additional functions as proposed in paragraphs 3.3 and 3.4?*
 - If the IA is going to take up the additional functions in supervising the conduct of insurance intermediaries, it is imperative for them to uphold the spirits and merits of the existing SROs, enhance transparency, ensure a level playing field by applying the same regulatory standard across board.
 - We are supportive of the idea of organizing public education programmes to raise insurance literacy among the insuring public. However, there may be overlapping of work and resources of the Investor Education Council proposed by the FSTB.

4. *Do you agree the independent IA should also have a duty to enhance the competitiveness of the insurance industry, which will help to reinforce Hong Kong's status as an international financial centre?*
 - We agreed that the future IIA should have a duty to help enhance the competitiveness of the industry, thus reinforcing Hong Kong's status as an international financial centre.

Topics to be looked at include the introduction of risk-based capital requirements, enterprise risk management, cultivation of insurance talents like the setting up of an insurance academy, promoting Hong Kong as a maritime insurance centre, promoting cross-border cooperation and integration of insurance markets in the Pearl Delta River region, developing RMB investments in Hong Kong, etc.

- All in all, the actions to be taken by the IIA should ensure a level playing field and not undermine insurers' competitiveness.
5. *Do you agree that the independent IA should be vested with additional powers as proposed in paragraph 4.7 to enable it to regulate insurers more effectively?*
- The existing powers vested in the present IA are already quite extensive. Insurers are and will continue to be co-operative when asked for information by the IA in connection with the performance of any legitimate regulatory functions. There should be effective checks and balances and appeal mechanism for ensuring fairness and reasonableness.
 - The condition giving rise to an entry into premises as stated in 4.7(a) should be clearly defined. We are mindful of the possible over-regulation and the privacy issue it may have caused.
6. *Do you consider that the existing self-regulatory arrangements for insurance intermediaries should be changed, and if so, do you support that Option 2 (i.e. direct supervision of insurance intermediaries by the independent IA) should be pursued? If not, why?*
- The present self-regulatory regime is sound and robust. The spirits, the merits and the neutrality of the SROs should be maintained. One possible option is to consolidate the three SROs under one body and place it within the future IIA to address the issues of inconsistency.
 - Direct supervision of intermediaries must be visible, transparent and carried out under clearly defined criteria. To make certain that the process is fair and acceptable to the industry, there must be appropriate input from and involvement of industry practitioners.
7. *Do you consider that in relation to the sale of insurance products in banks, the HKMA should be vested with powers similar to those for the independent IA to allow HKMA to regulate bank employees selling insurance products given the different client profile and sale environment in banks?*
- It is wrong in principle to place the selling of insurance in banks under the direct control and supervision of the HKMA. Firstly, it would be confusing to customers who should have complaints dealt with by a single body in line with international practice. Secondly, the HKMA doesn't have the required expertise to do the job. Customers' profiles between banks and agents are not that different to justify the approach. Insurers as product manufacturer would be ultimately responsible for redressing any grievances if substantiated.

- It would be more sensible to have one set of rules administered by one regulatory body in the interests of consistency, transparency and level playing field.
8. *Do you agree that the recommendations as set out in paragraphs 6.5 to 6.8 should be pursued for the independent IA to operate as an independent entity? Any other views?*
- More details are required to justify the proposed organisational and staffing structure. The increase in staff from 123 to 237 mainly for the regulation of insurance intermediaries and management of corporate services seems excessive when one considers that the three existing SROs operate with very few staff and a total annual budget of less than \$20 million. Independent monitoring measures should be in place to ensure the operating terms are fair, reasonable, transparent, no over-spending and lack of internal control.
 - We have strong reservation about giving incentive pay to 50% of the staff as there is no description of the basis on which the incentives are calculated and control mechanism on the award of such incentives.
 - The proposed organization structure focuses mainly on the regulation of different lines of business and market conduct. It does not make any reference to claims-related matters and other increasingly important issues such as anti-money laundering, prevention of insurance fraud, etc.
9. *Do you agree with the proposed checks and balances and governance arrangements for the independent IA as set out in this Chapter?*
- The Governing Board of the future IIA should include insurance practitioners to ensure a balanced view from the industry is presented. Appropriate representation of all stakeholders at various committees should also be considered.
 - There should also be checks and balances to ensure the self-funded IIA will not be engaged in excessive hiring, which in turn will lead to over regulation as under-utilized employees may try to create unimportant work.
 - For areas like the selling of ILAS, the provision of related advice and the related licensing requirements, we will need to set clear supervisory boundaries between the IA and the Securities and Futures Commission.
10. *Do you agree that the Government should provide a lump sum to support the independent IA in its initial years of operation and the independent IA should seek to reach full cost recovery in six years?*
- We agree that a lump sum should be provided to support the establishment of the IIA. Further details on how the lump sum amount of HK\$500 million is derived at should be provided.
 - As on the issue of full cost recovery, we are not able to comment on the reasonableness of fees and levies as the Consultation Paper does not provide sufficient information, such as forecast revenues and expenses vs current expenses, to make a rational assessment.

11. *Do you agree with the proposed fee structure as set out in paragraphs 8.2 and 8.6?*

- As mentioned above, there is no way for us to comment on the fee and levy structure as no details on the expenses are provided. Generally speaking, we are concerned that any substantial increase in the cost of meeting regulation may affect the competitiveness and viability of our market.
- Other than that, we have reservations on the calculation basis of variable licence fee. The term “individual liabilities” in 8.2 (b) is not clearly defined. Furthermore, “the size and complexity of the operations of an insurer” does not necessarily have anything to do with its liabilities.
- As for the market levy, we are gravely concerned about the detrimental effect it will have on our market. Firstly, the proposed uncapped levy of 0.1% on insurance premium for all policies is likely to deter sophisticated buyers from placing their business into the Hong Kong market and regional buyers from taking out insurance from Hong Kong. Secondly, this levy applies to all insurance policies across the board. In other words, the same amount of premium will be subject to levy in the direct business level and then at the reinsurance level. Thirdly, there is no indication on how the levy is to be collected and from whom. The administrative work there involves may give rise to additional cost.