

**KEY LEGISLATIVE PROPOSALS
ON ESTABLISHMENT OF
AN INDEPENDENT INSURANCE
AUTHORITY (“IIA”)

CONSULTATION PAPER**

Financial Services and the Treasury Bureau
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FOREWORD

1. This paper is issued by the Financial Services and the Treasury Bureau (“FSTB”) to consult the public on the key legislative amendments the Insurance Companies Ordinance (“ICO”) (Cap. 41) for the establishment of an independent Insurance Authority (“IIA”).
2. FSTB welcomes written comments on or before **26 January 2013** through any of the following means:

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GLOSSARY

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| Amendment Bill | Insurance Companies (Amendment) Bill |
| AMLO | Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) |
| Bank | Authorized Institution as defined under the Banking Ordinance (Cap. 155) |
| CIB | Hong Kong Confederation of Insurance Brokers |
| Detailed proposals | Proposed Establishment of an Independent Insurance Authority Consultation Conclusions and Detailed Proposals |
| FRCO | Financial Reporting Council Ordinance (Cap. 588) |
| FS | Financial Secretary |
| FSTB | Financial Services and the Treasury Bureau |
| HKFI | Hong Kong Federation of Insurers |
| HKMA | Hong Kong Monetary Authority |
| IA | Insurance Authority |
| IIA | Independent Insurance Authority |
| IAIS | International Association of Insurance Supervisors |
| IARB | Insurance Agents Registration Board |
| ICO | Insurance Companies Ordinance (Cap. 41) |

| | |
|--------------------------|----------------------------------------------------------------------|
| Insurers | Companies carrying on insurance business as authorized under the ICO |
| Insurance intermediaries | Insurance agents and insurance brokers as defined under the ICO |
| LegCo | Legislative Council |
| MPFA | Mandatory Provident Fund Schemes Authority |
| MPFO | Mandatory Provident Fund Schemes Ordinance (Cap. 485) |
| OCI | Office of the Commissioner of Insurance |
| PIBA | Professional Insurance Brokers Association |
| RO | Responsible Officer |
| SFC | Securities and Futures Commission |
| SFO | Securities and Futures Ordinance (Cap. 571) |
| SROs | Self-regulatory Organisations |
| TR | Technical representative |

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 three-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.

CHAPTER 1

INTRODUCTION

Purpose

- 1.1 We are preparing a bill to amend the Insurance Companies Ordinance (“ICO”) (Cap. 41) to provide for the establishment of an independent Insurance Authority (“IA”), including its functions, governance, regulatory powers and related matters. This consultation document seeks the views of the industry and the public on the key legislative proposals that will be included in the Insurance Companies (Amendment) Bill (“Amendment Bill”).

Background

- 1.2 The main purposes of the proposal to establish an IIA to replace the existing Office of the Commissioner of Insurance (“OCI”), a government department headed by the Insurance Authority (“IA”)¹, in performing regulatory oversight over the insurance industry are to align with international practice that financial regulators should be financially and operationally independent of the Government, and to ensure that Hong Kong has a modern infrastructure for the regulation of the insurance industry.
- 1.3 The proposed IIA is intended to bring the following benefits to the industry and the public –
 - (a) enhanced regulation of insurance companies and insurance intermediaries which can provide for better protection of insurance policyholders and facilitate the stable development of the insurance industry;

¹ Thereafter, in this document, “the Insurance Authority (‘IA’)” refers to the existing regulator whereas the “independent Insurance Authority (‘IIA’)” refers to the new regulator to be established, except that all references to the “Insurance Authority” or “Authority” in the key legislative proposals refer to the new regulator to be established.

- (b) greater nimbleness in responding to new regulatory challenges and more effective implementation of international regulatory standards;
- (c) facilitating market innovation and maintaining competitiveness of the industry without undermining regulation; and
- (d) raising consumer confidence in the insurance industry.

The above will help reinforce Hong Kong's position as an international financial centre.

- 1.4 We published in July 2010 a public consultation document on the broad framework for setting up the IIA and putting in place a statutory insurance intermediaries licensing regime. During the three-month consultation period, we met with various trade/professional bodies of the insurance industry and stakeholder groups to hear their views. We also briefed the Legislative Council ("LegCo") Panel on Financial Affairs on the broad framework of the proposals and attended a public hearing session organised by the Panel.
- 1.5 In June 2011, on the basis of general public support for the proposed establishment of the IIA in the consultation exercise in 2010, we published the consultation conclusions and detailed proposals for the establishment of the IIA and entered into the next phase of engagement with the industry and relevant stakeholders.
- 1.6 We have taken into account the comments received during the process and the outcome of further deliberation when preparing the draft key legislative proposals in this document.

Consultation and Next Steps

- 1.7 We will arrange consultative sessions with the industry and relevant stakeholder groups during the consultation period to hear views direct from them. We will also organise public fora to collect public views on the key legislative proposals. Members of the public and any interested parties are invited to offer their views on the key legislative proposals in writing to

the Financial Services and the Treasury Bureau (“FSTB”) on or before 26 January 2013.

- 1.8 We will take into account the views and comments received in this consultation exercise in finalising the Amendment Bill. We aim to introduce the Amendment Bill into LegCo in 2013 with a view to establishing the IIA in 2015.

CHAPTER 2

KEY LEGISLATIVE PROPOSALS – AN OVERVIEW

- 2.1 This chapter provides an overview of the key legislative proposals for establishing the IIA. They will be set out and elaborated in Chapters 3 – 9 of this consultation document.

Coverage of the Key Legislative Proposals

- 2.2 Currently, the regulation of the insurance industry is governed by the ICO. The ICO empowers the IA to authorize insurers to carry on insurance business in Hong Kong and to supervise authorized insurers for the purpose of prudential regulation, and provides for a self-regulatory regime for the registration and supervision of insurance intermediaries.
- 2.3 We will amend the ICO to provide for the establishment of the IIA. The key legislative proposals in this consultation document are prepared on the basis of the detailed proposals set out in the paper entitled “Proposed Establishment of an Independent Insurance Authority Consultation Conclusions and Detailed Proposals” published on 24 June 2011 (“Detailed Proposals”). In developing the key legislative proposals, we have refined and elaborated on the Detailed Proposals, taking into account feedback from relevant stakeholders we received during the engagement process following the last consultation exercise, the existing arrangements under the self-regulatory regime for the registration and supervision of insurance intermediaries, and the governing legislation for other financial regulators as appropriate. 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,² insurance intermediary activities;
- (e) appellate mechanism and checks and balances;
- (f) levy and fees; and
- (g) transitional arrangements for pre-existing insurance intermediaries.

Functions and governance structure of the IIA (details in Chapter 3)

2.4 The key legislative proposals seek to provide for the establishment of the IIA as a body corporate, its functions and general powers and the delegation of such functions and powers, as well as the appointment of Industry Advisory Committees to advise the Governing Board of the IIA on matters related to insurance business.

Licensing regime for insurance intermediaries (details in Chapter 4)

- 2.5 The key legislative proposals cover four specific areas, namely –
- (a) definition of regulated activities;
 - (b) types of licensees under the licensing regime and their eligibility criteria;
 - (c) establishment and maintenance of a register of insurance intermediaries for public inspection; and
 - (d) requirement for all authorized insurers, licensed insurance agencies and licensed insurance broker companies to appoint responsible officers (“ROs”).

² In this document, “banks” refer to authorized institutions under the Banking Ordinance (Cap. 155).

Definition of regulated activities

2.5.1 The key legislative proposals seek to define the intermediary activities subject to conduct regulation by the IIA and the following two broad categories of insurance intermediaries –

- (a) Licensed insurance agents who carry on regulated activities as an agent of an authorized insurer; and
- (b) Licensed insurance brokers who carry on regulated activities as an agent of existing or potential policyholders.

Licensing regime for insurance intermediaries

2.5.2 The key legislative proposals seek to empower the IIA to issue the following five types of licences for the two broad categories of licensed insurance intermediaries viz. licensed insurance agents and licensed insurance brokers (please also see the illustration in the diagram at **Annex A**) –

- (a) for licensed insurance agents who carry on regulated activities as an agent of an authorized insurer –
 - (i) licensed individual insurance agents;
 - (ii) licensed insurance agencies; and
 - (iii) licensed technical representatives (“TRs”) (agent); and
- (b) for licensed insurance brokers who carry on regulated activities as an agent of existing or potential policyholders –
 - (iv) licensed insurance broker companies; and
 - (v) licensed TRs(broker).

2.5.3 The key legislative proposals also seek to set out the eligibility criteria for obtaining a licence and the relevant licence application and renewal procedures, and provide that all pre-existing insurance intermediaries who are validly registered with the relevant Self-regulatory Organisation (“SRO”) ³ immediately before the commencement of the statutory licensing regime will be deemed to be licensed by the IIA for 3 years upon

³ The three SROs are the Insurance Agents Registration Board (“IARB”) under the Hong Kong Federation of Insurers, the Confederation of Insurance Brokers (“CIB”) and the Professional Insurance Brokers Association (“PIBA”).

its establishment to ensure a smooth transition and minimize the impact of the change on pre-existing insurance intermediaries.

Register of insurance intermediaries for public inspection

2.5.4 The IIA will establish and maintain a register of insurance intermediaries for public inspection. The register will include information about the particulars of an insurance intermediary, the name of the appointing authorized insurer(s) of a licensed insurance agency or licensed individual insurance agent, the name of the licensed insurance agency/licensed insurance broker company which engages a TR(agent)/TR(broker), the RO of a corporate licensee, the line(s) of business of which each licensee is eligible to carry on and a record of every disciplinary action against a licensee or an RO within the last 5 years. Licensees and ROs will have a statutory duty to provide information to the IIA and inform the IIA of changes.

Requirement for all authorized insurers, licensed insurance agencies and licensed insurance broker companies to appoint ROs

2.5.5 The key legislative proposals seek to stipulate that each licensed insurance agency and licensed insurance broker company will be required to have an RO to ensure that internal control and procedures are in place and observed by these licensees and their TRs. Likewise, each authorized insurer will be required to have an RO to ensure that internal control and procedures are in place and observed by the agents and agencies appointed by it. An authorized insurer's Chief Executive Officer would be deemed as its RO.

Regulatory powers of the IIA (details in Chapter 5)

Regulation of licensed insurance intermediaries

2.6.1 The key legislative proposals seek to provide for the IIA's new powers in respect of conduct regulation of licensed insurance intermediaries, covering supervisory and disciplinary powers. The IIA will be vested with inspection and investigative powers which include those to make enquiries and have access to records and documents, to apply to the Court of First Instance for court orders to compel compliance, and to prosecute non-compliance offences summarily.

- 2.6.2 The key legislative proposals set out in broad terms what would be construed as misconduct of a licensed insurance intermediary. When the IIA finds that a licensed insurance intermediary has committed misconduct or not fit and proper, it may impose proportionate supervisory sanctions. There will be checks and balances to ensure proper exercise of disciplinary powers by the IIA.
- 2.6.3 The key legislative proposals seek to empower the IIA to make regulations which are subsidiary legislation subject to negative vetting by LegCo. These regulations will cover specific areas like details of conduct requirements and fees and the levy to be payable to the IIA. They also seek to enable the IIA to publish non-statutory codes of conduct and guidelines for giving guidance relating to practices and standards with which licensed insurance intermediaries are required to comply.
- 2.6.4 Furthermore, the key legislative proposals also seek to cater for circumstances whereby the IIA may consider it necessary to protect the interest of the public and/or existing or potential policyholders by suspending a licensed insurance intermediary from carrying on any regulated activities for a specified period before the determination of the appropriate disciplinary actions to be imposed on the intermediary. There will be procedural safeguards to ensure proper exercise of such specified suspension power by the IIA.

Regulation of authorized insurers

- 2.7 For the purpose of improving the existing ICO provisions on the regulation of authorized insurers, the key legislative proposals seek to provide the IIA with inspection and investigative powers for the regulation of authorized insurers that correspond to those proposed for its regulation of licensed insurance intermediaries.

Regulatory arrangements for banks' insurance intermediary activities (details in Chapter 6)

- 2.8 The key legislative proposals seek to empower the IIA to delegate to the Hong Kong Monetary Authority ("HKMA") its inspection and investigative functions (re. para. 2.6.1 above) and the specified suspension power (re. para. 2.6.4 above) in respect

of the regulation of banks’ insurance intermediary activities, subject to approval by the Chief Executive in Council (“CE in Council”) for the proposed delegation. The relevant legislative proposals also set out the delegation mechanism.

Appellate mechanism and checks and balances (details in Chapter 7)

2.9 The key legislative proposals seek to provide for the establishment of an Insurance Appeals Tribunal (“IAT”) for considering appeals against relevant decisions made by the IIA as well as decisions made by the HKMA (regarding regulation of banks’ insurance intermediary activities), and set out the eligibility criteria for appointment to the IAT, its powers, procedures relevant to the review of IIA’s decisions and the list of decisions that are subject to review by the IAT. There will also be other statutory requirements to enhance the accountability of the IIA such as tabling the IIA’s annual budget before LegCo.

Levy and fees (details in Chapter 8)

2.10 The key legislative proposals seek to provide for the following –

- (a) the rates of levy payable by policyholders to the IIA⁴ are to be specified by the CE in Council by order published in the Gazette (which is subsidiary legislation subject to negative vetting by LegCo);
- (b) a mechanism for review of the levy; and
- (c) any fees payable by users and licensees⁵ to the IIA are to be prescribed in regulations to be made by the CE in Council (which is subsidiary legislation subject to negative vetting by LegCo).

⁴ The IIA will adopt an incremental approach in achieving the target level of levy in the first 5 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% |

⁵ License fees payable by insurance intermediaries will be waived in the first 5 years after the establishment of the IIA.

Transitional arrangements for pre-existing insurance intermediaries (details in Chapter 9)

- 2.11 The key legislative proposals are to deem pre-existing insurance intermediaries and their ROs (including chief executives of insurance broker companies) validly registered with the SROs as licensees and ROs under the new licensing regime for 3 years. In addition, we have set out the broad approaches to handle outstanding cases upon the inception of the IIA, including pre-IIA complaints and disciplinary cases that remain unresolved by the SROs; complaints lodged with the IIA about pre-IIA events; pre-IIA appeal cases that remain unresolved by the relevant appellate bodies under the self-regulatory regime; effect of unexpired disciplinary sanctions imposed by the SROs; pre-IIA applications for registration with the SROs that have not yet been approved; and pre-IIA notifications of changes of particulars and appointments of ROs that have not yet been fully processed by the SROs. We will further engage the SROs to discuss the operational details for the transition.

Preparation of the Amendment Bill

- 2.12 Preparation of the Amendment Bill for the establishment of the IIA is going on. The key legislative proposals in this consultation document should not be regarded as final. We will continue to refine these proposals, taking into account views and comments received from the public and industry in this consultation exercise. In parallel, we will engage the industry and relevant stakeholders in the coming months to discuss relevant transitional matters. We aim to finalise the Amendment Bill for introduction into LegCo in 2013.

CHAPTER 3

KEY LEGISLATIVE PROPOSALS – FUNCTIONS AND GOVERNANCE STRUCTURE OF THE INDEPENDENT INSURANCE AUTHORITY

3.1 Functions of the IIA

Detailed Proposals issued in June 2011 (c.f. para. 6 of the document and paras. 1 – 2 of Annex A to the document)

3.1.1 We have proposed that –

- (a) similar to those of the existing IA, the principal functions of the IIA are to regulate the insurance industry for the promotion of the general stability of the industry and the protection of existing and potential policyholders; and
- (b) the IIA would assume additional functions, including those to perform direct regulation of the conduct of insurance intermediaries; organise public education programmes; conduct thematic research and studies concerning the industry; and assist the Financial Secretary (“FS”) in maintaining the financial stability of Hong Kong.

Key Legislative Proposals

3.1.2 To reflect the above, we **propose** to amend section 4A(2) of the ICO (which sets out the existing functions of the IA) to confer on the IIA the following additional functions –

- (a) *the IIA shall regulate the conduct of insurance intermediaries through a licensing regime;*
- (b) *the IIA shall promote understanding by potential and existing insurance policyholders of insurance products and the insurance industry in Hong Kong;*
- (c) *the IIA shall formulate effective regulatory strategies and facilitate sustainable market development of the insurance industry;*

(d) the IIA shall conduct studies into matters affecting the insurance industry in Hong Kong; and

(e) the IIA shall assist the FS in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the insurance industry.

[Remarks: The existing reference to “self-regulation by market and professional bodies of the insurance industry” in section 4A(2)(e) will be removed.]

3.2 General Powers of the IIA

Key Legislative Proposals

3.2.1 Drawing reference from the governing legislation for other financial regulators⁶, we **propose** to introduce an express provision in the ICO to set out the general powers of the IIA in respect of the performance of its functions along the following line –

(a) The IIA may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.

(b) Specifically, the IIA may –

(i) hold, acquire, lease, sell, charge, dispose of or otherwise deal with all kinds of property, whether movable or immovable;

(ii) enter into, carry out, assign or accept the assignment of, vary or rescind any contract, agreement, memorandum of understanding or other obligation;

(iii) with the approval of the FS, borrow money on security or other conditions;

(iv) receive and expend moneys;

(v) accept gifts;

(vi) publish or otherwise make available materials indicating to the public any matter relating or

⁶ For example, section 5(4) of the Securities and Futures Ordinance (“SFO”) (Cap.571) and section 10 of the Financial Reporting Council Ordinance (“FRCO”) (Cap.588).

- incidental to the performance by the Authority of any of its functions;*
- (vii) establish wholly-owned subsidiaries;*
- (viii) do all such things as the Authority thinks fit in respect of its administration and management; and*
- (ix) exercise such other powers as are conferred on the Authority under the ICO or any other Ordinance.*

3.3 Set-up of the IIA

Detailed Proposals issued in June 2011 (c.f. paras. 25 – 26 of the document and para. 34 of Annex A to the document)

- 3.3.1 We have proposed that the Chief Executive (“CE”) will appoint the Governing Board of the IIA to provide leadership and direction and to guide the IIA in the development of a corporate strategy to achieve its objectives and perform its functions effectively. We have also proposed that the Governing Board –
- (a) would comprise predominately non-executive directors from a cross-section of the community, including but not limited to one or two members with knowledge of the insurance industry (on an ad personam basis to ensure independence) who are free from any conflict of interests with IIA’s licensees, relevant professional fields (e.g. actuarial, accountancy, legal), the Consumer Council, the academia and the Government; and
 - (b) would be empowered to form supporting committees designated to oversee specific areas of the IIA’s work and make recommendations to the Board. The supporting committees would include but not limited to an Audit Committee, a Finance Committee, a Remuneration Committee, a Management Committee and a Disciplinary Committee.

Key Legislative Proposals

- 3.3.2 After further deliberation, in order to promote independence of the IIA, we propose not to appoint any Government representative to the Governing Board of the IIA. To reflect

the Detailed Proposals, we **propose** to amend the ICO in the following manner –

- (a) *The IIA shall be established as a body corporate with the corporate name of “Insurance Authority” in English and “保險業監管局” in Chinese.*
- (b) *The IIA has perpetual succession under its corporate name; is required to have a common seal; and is capable of suing and being sued in its corporate name.*
- (c) *The IIA shall consist of –*
 - *a chairman appointed by the CE;*
 - *a chief executive officer appointed by the CE; and*
 - *not fewer than six directors appointed by the CE.*
- (d) *The number of non-executive directors of the IIA is to exceed the number of executive directors (the chief executive officer is an executive director). Of the non-executive directors –*
 - *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 the CE to be suitable for such appointment; and*
 - *the other non-executive directors are to be appointed from amongst persons who, either because of their knowledge in actuarial science, accountancy, law, consumer affairs, or because of their professional or occupational experience, appear to the CE to be suitable for such appointment.*
- (e) *The IIA may perform any of its functions despite a vacancy in its membership.*
- (f) *The IIA may establish standing committees and special committees⁷ to give advice and assistance to the Authority*

⁷ A standing committee is established for a general purpose such as the Finance Committee whereas a special committee is established for a special purpose to deal with particular issues. An example could be a special committee to review a guideline.

in connection with any matter with which the Authority is concerned.

- (g) The IIA may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the IIA, and may appoint a member of the committee to be the chairman of the committee.*
- (h) A reference of a matter to a committee for advice and assistance does not prevent the IIA from performing any of its functions.*
- (i) The IIA may give directions to a committee, whether generally or in any particular case, and whether regarding the matter in which it is to act or otherwise, and the committee must act in accordance with such directions.*

3.3.3 Noting that the IIA would require other persons and committees to assist it to perform its various functions and drawing reference from other legislation governing financial regulators⁸, we also **propose** to amend the ICO in the following manner to empower the IIA to delegate its functions⁹, other than those important functions which are expressly specified to be non-delegable to ensure that these functions can only be performed by the governing board of the IIA as a safeguard to ensure their proper exercise (details in para. 7.2.1(c) and para. 7.2.2(b) of this document). The Schedule of non-delegable functions may be amended by LegCo resolution.

- (a) The IIA may delegate any of its functions to its member, its committee, and its employee, whether by reference to the name of the employee or to the office held by the*

⁸ For example, section 10 of the SFO and section 11 of the FRCO.

⁹ The provisions on general delegation of functions provide for such delegation within the IIA to its members, committees and employees. They are not for the delegation of functions to the Hong Kong Monetary Authority (“HKMA”) for the regulation of banks’ insurance intermediary activities, the specific provisions for which will be set out in Chapter 6 of this document.

employee. The IIA may also authorize the delegate to sub-delegate the function.

- (b) The IIA may revoke a delegation, or an authorization in respect of a sub-delegation; attach restrictions or conditions to a delegation; or attach restrictions or conditions to an authorization in respect of a sub-delegation, including those on the exercise of the power to sub-delegate.*
- (c) A delegation or sub-delegation does not prevent the IIA or its delegate from concurrently performing the function delegated or sub-delegated.*
- (d) If a person or committee purports to act pursuant to a delegation or sub-delegation, the person or committee is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.*
- (e) There will be a schedule to ICO to specify the following non-delegable functions of IIA –*
 - (i) to make subsidiary legislation under or pursuant to any Ordinance;*
 - (ii) to borrow money;*
 - (iii) to establish a wholly owned subsidiary;*
 - (iv) to publish or otherwise make available materials indicating to persons who are, or who carry on activities, regulated by the IIA under any of the relevant provisions and, where the IIA considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the IIA proposes to perform any of its functions;*
 - (v) to establish any committee;*
 - (vi) to refer any matter to a committee;*
 - (vii) to appoint a person to be a member or chairman of a committee;*
 - (viii) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee;*

- (ix) to submit to the FS estimates, to prepare any financial statements and reports, and to appoint auditors;*
- (x) to specify the time at which a specified decision is to take effect;*
- (xi) to consult the FS with a view to recommending to the CE in Council that the levy be reduced and recommend to the CE in Council to reduce the levy;*
- (xii) to appoint any person, other than an employee of the IIA or HKMA, to conduct investigation in respect of authorized insurers and licensees; and*
- (xiii) to cause an investigation report to be published.*

3.4 Industry Advisory Committees

Detailed Proposals issued in June 2011 (c.f. para. 25 of the document and para. 34 of Annex A to the document)

3.4.1 At present, under section 54 of the ICO, an insurance advisory committee has been set up to advise the CE on matters relating to the carrying on of insurance business as the CE may refer to it, etc. The CE appoints the members of the insurance advisory committee and the FS or his representative serves as the Chairman of the Committee. We have proposed that, after the establishment of the IIA, there should be at least two industry advisory committees (“IACs”), one for life insurance and the other for non-life insurance, to advise and make recommendation to the IIA on industry-related issues and policies. Members of the IACs shall be appointed by the FS after consulting the IIA, and may comprise insurance practitioners, industry body representatives and user/consumer groups.

Key Legislative Proposals

3.4.2 On the basis of the above, we **propose** to amend the ICO to provide for the setting up of IACs in the following manner –

- (a) to provide that the IIA shall establish two committees each to be known as an industry advisory committee (“IAC”), to advise it on any matter it refers to them in relation to long term business and general business.*

- (b) *to provide that the IIA may, after consulting the FS, establish additional IACs to advise it on matters of policy regarding any of its functions when the IIA considers it necessary.*
- (c) *to provide that all members of the IACs shall be appointed by the FS after consulting the IIA.*

[Remarks: The existing insurance advisory committee set up under section 54 of the ICO will be dissolved upon establishment of the IIA.]

CHAPTER 4

KEY LEGISLATIVE PROPOSALS – LICENSING REGIME FOR INSURANCE INTERMEDIARIES

4.1 Overall Framework

Scope of the Key Legislative Proposals

4.1.1 Under the proposed regulatory regime, the IIA will be responsible for the licensing and direct regulation of insurance intermediaries. For this purpose, we shall 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 will cover the following major areas –

- (a) definition of regulated activities (i.e. insurance intermediary activities which are subject to conduct regulation by the IIA);
- (b) offences against the carrying on of regulated activities without a licence;
- (c) operation of the licensing system, including –
 - (i) the types of licensees under the new regime;
 - (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.

The relevant legislative proposals are explained in detail in paragraphs 4.2 – 4.5. The transitional arrangements, including the deeming of all pre-existing insurance intermediaries, who are validly registered with the SROs, as IIA licensees for 3 years

upon commencement of the statutory licensing regime, will be covered in Chapter 9 of this document.

4.2 Definition of Regulated Activities

Detailed Proposals issued in June 2011 (c.f. para. 14 of Annex A to the document)

4.2.1 We have proposed to define in the Amendment Bill the scope of insurance intermediary activities which are subject to conduct regulation by the IIA (“regulated activities”). Any person who performs such regulated activities would have to be licensed by the IIA.

Key Legislative Proposals

4.2.2 We **propose** to introduce new provisions in the ICO –

- (a) to adopt and define the term “regulated activities”;
- (b) to provide for two broad categories of licensed insurance intermediaries viz. licensed insurance agents and licensed insurance brokers;
- (c) to restrict the carrying on of any unlicensed regulated activity, such that a person must not carry on or hold out as carrying on any regulated activity –
 - (i) as an agent of an authorized insurer¹⁰ unless being a licensed insurance agent; or
 - (ii) as an agent of an existing or potential policyholder¹¹ unless being a licensed insurance broker;

¹⁰ For the purpose of regulation by the IIA, a sub-agency/sub-agent and a TR(agent) will be regarded as an agent of the authorized insurer.

¹¹ For the purpose of regulation by the IIA, a TR(broker) will be regarded as an agent of the policyholder or potential policyholder.

- (d) to stipulate that it is an offence¹² if a person carries on or holds himself out as carrying on a regulated activity without a licence, unless the person is otherwise exempted;
- (e) to provide for exemptions under certain specified circumstances, e.g. professionals, such as accountants, lawyers and actuaries, giving regulated advice wholly incidental to their professional practice as well as trust companies giving regulated advice wholly incidental to the discharge of their duties. This exemption arrangement is modelled on similar arrangements provided for in other legislation on the regulation of financial intermediaries, the most recent one being the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012¹³. Similarly, loss adjusters/assessors, claims settling agents and persons providing ancillary services such as back office supporting staff of an authorized insurer or an insurance intermediary will also be covered by the exemption provision; and
- (f) 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.

4.2.3 The new provisions should be along the following line –

(1) Interpretation

- (a) ***To define a licensed insurance agent 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 insurance agencies, licensed individual insurance agents and licensed TRs(agent).***

¹² There are also similar offences of carrying on regulated activities without authorization or licence in the SFO and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) (Cap. 615).

¹³ The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 was enacted in June 2012 and will come into operation on 1 November 2012.

(b) To define a licensed insurance broker as a person who carries on or holds himself out to carry on any regulated activity as an agent of an existing or potential policy holder, and includes two types of licensees viz. licensed insurance broker companies and licensed TRs(broker).

(2) Definition of regulated activities

(a) To provide that a person carries on a regulated activity if the person –

- (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.***

(b) To provide that a person makes a material decision if the person makes a decision as to any matter specified in para. (2)(d) below.

(c) To provide that a person gives regulated advice if the person gives an opinion in relation to any matter specified in para. (2)(d) below.

(d) The following matters are specified for the purposes of paras. (2)(b) and (2)(c) –

- (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.***

(3) Restriction on carrying on regulated activities

- (a) To provide that unless being a licensed insurance agent, a person must not carry on or hold himself out as carrying on any regulated activity as an agent of an authorized insurer in the course of the person's business or employment or for reward.**
- (b) To provide that unless being a licensed insurance broker, a person must not carry on or hold himself out as carrying on any regulated activity as an agent of a policy holder or a potential policy holder in the course of the person's business or employment or for reward.**
- (c) To provide that a person who, without reasonable excuse, contravenes paras. (3)(a) or (3)(b) above commits an offence¹⁴ and is liable –**
- 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**
 - on summary conviction to a fine at level 6¹⁵ 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.**
- (d) To provide that the restrictions in paras. (3)(a) and (3)(b) above do not –**
- (i) prohibit a solicitor from giving regulated advice, or holding himself out as so giving regulated advice, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);**
 - (ii) prohibit a counsel from giving regulated advice, or holding himself out as so giving regulated advice, wholly incidental to his practice as a counsel;**
 - (iii) prohibit a certified public accountant from giving**

¹⁴ C.f. section 114(9) of the SFO and section 34N(1B) of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

¹⁵ Please refer to **Annex B** which sets out the levels of fines pursuant to section 113C(2) of the Criminal Procedure Ordinance (Cap. 221).

- regulated advice, or holding himself out as so giving regulated advice, wholly incidental to his or her practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);*
- (iv) *prohibit a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) from giving regulated advice, or holding himself out as so giving regulated advice, wholly incidental to the discharge of its duty as such trust company;*
- (v) *prohibit an actuary within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426) from giving regulated advice, or holding himself out as so giving regulated advice, wholly incidental to his practice as an actuary;*
- (vi) *prohibit a person from giving regulated advice through –*
- *a newspaper, magazine, book or other publication that is made generally available to the public (excluding one that is made available on subscription only);*
 - *a television broadcast or radio broadcast for reception by the public; or*
 - *electronic communication to the public;*
- (vii) *prohibit a person from giving regulated advice, or holding himself out as so giving regulated advice, if he acts in the course of carrying on the business of –*
- *loss assessment on behalf of an authorized insurer, policyholder or insurance claimant; or*
 - *settling claims on behalf of an authorized insurer;*
- or*
- (viii) *prohibit a person from carrying on a regulated activity if he solely provides back office administration services in relation to such an activity.*

(4) Conduct of activities outside Hong Kong

To provide that if –

- (i) *a person actively markets, whether by himself or another person on his behalf from a place outside Hong Kong, to the public any services that he provides; and*
- (ii) *such services, if provided in Hong Kong, would constitute a regulated activity,*

then the provision of such services so marketed shall be regarded as carrying on that regulated activity as an insurance agent or insurance broker as the case may be, and the person's marketing of such services shall be regarded as holding himself out as carrying on that regulated activity as an insurance agent or insurance broker as the case may be.

4.3 Operation of the Licensing System

Detailed Proposals issued in June 2011 (c.f. paras. 7 – 8 of Annex A to the document)

4.3.1 We have proposed that the Amendment Bill will specify the eligibility criteria for licensing insurance intermediaries with reference to the existing requirements as specified by the IA under the ICO and those by the SROs as stipulated in their respective codes of conduct, guidelines, rules and regulations. We have also proposed that whilst the professional standards for insurance intermediaries would require regular reviews in light of local and international insurance market developments and consumer expectation, it is not our intention to tighten the existing eligibility criteria for the purpose of establishing the IIA.

Key Legislative Proposals

4.3.2 We **propose** a licensing framework as follows –

(A) *Types of licensees*

4.3.2.1 There will be two broad categories of licensees, namely, licensed insurance agents and licensed insurance brokers.

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 –

(a) licensed individual insurance agents;

- (b) licensed insurance agencies¹⁶; and
- (c) licensed TRs(agent)¹⁷.

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 licensees¹⁸ –

- (a) licensed insurance broker companies; and
- (b) licensed TRs(broker)¹⁹.

4.3.2.2 Under the existing self-regulatory regime, a valid insurance agent registration with the Insurance Agents Registration Board (“IARB”) is renewable every 3 years while a valid insurance broker registration with the Hong Kong Confederation of Insurance Brokers (“CIB”) or Professional Insurance Brokers Association (“PIBA”) is not time-limited. To minimize the impact on pre-existing insurance intermediaries, we will adopt the same arrangement and the Amendment Bill will provide that the licences for insurance agencies, individual insurance agents and TRs(agent) are renewable every 3 years whereas there is no renewal requirement for the licences for insurance broker companies and TRs(broker) as long as they continue to comply with the licensing requirements.

(B) Eligibility criteria

4.3.2.3 To minimize the impact on pre-existing insurance intermediaries,

¹⁶ Insurance agencies are business entities (sole proprietorships, partnerships or limited companies), whereas individual insurance agents are individuals.

¹⁷ Under the proposed licensing regime, TRs(agent) are individuals engaged by insurance agencies for carrying on a regulated activity as an agent of an authorized insurer. Examples of TRs(agent) are frontline bank staff selling insurance policies in a bank which is a licensed insurance agency, staff of a car dealer (which is a licensed insurance agency) who sells motor insurance policies, or frontline staff of a travel agency who sells travel insurance policies.

¹⁸ At present, all members of CIB and PIBA, the two SROs for insurance brokers, are limited companies (i.e. none of them are sole proprietors or partnerships). The staff engaged by the registered broker companies for insurance brokerage business are registered with CIB and PIBA as TRs of these insurance broker companies.

¹⁹ TRs (broker) are individuals engaged by insurance broker companies for carrying on a regulated activity as an agent of an existing or potential policyholder.

in formulating the eligibility criteria for obtaining a licence from the IIA, we have drawn reference from the eligibility criteria under the current registration regime, including the relevant statutory requirements for authorized insurance brokers specified by the IA under the ICO and stipulated in the codes issued by the SROs. We would reiterate that it is not our intention to tighten the pre-existing eligibility criteria for the purpose of establishing the IIA. Having said the above, we believe that in discharging its functions, the IIA would review the professional standards for insurance intermediaries from time to time in light of local and international insurance market developments and consumer expectation.

4.3.2.4 In general, similar to the existing registration regime, applicants for insurance intermediary licences will be required to fulfil the following eligibility criteria –

- (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;
- (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 business²⁰ which the applicant may engage in if a licence is

²⁰ Same as the existing practice under the self-regulatory regime, subject to passing the relevant qualifying professional examinations, licensed insurance agents may engage in one or more of the following lines of insurance business –

- (i) general business;
- (ii) long term business (excluding linked long term business) ;
- (iii) long term business (including linked long term business); and
- (iv) restricted scope travel business.

Licensed insurance brokers may engage in one or more of the first three lines of business listed above but not restricted scope travel business.

According to the Code of Practice issued by IARB, restricted scope travel business in relation to a tour, travel package, trip or other travel services arranged by a travel agent, means effecting and carrying out contracts of travel insurance that is tied to the tour, travel package, trip or other travel services by the travel agent for its clients, but excluding any annual travel insurance policies or any travel insurance policies for tours, travel packages, trips or any other services which the travel agent does not arrange for the clients of the travel agent. We will draw reference to this definition when we define this line of business in the ICO.

granted;

(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

(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.

4.3.2.5 At present, all insurance brokers registered with the two broker SROs are limited companies, none being sole proprietors or partnerships. In the new regulatory regime, we **propose** that this be reflected in the eligibility criteria for the insurance broker company licence. 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).

(C) Preservation of other existing industry practices with regard to sub-agents and sub-agencies

4.3.2.6 At present, there are insurance agencies engaging individuals and business entities²¹ which are validly registered with the IARB as their sub-agents and sub-agencies respectively. We **propose** that this business practice 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.

(D) Application for an insurance intermediary licence

4.3.2.7 The Amendment Bill will stipulate the following with regard to the procedures for applications for an insurance intermediary licence –

²¹ They can be sole proprietorships, partnerships or limited companies.

- (a) applications should be made in the form and manner specified by the IIA;
- (b) applications should be accompanied by a fee, which will be waived in the first 5 years after the establishment of the IIA (also see para. 8.1.2(b) in Chapter 8 of this document); and
- (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 (also see para. 7.1.2 and Schedule B in Chapter 7 of this document)²².

4.3.2.8 To better protect the interests of policyholders, it is important for the IIA to ensure the integrity of information provided by licence applicants before approving a licence application. With reference to the licensing regime under the Securities and Futures Ordinance (“SFO”) (Cap. 571) and Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) (Cap. 615), the Amendment Bill will provide 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.

(E) Continued compliance after grant of licence

4.3.2.9 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. The IIA may vary, suspend or revoke a licence granted to a person if the person ceases to meet the eligibility criteria set out under para. 4.3.3 below or any licensing conditions imposed by the IIA²³. The

²² The IIA’s decision of not granting a licence is also appealable to the Insurance Appeals Tribunal (“IAT”). Please refer to para. 7.1.2 and Schedule B in Chapter 7 of this document for details.

²³ By virtue of section 46 of the Interpretation and General Clauses Ordinance (Cap.1), where any Ordinance confers power upon any person to grant a licence, such power shall include the power to vary, suspend or withdraw the licence.

same applies to deemed licensees in the case of deemed licences during the transitional period of 3 years from the commencement of the new licensing regime (see para. 9.1.2 of Chapter 9 of this document).

4.3.2.10 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 date²⁴. 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 (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.

4.3.3 We **propose** to introduce a new Part in the ICO to provide for the licensing framework explained in paras. 4.3.2.1 to 4.3.2.10 above along the following line –

(1) Grant of licence – insurance agency

(a) To provide that an application for the grant of an insurance agency licence must be made to the IIA in the form and manner specified by the IIA; and accompanied by a specified fee payable to the IIA.

(b) To provide that the IIA may, on the application made under para. (1)(a), grant to the applicant an insurance agency licence.

(c) To provide that the IIA must not grant a licence unless the applicant –

²⁴ It will be a statutory requirement under the amended ICO for a licensee to notify the IIA of such changes within 7 business days after the occurrence of the relevant event (see the legislative proposals under para. 4.4.3 of this Chapter).

- (i) *is a sole proprietorship, a partnership, or a corporation²⁵;*
 - (ii) *is fit and proper;*
 - (iii) *is appointed by at least one authorized insurer; and*
 - (iv) *has lodged an application for approval of an individual as the RO of the applicant (c.f. para. (2) under para. 4.5.5 of this document), and the IIA is satisfied that the individual could be approved as the RO of the applicant.*
- (d) *To provide that a licence granted is subject to any reasonable conditions as the IIA may impose and the IIA may, at any time, by notice in writing, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.*
- (e) *To provide that where the IIA by notice in writing amends or revokes any condition or imposes any new condition, the amendment, revocation or imposition takes effect at the time the notice is received by the licensee²⁶ or at the time specified in the notice, whichever is the later.*
- (f) *To provide that a licensed insurance agency must not, when carrying on a regulated activity as an insurance agent, use a name other than the name specified in the licence.*
- (g) *To provide that a licence granted is valid for 3 years or, if the IIA considers it appropriate in any particular case, any other period determined by the IIA, beginning on the date on which it is granted.*
- (h) *To provide that if a licensed insurance agency ceases to be appointed by at least one authorized insurer, the licence of the licensee is deemed to be suspended as from the date on which the cessation takes effect and deemed to be revoked*

²⁵ “Corporation” will be defined in the Amendment Bill to mean “a company or a non-Hong Kong company as defined in the Companies Ordinance (Cap.32)”.

²⁶ With reference to section 400 of the SFO and other relevant legislation, there will be provisions in the amended ICO to explain what constitutes “the time the notice is received by the licensee”

after 90 days from that date if the licensee has not been appointed by any authorized insurer within 90 days after that date.

(2) Grant of licence – individual insurance agent

- (a) To provide that an application for the grant of an individual insurance agent licence must be made to the IIA in the form and manner specified by the IIA; and accompanied by a specified fee payable to the IIA.*
- (b) To provide that the IIA may, on the application made under para. (2)(a), grant to the applicant an individual insurance agent licence.*
- (c) To provide that the IIA must not grant a licence unless the applicant –
 - (i) is fit and proper;*
 - (ii) fulfills the requirements in respect of relevant qualifying insurance examinations as specified by the IIA; and*
 - (iii) is appointed by at least one authorized insurer.**
- (d) To provide that a licence granted is subject to any reasonable conditions as the IIA may impose and the IIA may, at any time, by notice in writing, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.*
- (e) To provide that where the IIA by notice in writing amends or revokes any condition or imposes any new condition, the amendment, revocation or imposition takes effect at the time the notice is received by the licensee or at the time specified in the notice, whichever is the later.*
- (f) To provide that a licence granted is valid for 3 years or, if the IIA considers it appropriate in any particular case, any other period determined by the IIA, beginning on the date on which it is granted.*
- (g) To provide that if a licensed individual insurance agent ceases to be appointed by at least one authorized insurer, the licence of the licensee is deemed to be suspended as from the*

date on which the cessation takes effect and deemed to be revoked after 90 days from that date if the licensee has not been appointed by any authorized insurer within 90 days after that date.

(3) Grant of licence – TR(agent)

- (a) To provide that an application for the grant of a TR(agent) licence to an individual must be made to the IIA in the form and manner specified by the IIA; and accompanied by the specified fee payable to the IIA.*
- (b) To provide that the IIA may, on the application made under para. (3)(a), grant to the applicant a TR(agent) licence.*
- (c) To provide that the IIA must not grant a licence unless the individual –
 - (i) is fit and proper;*
 - (ii) fulfils the requirements in respect of relevant qualifying insurance examinations as specified by the IIA; and*
 - (iii) is engaged by a licensed insurance agency.**
- (d) To provide that an individual so licensed is eligible to carry on a regulated activity as an insurance agent in relation to any line of business specified in the licence of the licensed insurance agency which engages the individual.*
- (e) To provide that a licence granted is subject to any reasonable conditions as the IIA may impose and the IIA may, at any time, by notice in writing, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.*
- (f) To provide that where the IIA by notice in writing amends or revokes any condition or imposes any new condition, the amendment, revocation or imposition takes effect at the time the notice is received by the licensee or at the time specified in the notice, whichever is the later.*
- (g) To provide that a licence granted is valid for 3 years or, if the IIA considers it appropriate in any particular case, any other period determined by the IIA, beginning on the date on which it is granted.*

(h) To provide that if a licensed TR(agent) ceases to be engaged by a licensed insurance agency, the licence of the licensed TR(agent) is deemed to be suspended as from the date on which the cessation takes effect and deemed to be revoked after 90 days from that date if the licensed TR(agent) has not been engaged by any licensed insurance agency within 90 days after that date.

(4) Grant of licence – insurance broker company

(a) To provide that an application for the grant of an insurance broker company licence must be made to the IIA in the form and manner specified by the IIA; and accompanied by a specified fee payable to the IIA.

(b) To provide that the IIA may, on the application made under para. (4)(a), grant to the applicant an insurance broker company licence.

(c) To provide that the IIA must not grant a licence unless the applicant –

(i) is a corporation;

(ii) is fit and proper;

(iii) fulfils the requirements in respect of capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts; and

(iv) has lodged an application for approval of an individual as the RO of the applicant, and the IIA is satisfied that the individual could be approved as the RO of the applicant.

(d) To provide that a licence granted is subject to any reasonable conditions as the IIA may impose and the IIA may, at any time, by notice in writing, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.

(e) To provide that where the IIA by notice in writing amends or revokes any condition or imposes any new condition, the amendment, revocation or imposition takes effect at the time

the notice is received by the licensee or at the time specified in the notice, whichever is the later.

- (f) To provide that a licensed insurance broker company must not, when carrying on a regulated activity as an insurance broker, use a name other than the name specified in the licence.*

(5) Grant of licence – TR(broker)

- (a) To provide that an application for the grant of a TR (broker) licence to an individual must be made to the IIA in the form and manner specified by the IIA; and accompanied by a specified fee payable to the IIA.*
- (b) To provide that the IIA may, on the application made under para. (5)(a), grant to the applicant a TR(broker) licence.*
- (c) To provide that the IIA must not grant a licence unless the individual–
 - (i) is fit and proper;*
 - (ii) fulfils the requirements in respect of relevant qualifying insurance examinations as specified by the IIA; and*
 - (iii) is engaged by a licensed insurance broker company.**
- (d) To provide that an individual so licensed is eligible to carry on a regulated activity as an insurance broker in relation to any line of business specified in the licence of the licensed insurance broker company which engages the individual.*
- (e) To provide that a licence granted is subject to any reasonable conditions as the IIA may impose and the IIA may, at any time, by notice in writing, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.*
- (f) To provide that where the IIA by notice in writing amends or revokes any condition or imposes any new condition, the amendment, revocation or imposition takes effect at the time the notice is received by the licensee or at the time specified in the notice, whichever is the later.*

(g) To provide that if a licensed TR(broker) ceases to be engaged by a licensed insurance broker company, the licence of the licensed TR(broker) is deemed to be suspended as from the date on which the cessation takes effect and deemed to be revoked after 90 days from that date if the licensed TR(broker) has not been engaged by any licensed insurance broker company within 90 days after that date.

(6) Determination of “fit and proper”

(a) To provide that, in considering whether a person²⁷ is a fit and proper person, the IIA may, in addition to any other matter that the IIA considers relevant, have regard to the following –

- (i) the educational or other qualifications or experience of the person; the person’s ability to carry on a regulated activity competently, honestly and fairly;***
- (ii) the reputation, character, reliability and financial integrity of the person ;***
- (iii) whether the person has failed to comply with any requirement imposed under the ICO or any relevant regulations;***
- (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;***
- (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;***

²⁷ In paragraph (6), unless being specified, a “person” refers to –

- (a) where the person is an individual, the person himself;
- (b) where the person is a partnership, each partner in the partnership;
- (c) where the person is a corporation (other than a bank), the corporation and each director and controller of the corporation; or
- (d) where the person is a bank, the bank and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance) and responsible officer (“RO”) of the bank.

There will be provisions in the amended ICO to reflect the meaning of “person” in this context.

- (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;*
- (vii) *a decision made in respect of the person by the HKMA, the Securities and Futures Commission (“SFC”), the Mandatory Provident Fund Schemes 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;*
- (viii) *any information, whether provided by the person or not, relating to*
 - *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 made (as the case may be); or*
 - *where the person is a corporation in a group of companies,*
 - (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 subparagraph (A);*
- (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;*
- (x) *the state of affairs of any other business which the person carries on or propose to carry on;*
- (xi) *whether the person has ever been convicted of any criminal offence in Hong Kong or elsewhere.*

(b) To define the following for the purpose of para. (6)(a) above –

- *shadow director means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person must not be regarded as a shadow director by reason only of the fact that the director acts on advice given by the person in a professional capacity;*
- *a member of the senior management in relation to a corporation, means a person who performs managerial functions in relation to the corporation under the directors' immediate authority; but excludes –*
 - (i) a receiver or manager of the corporation's property; and*
 - (ii) a special manager of the corporation's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).*
- *a person becomes insolvent if –*
 - (i) the person goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or*
 - (ii) a receiver of the person is appointed.*

(7) Applicants to provide information

(a) To provide that an applicant who applies –

- (i) for a licence;*
 - (ii) for approval of a person to be an RO (see para. 4.6.5 of this document); or*
 - (iii) for renewal of a licence,*
- must provide the IIA with such information as it may reasonably require to enable it to consider the application.*

(b) To provide that in considering an application, the IIA may have regard to any relevant information in its possession whether provided by the applicant or not.

(8) Renewal of licences issued

- (a) To provide that a licensed insurance agency, a licensed individual insurance agent or a licensed TR(agent) may apply to the IIA for renewal of its licence.**
- (b) To provide that an application for renewal must be –**
- (i) made not later than 45 days before the licence is due to expire;**
 - (ii) made to the IIA in the form and manner specified by the IIA; and**
 - (iii) accompanied by a specified fee payable to the IIA.**
- (c) To provide that the IIA must not renew –**
- (i) an insurance agency licence unless the applicant –**
 - is a sole proprietorship, a partnership, or a corporation;**
 - is fit and proper;**
 - is appointed by at least one authorized insurer; and**
 - has an RO, or has lodged an application for approval of an individual as the RO of the applicant and the IIA is satisfied that the individual could be approved as the RO of the applicant;**
 - (ii) an individual insurance agent licence unless the applicant –**
 - is fit and proper;**
 - fulfils the requirements in respect of relevant qualifying insurance examinations as specified by the IIA; and**
 - is appointed by at least one authorized insurer; and**
 - (iii) a TR(agent) licence unless the applicant –**
 - is fit and proper;**
 - fulfils the requirements in respect of relevant qualifying insurance examinations as specified by the IIA; and**
 - is engaged by a licensed insurance agency.**
- (d) To provide that the IIA may, on renewing a licence on an application made, by notice in writing amend or remove any condition of the licence previously imposed on the applicant, or impose any new condition on the licensee, that the IIA thinks fit.**

- (e) *To provide that where the IIA by notice in writing amends or removes any condition or imposes any new condition, the amendment, removal or imposition takes effect at the time the notice is received by the applicant or at the time specified in the notice, whichever is the later.*
- (f) *To provide that a licence in respect of which an application for renewal has been made and which would have expired before the IIA has made a determination on the application by the IIA remains in force –*
- *until the licence is renewed; or*
 - *if the renewal is refused, until the IIA's decision to refuse to renew the licence takes effect,*
- unless the application is withdrawn or the licence is revoked.*
- (g) *To provide that a renewal granted takes effect –*
- *on the day following the expiration of the licence; or*
 - *if para. (8)(f) applies, on the day following the day on which the licence would have expired but for that para.*
- (h) *To provide that a licence renewed is valid for 3 years or, if the IIA considers it appropriate in any particular case, any shorter period determined by the IIA.*

(9) Offence to provide false information in connection with application for licence

- (a) *To provide that a person commits an offence if the person, in connection with an application for the grant or renewal of a licence –*
- *makes a statement that is false or misleading in a material particular;*
 - *knows that, or is reckless as to whether, the statement is false or misleading in a material particular.*
- (b) *To provide that a person commits an offence if the person, in connection with an application for the grant or renewal of a licence –*
- *omits a material particular from a statement with the result that the statement is rendered false or misleading; and*
 - *knows that, or is reckless as to whether, the material particular is omitted from the statement.*

- (c) *To provide that a person who commits an offence under para. (9)(a) or (b) above is liable on conviction to a fine at level 5 and to imprisonment for 6 months²⁸.*

4.4 Register of Licensed Insurance Intermediaries

Detailed Proposals issued in June 2011 (c.f. para. 6 of Annex A to the document)

- 4.4.1 We have proposed that the IIA will establish and maintain a register of licensees. The register shall contain relevant information in relation to each licensee, including its particulars, the line(s) of business of which the licensee is eligible to carry on regulated activities, the licence conditions (if any) imposed by the IIA and a record of any disciplinary actions taken against it by the IIA / SROs within a period of 5 years.

Key Legislative Proposals

- 4.4.2 With reference to the SFC and MPFA regulatory regimes for licensing and regulation of intermediaries, we **propose** that apart from specifying the duty of the IIA in providing the register for public inspection, there should be express provisions in the new legislation to –
- (a) empower the IIA to require licensees to submit relevant information for the purpose of maintaining the register;
 - (b) mandate licensees to inform the IIA of changes in their particulars (e.g. name and business address);
 - (c) mandate authorized insurers to inform the IIA of the cessation of their appointment of a licensed individual insurance agent or a licensed insurance agency;
 - (d) mandate licensed insurance agencies and licensed insurance broker companies to inform the IIA of the cessation of

²⁸ C.f. section 52(3) of the AMLO.

engagement of a licensed TR(agent) or licensed TR(broker);

- (e) mandate licensees to inform the IIA of their cessation of business;
- (f) stipulate that contravention of (b) – (e) above, without reasonable excuse, will constitute an offence²⁹; and
- (g) stipulate that 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.

4.4.3 We will introduce new provisions to give effect the proposal in para. 4.4.2 above along the following line –

(1) Duty to maintain a register

- (a) ***To provide that the IIA must establish and keep a register of licensees, in any form it thinks fit, containing –***
 - (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;***
 - (v) ***in relation to each licensed insurance agency and licensed insurance broker company, the name and business address of its RO;***
 - (vi) ***the line(s) of business which each licensee is eligible to carry on;***
 - (vii) ***a record of specified suspension imposed on the licensee or RO by the IIA or HKMA within the last 5 years;***
 - (viii) ***a record of every disciplinary action taken against the licensee or RO by the IIA or self-regulatory organisations within the last 5 years;***

²⁹ There are similar offences in the relevant sections of the SFO and AMLO.

- (ix) *if the licence of a person or the approval of a person as an RO is suspended, the period of the suspension; and*
 - (x) *such other particulars as may be prescribed by regulations for the purposes of this subsection.*
- (b) *To provide that at all reasonable times, a member of the public, –*
 - *if the register is kept in a documentary form, may inspect the register free of charge; or*
 - *if the register is kept otherwise than in a documentary form, may inspect reproduction of any information recorded in the register in a legible form free of charge.*
- (c) *To provide that at all reasonable times, a member of the public may, on payment of a prescribed fee to the IIA, obtain –*
 - *a copy of an entry in or extract of the register; or*
 - *a copy of such an entry or extract, certified by an authorized officer of the IIA as a true copy of the entry or extract.*
- (d) *To provide that a right under paras. (1)(b) or (c) is only exercisable for the purpose of enabling the member of the public –*
 - *to ascertain whether the member of the public is dealing with a licensee or RO in matters of or connected with any regulated activity as an insurance agent or any regulated activity as an insurance broker; or*
 - *to ascertain the particulars of the licensing of a person as a licensee or the approval of an individual as an RO.*
- (e) *To provide that in any legal proceedings –*
 - (i) *a document purporting to be a copy of an entry in or extract of the register, and purporting to be certified by an authorized officer of the IIA as a true copy of the entry or extract, is admissible in evidence on its production without further proof; and*
 - (ii) *on being admitted in evidence under (i), the document, unless there is evidence to the contrary –*
 - *is presumed to be certified by an authorized officer of the IIA;*

- *is presumed to be a true copy of the entry or extract; and*
- *is proof of its documents.*

(f) To provide that the IIA must make the register available to the public through the internet.

(2) The IIA may request information

To provide that the IIA may require a licensee to submit such information as the IIA may reasonably require in order to maintain the register in so far as it relates to the licensee and such information must be submitted within such period and in such manner as the IIA may require.

(3) Licensee's duty to notify the IIA of changes in particulars

- (a) To provide that if there is any change in the name or contact details of a licensee, including, insofar as applicable, the business or residential address, telephone and facsimile numbers and electronic mail address, the licensee must notify the IIA in writing of the change within 7 days beginning on the date on which the change takes place.*
- (b) To provide that the IIA must, as soon as reasonably practicable after receiving a notification under para. (3)(a), amend any relevant particulars in the register if necessary.*
- (c) To provide that a licensee who, without reasonable excuse, contravenes para. (3)(a) commits an offence and is liable on conviction to a fine at level 5³⁰.*

(4) Licensee's duty to notify the IIA of cessation of business

- (a) To provide that if a licensed insurance intermediary intends to cease to carry on any regulated activity for which the intermediary is licensed with effect from a particular date, the intermediary must, before the date of cessation, notify the IIA in writing of that intention and the date of cessation.*

³⁰ C.f. section 110 of the SFO.

- (b) *To provide that subject to para. (4)(d), the IIA must, as soon as reasonably practicable after receiving a notification and the licence concerned under para. (4)(a), update the relevant particulars from the register.*
- (c) *To provide that a licensed insurance intermediary who, without reasonable excuse, contravenes para. (4)(a) commits an offence and is liable on conviction to a fine at level 5³¹.*
- (d) *To provide that on receipt of a notification under para. (4)(a), the IIA may require the intermediary concerned to carry out such operations and take out such procedures / take such measures for the protection of the interest of the clients of the intermediary as the IIA considers appropriate and the IIA may remove the relevant particulars from the register only after such requirements have been completed to the satisfaction of the IIA.*

(5) The IIA to be notified on change in appointment

- (a) *To provide that if an authorized insurer appoints, or terminates the appointment of, a licensed insurance agency or a licensed individual agent as an agent of the authorized insurer, the authorized insurer must, within 7 business days after such appointment or termination, notify the IIA in writing of the appointment or termination.*
- (b) *To provide that if an individual licensed as a TR(agent) ceases to act for or on behalf of a licensed insurance agency, the licensed insurance agency must, within 7 business days after such cessation, notify the IIA in writing of the cessation.*
- (c) *To provide that if an individual licensed as a TR(broker) ceases to act for or on behalf of a licensed insurance broker company, the licensed insurance broker must, within 7 business days after such cessation, notify the IIA in writing of the cessation.*

³¹ C.f. section 41 of the AMLO.

- (d) *To provide that if an individual ceases to be the RO of a licensed insurance agency or licensed insurance broker company, the licensed insurance agency or licensed insurance broker company must, within 7 business days after such cessation, notify the IIA in writing of the cessation.*
- (e) *To provide that a person who contravenes para. (5)(a), (b), (c) or (d) commits an offence and is liable on conviction to a fine at level 6³².*

(6) Licence ceases to be valid on the death or dissolution of licensee

To provide that a licence ceases to be valid, –

- *if the licensee is an individual, on the death of the individual;*
- *if the licensee is a partnership, on the dissolution of the partnership; or*
- *if the licensee is a corporation, on the commencement of winding up of the corporation.*

4.5 Appointment of Responsible Officers

Key Legislative Proposals

- 4.5.1 With reference to the regimes under the SFO and the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) for regulation of financial intermediaries, we **propose** that under the new licensing regime for insurance intermediaries, each and every corporate licensee (including a sole proprietorship and a partnership which is a licensed insurance agency) should be required to appoint an RO who is its senior executive with the capacity and responsibility to ensure that internal control and procedures are in place and observed by all insurance intermediaries³³ engaged by the corporate licensee for compliance with the relevant statutory conduct requirements.

³² C.f. section 123 of the SFO.

³³ They include the TRs of the corporate licensees, and the latter’s sub-agents and sub-agencies (if any) (c.f. para. 4.3.2.6 of this Chapter).

Likewise, we **propose** that each authorized insurer should be required to appoint a senior executive so as to ensure that there are internal control and procedures in place and observed by its appointed insurance agents (viz. its insurance agencies and individual insurance agents).

- 4.5.2 The appointment of an RO is subject to the IIA's approval. In order to ensure that the RO of a corporate licensee has the professional knowledge and authority within the corporation to fulfil his responsibilities, an eligible appointee should be a licensed TR(agent) or licensed TR(broker) (as the case may be) with sufficient capacity and authority in overseeing the implementation of the corporation's internal control and procedures.
- 4.5.3 Given the importance of having an RO for compliance purpose, the IIA may suspend the licence of a corporate licensee (and hence its licensed TRs)³⁴ if the corporate licensee 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 prolonged period of 90 days.
- 4.5.4 As for the RO of an authorized insurer, since under the ICO its chief executive officer is held responsible for its insurance business in entirety³⁵, we **propose** to introduce an automatic appointment mechanism whereby the chief executive officer of an authorized insurer would be deemed to be its RO.
- 4.5.5 On the basis of paras. 4.5.1 – 4.5.4 above, we **propose** to introduce the new provisions in the ICO along the following line –

³⁴ Similar to the existing practice under the existing SRO regime, a TR (agent) or a TR (broker) will be allowed to be engaged by only one licensed insurance agency or only one licensed insurance broker company (as the case may be) at a time. Thus, when the licence of an insurance agency or an insurance broker company is suspended or revoked, the licences of its TRs will also be suspended or revoked automatically.

³⁵ C.f. section 9(2) of the ICO.

(1) Approval of ROs of authorized insurers

To provide that the chief executive officer of an authorized insurer shall be deemed to be the RO of the authorized insurer.

(2) Approval of ROs of licensed insurance agencies

- (a) To provide that an application for the approval of an individual as the RO of a licensed insurance agency must be made in the specified form; and accompanied by the specified fee payable to the IIA.*
- (b) To provide that the IIA may, on application by a licensed insurance agency or an applicant for a licence as a licensed insurance agency, approve an individual as the RO of the applicant.*
- (c) To provide that the IIA must not grant the approval under para. (2)(b) unless the IIA is satisfied that the individual –
 - (i) is responsible for the conduct of the whole of the applicant’s business in relation to a regulated activity as an insurance agent; and*
 - (ii) is a licensed TR(agent) if the applicant is a licensed insurance agency; or would be granted a TR(agent) licence if he is engaged by a person who is concurrently applying for an insurance agency licence.**
- (d) To provide that the approval is subject to any reasonable conditions as the IIA may impose on the applicant and the RO and the IIA may, at any time, by notice in writing to the applicant and RO, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.*
- (e) To provide that the approval is deemed to be revoked if the individual approved as the RO –
 - (i) ceases to be a licensed TR(agent); or*
 - (ii) ceases to be responsible for the conduct of the whole of the applicant’s business in relation to a regulated activity as an insurance agent.**

(3) Approval of ROs of licensed insurance broker companies

- (a) To provide that an application for the approval of an individual as the RO of a licensed insurance broker company must be made in the specified form; and accompanied by the specified fee payable to the IIA.***
- (b) To provide that the IIA may, on application by a licensed insurance broker company or an applicant for a licence as a licensed insurance broker company, approve an individual as the RO of the applicant.***
- (c) To provide that the IIA must not grant the approval under para. (b) unless the IIA is satisfied that the individual –***
 - (i) is responsible for the conduct of the whole of the applicant’s business in relation to a regulated activity as an insurance broker; and***
 - (ii) is a licensed TR(broker) if the applicant is a licensed insurance broker company; or would be granted a TR(broker) licence if he is engaged by a person who is concurrently applying for an insurance broker company licence.***
- (d) To provide that the approval is subject to any reasonable conditions as the IIA may impose on the applicant and the RO and the IIA may, at any time, by notice in writing to the applicant and RO, amend or revoke any condition imposed, or impose new conditions, as may be reasonable in the circumstances.***
- (e) To provide that the approval is deemed to be revoked if the individual approved as the RO –***
 - (i) ceases to be a licensed TR(broker); or***
 - (ii) ceases to be responsible for the conduct of the whole of the applicant’s business in relation to a regulated activity as an insurance broker.***

(4) Suspension or revocation of licence if no RO

- (a) To provide that the IIA may suspend the licence of a person as a licensed insurance agency or a licensed insurance broker company for a specified period, or until the occurrence of an event, determined by the IIA, if the IIA is***

of the opinion that the licensed insurance agency or licensed insurance broker company ceases to have an RO.

- (b) To provide that the IIA may revoke the licence of a person as a licensed insurance agency or a licensed insurance broker company if –
 - (i) the person has not made an application for the approval of an individual as its RO within 90 days after the date on which the suspension takes effect; or*
 - (ii) the person has made such an application within 90 days after the date on which the suspension takes effect, and the IIA has rejected the application.**

- (c) To provide that the power under paras. (4)(a) and (b) above is not exercisable unless, before exercising the power, the IIA –
 - (i) has given the person a notice in writing of its intention to do so and the reasons for doing so; and*
 - (ii) has given the person an opportunity to make oral or written representations, or both, on those reasons.**

- (d) To provide that a notice under para. (4)(c)(i) must also include a statement describing the right of the person to make representations; and how and when the person may make representations.*

(5) Conduct requirements for authorized insurers and their ROs

- (a) To provide that an authorized insurer –
 - (i) must establish and maintain proper controls and procedures for securing compliance by the licensed insurance agencies and licensed individual insurance agents appointed by the authorized insurer, with the conduct requirements in para. 5.1.2 of Chapter 5 of this document;*
 - (ii) must use its best endeavours to secure observance by each licensed insurance agency and licensed individual insurance agent appointed by the authorized insurer of the controls and procedures established under (i);**

(b) To provide that an RO of a licensed insurance agency must use his best endeavours to carry out the following responsibilities in relation to the licensed insurance agency –

(i) to ensure that the licensed insurance agency has established and maintained proper controls and procedures for securing compliance by the licensed insurance agency, and by each licensee engaged by the licensed insurance agency, with the conduct requirements in para. 5.1.2 of Chapter 5 of this document; and

(ii) to ensure that the licensed insurance agency uses its best endeavours to secure observance by each licensee engaged by the licensed insurance agency of the controls and procedures established under (i).

(7) Conduct requirements for licensed insurance broker companies and their ROs

(a) To provide that a licensed insurance broker company –

(i) must establish and maintain proper controls and procedures for securing compliance by the licensed insurance broker company, and by each licensed TR(broker) engaged by the licensed insurance broker company, with the conduct requirements in para. 5.1.2 of Chapter 5 of this document;

(ii) must use its best endeavours to secure observance by each licensed TR(broker) engaged by the licensed insurance broker company of the controls and procedures established under (i);

(iii) must ensure that its RO has sufficient authority within the licensed insurance broker company for carrying out the responsibilities set out in para. (7)(b) below; and

(iv) must provide its RO with sufficient resources and support for carrying out the responsibilities set out in para. (7)(b) below.

(b) To provide that an RO of a licensed insurance broker company must use his best endeavours to carry out the following responsibilities in relation to the licensed insurance broker company –

- (i) to ensure that the licensed insurance broker company has established and maintained proper controls and procedures for securing compliance by the licensed insurance broker company, and by each licensed TR(broker) engaged by the licensed insurance agency, with the conduct requirements in para. 5.1.2 of Chapter 5 of this document; and*
- (ii) to ensure that the licensed insurance broker company uses its best endeavours to secure observance by each licensed TR(broker) engaged by the licensed insurance broker company of the controls and procedures established under (i).*

Chapter 5

KEY LEGISLATIVE PROPOSALS – REGULATORY POWERS OF THE INDEPENDENT INSURANCE AUTHORITY

Regulation of Insurance Intermediaries

5.1 Conduct requirements

Detailed Proposals issued in June 2011 (c.f. paras. 15 – 16 of Annex A to the document)

5.1.1 We have proposed that the primary legislation would set out broad conduct requirements and subsidiary legislation would lay down the details with which insurance intermediaries are obliged to comply whilst the IIA would issue non-statutory codes / guidelines to facilitate understanding of the statutory conduct requirements, promote compliance and provide evidential value if any provisions set out therein appears to the court to be relevant to any question arising in judicial or other proceedings.

Key Legislative Proposals

5.1.2 With reference to section 34ZL of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012, we **propose** to introduce a new provision in the ICO to set out the broad principles of conduct requirements on insurance intermediaries such as acting honestly and fairly, exercising a reasonable level of care and diligence, and making necessary disclosure of information, etc., along the following line –

To provide that when carrying on a regulated activity, a licensed insurance intermediary –

- (i) must act honestly, fairly, in the best interests of the policyholder or potential policyholder, and with integrity;*
- (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;*
- (iii) may advise only on matters for which the licensed insurance intermediary is competent to advise;*
- (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 ;

- (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;*
- (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;*
- (vii) must ensure that policyholder's assets are promptly and properly accounted for; and*
- (viii) must comply with other conduct requirements that are prescribed by regulations made by the IIA.*

5.1.3 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.

5.2 Enforcement of Statutory Conduct Requirements of Insurance Intermediaries

Detailed Proposals issued in June 2011 (c.f. para. 17 of Annex A to the document)

5.2.1 With reference to the regulatory regimes under the SFO, the AMLO and the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012, we have proposed to confer on the IIA the following new regulatory powers –

- (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;
- (f) to impose disciplinary sanctions (see para. 5.3.3 below for key legislative proposals for the sanctions); and
- (g) to prosecute offences summarily.

Key Legislative Proposals

5.2.2 After further internal deliberation, we have refined the above proposals to include a specified suspension power to be invoked by the IIA (or HKMA under power delegated by the IIA in respect of banks' insurance intermediary activities (see para. 6.1 in Chapter 6 of this document)) under the specific circumstances described below for necessary protection of the interest of policyholders or the general public. After the commencement of disciplinary proceedings, the IIA or HKMA (as the case may be) may, in the interest of existing or potential policyholders or the general public, suspend a 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. The specified suspension caters for the occasion when, out of consumer protection considerations, the IIA or HKMA (as the case may be) needs a legitimate power to halt a damaging act of a licensed insurance intermediary (or an RO), including the ongoing selling of insurance products, which has been found to cause regulatory concerns, as soon as practicable pending a proportionate disciplinary decision which may not be readily available in a serious or complicated case. In exercising this power, the IIA or HKMA (as the case may be) would need to follow due process and procedures, including the requirements to –

- (a) give the licensed insurance intermediary (or the RO) concerned an opportunity of being heard;

- (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
- (c) disclose to the public the details of the decision of imposing the suspension and any material facts relating to the case.

In addition, the decision to impose specified suspension is subject to appeal to the Insurance Appeals Tribunal (see para. 7.1.1 of this document). The 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.

5.2.3 With reference to the AMLO (especially regarding provisions on powers of inspection and investigation) and the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012, the following criminal offences would be provided in the legislation –

- (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 disposal of any record or document required by an inspector or investigator, with an intent to conceal.

5.2.4 With reference to the SFO, we propose 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.

- 5.2.5 On the basis of the above, we **propose** to introduce a new part in the ICO along the following line –

Interpretation

- (a) *To define “business record” as, in relation to an insurance intermediary, any record or document relating to –*
- (i) *the business conducted by the insurance intermediary;*
 - or*
 - (ii) *any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurance intermediary.*
- (b) *To define “inspector” as a person authorized by the IIA under para. (1) to ascertain any matter specified in para. (1)(a) in relation to an insurance intermediary.*
- (c) *To define “investigator” as a person appointed by the IIA under para. (2)(a) to investigate the matter referred to in para. (2).*

(1) Power to conduct inspection

- (a) *To provide that an inspector may exercise the powers under para. (1)(c) for the purpose of ascertaining whether an insurance intermediary is complying, has complied with, or is likely to be able to comply with the requirement specified in para. (1)(b).*
- (b) *To provide that the specified requirement in para. (1)(a) is the requirement not to contravene –*
- (i) *any provision of the ICO;*
 - (ii) *any notice or requirement given or imposed under the ICO;*
 - (iii) *any of the terms or conditions of any licence granted under the ICO; and*
 - (iv) *any other condition³⁶ imposed under the ICO.*
- (c) *To provide that an inspector may, at any reasonable time –*

³⁶ For example, the IIA may impose conditions on its approval of an RO appointed by an insurance intermediary.

- (i) *enter any business premises of the insurance intermediary;*
 - (ii) *inspect, and make copies or otherwise record details of, any business record of the insurance intermediary;*
 - (iii) *make inquiries of the insurance intermediary, or a person specified in para. (1)(g) –*
 - *concerning any business record of the insurance intermediary, or*
 - *concerning any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurance intermediary.*
- (d) *To provide that in exercising a power under para. (1)(c)(ii), the inspector may require the insurance intermediary, or a person specified in para. (1)(g) –*
- (i) *to give the inspector access to any business record of the insurance intermediary;*
 - (ii) *to produce to the inspector, within the time and at the place specified in the requirement, any business record of the insurance intermediary; and*
 - (iii) *to answer any question regarding any business record of the insurance intermediary.*
- (e) *To provide that in exercising a power under para. (1)(c)(iii), the inspector may require the insurance intermediary, or a person specified in para. (1)(g) –*
- (i) *to give the inspector access to any business record of the insurance intermediary;*
 - (ii) *to produce to the inspector, within the time and at the place specified, any business record of the insurance intermediary; and*
 - (iii) *to answer any question raised for the purposes of para.(1)(c)(iii).*
- (f) *To provide that the power under para. (1)(c)(iii), (d) and (e) is not exercisable in relation to a person specified in para. (1)(g) unless the inspector has reasonable cause to believe that the information or record sought under para. (1)(c), (d) or (e) cannot be obtained by exercising the power in relation to the insurance intermediary.*
- (g) *To provide that the person specified for the purposes of paras. (1)(c)(iii), (d) and (e) is a person whom the inspector*

has reasonable cause to believe has information relating to, or is in possession of, any business record of the insurance intermediary.

- (h) To provide that if a person gives an answer in compliance with a requirement imposed under paras. (1)(c)(iii), (d) or (e), the inspector may, in writing, require the person to verify, within the time specified in the requirement, the answer by a statutory declaration.*
- (i) To provide that if, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer in compliance with a requirement imposed under paras. (1)(c)(iii), (d) or (e), the inspector may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.*
- (j) To provide that a statutory declaration under paras. (1)(h) and (i) may be made before the inspector and for that purpose the inspector shall have full power and authority to administer the statutory declaration.*
- (k) To provide that the IIA may authorize in writing any person, or any person belonging to a class of persons, as an inspector for the purposes of conducting inspection.*
- (l) To provide that the IIA may exercise the inspection powers and may authorize another person for the purpose of ascertaining whether or not a person, who was formerly a licensed insurance intermediary, has complied, or has failed to comply, with the specified requirements under para. 1(b) at any time during the period the person was a licensed insurance intermediary³⁷.*

(2) Power to conduct investigation

- (a) To provide that if –*
 - (i) the IIA has reasonable cause to believe that an offence*

³⁷ C.f. section 34ZS of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

- under the ICO may have been committed;*
- (ii) the IIA has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in relation to the carrying on of a regulated activity;*
 - (iii) the IIA has reasonable cause to believe that the manner in which any person has engaged or is engaging in any regulated activities is prejudicial to the interest of policyholders or potential policyholders or in the public interest;*
 - (iv) the IIA, for the purpose of considering whether any disciplinary power under the ICO is to be exercised, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not fit and proper, or*
 - (v) the IIA has reasonable cause to believe that any provisions under the ICO may have been breached,*
the IIA may in writing direct one or more of its employees or, with the consent of the FS, appoint one or more other persons, to investigate any of the matters referred to in paras (2)(a)(i) – (v).
- (b) To provide that the costs and expenses incurred by an investigator, other than an employee of the IIA, are to be paid out of moneys provided by the LegCo.*
- (c) To provide that the IIA shall furnish an investigator with a copy of its direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person in relation to an investigation, shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.*
- (d) To provide that before the IIA directs any of its employees, or appoints any person to investigate matters in respect of a bank's insurance intermediary activities, the IIA shall consult the HKMA.*
- (e) To provide that para. (2)(f) applies to –*
- (i) an insurance intermediary in relation to whom an investigator is appointed to investigate any matter referred to in para. (2)(a)(i) – (v); or*
 - (ii) a person whom an investigator has reasonable cause*

to believe to be in possession of any record or document that contains, or is likely to contain, information relevant to an investigation of any matter referred to in para. (2)(a)(i) – (v).

- (f) To provide that an investigator may require a person in relation to whom this paragraph applies to –
 - (i) produce, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator that is or may be relevant to the investigation, and is in the person's possession;*
 - (ii) give an explanation or further particulars in respect of any record or document produced;*
 - (iii) attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to any matter under investigation that may be raised by the investigator;*
 - (iv) respond to any written question relating to any matter under investigation that the investigator may raise with the person; and*
 - (v) give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.**

- (g) To provide that if a person gives any answer, response, explanation or particulars in accordance with a requirement imposed under para. (2)(f), the investigator may in writing require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.*

- (h) To provide that if a person does not give any answer, response, explanation or particulars in accordance with a requirement under para. (2)(f) for the reason that the information concerned is not within the person's knowledge or in the person's possession, the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.*

- (i) To provide that a statutory declaration under paras. (2)(g) and (h) may be made before the investigator and for that*

purpose the investigator shall have full power and authority to administer the statutory declaration.

(3) Application to Court of First Instance

- (a) To provide that if a person fails to comply with a requirement imposed by an inspector under para. (1) or by an investigator under para. (2), the inspector or the investigator may apply by originating summons to the Court of First Instance for an inquiry into the failure.*
- (b) To provide that on an application under para. (3)(a), the Court of First Instance may –*
 - (i) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the time specified by the Court; and*
 - (ii) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.*
- (c) To provide that an originating summons under para. (3)(a) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).*
- (d) To provide that despite anything in the ICO, no proceedings may be instituted against a person for the purposes of para. (3)(b)(ii) in respect of any conduct if –*
 - (i) criminal proceedings have previously been instituted against the person under paras. (4)(a), (b), (c), (d) or (e) below in respect of the same conduct; and*
 - (ii) those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under para. (4)(a), (b), (c), (d) or (e) below in respect of the same conduct.*

(4) Offences in relation to inspections and investigations

- (a) To provide that a person commits an offence if the person,*

without reasonable excuse, fails to comply with a specified requirement imposed on the person.

- (b) To provide that a person commits an offence if the person, with intent to defraud, fails to comply with a specified requirement imposed on the person.*
- (c) To provide that a person commits an offence if –*

 - (i) in purported compliance with a specified requirement imposed on the person, the person produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect; and*
 - (ii) the person knows that, or is reckless as to whether, the record or document, or the answer or response, or the explanation or particulars, are false or misleading in a material respect.*
- (d) To provide that a person commits an offence if, in purported compliance with a specified requirement imposed on the person, the person, with intent to defraud, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect.*
- (e) To provide that a person commits an offence if, being an officer or employee of an insurance intermediary, the person, with intent to defraud –*

 - (i) causes or allows the insurance intermediary to fail to comply with a specified requirement imposed on the company; or*
 - (ii) causes or allows the insurance intermediary, in purported compliance with a specified requirement imposed on the insurance intermediary, to produce any record or document, or give an answer or response, or give any explanation or particulars, that are false or misleading in a material respect.*
- (f) To provide that a person is not excused from complying with a specified requirement imposed on the person only on the ground that to do so might tend to incriminate the person.*

- (g) *To provide that a person who commits an offence under³⁸ –*
- (i) *para. (4)(a) is liable –*
 - *on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or*
 - *on summary conviction to a fine at level 5 and to imprisonment for 6 months.*
 - (ii) *para. (4)(c) is liable –*
 - *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*
 - (iii) *paras. (4)(b), (d) or (e) is liable –*
 - *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or*
 - *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*
- (h) *To provide that 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 the person to pay to the IIA the whole or a part of the costs and expenses of the investigation and the IIA may recover the whole or the part of the costs and expenses as a civil debt due to it.*
- (i) *To provide that if the IIA receives an amount under an order made under para. (4)(h) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have already been paid out of moneys provided by LegCo, the IIA must pay to the FSy the amount received under the order to the extent that it has already been paid out of moneys provided by LegCo.*
- (j) *To provide that for the purpose of para. (4), a specified requirement means a requirement imposed under para. (1) or (2).*

(5) Magistrate's warrant

- (a) *To provide that if a magistrate is satisfied on information on*

³⁸ C.f. section 184 of the SFO and section 13(9) of the AMLO.

oath laid by a person specified in para. (5)(b) that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under para. (1) or (2), the magistrate may issue a warrant authorizing a person set out in the warrant, and such other person as may be necessary to assist in the execution of the warrant –

(i) to enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

(ii) to search for, seize and remove any record or document that the person specified in the warrant has reasonable cause to believe may be required to be produced under para. (1) or (2), as the case may be.

(b) To provide that the person specified for the purposes of para.(5)(a) is –

(i) in the case of para. (1), an inspector; or

(ii) in the case of para.(2), an investigator.

(c) To provide that if an authorized person has reasonable cause to believe that a person found on the premises is employed, or engaged to provide a service, in connection with a business that is or has been conducted on the premises, the authorized person may require that person to produce for examination any record or document that –

- is in the possession of that person; and

- the authorized person has reasonable cause to believe may be required to be produced under para. (1) or (2), as the case may be.

(d) To provide that an authorized person may, in relation to any record or document required to be produced under para. (5)(c) –

(i) prohibit any person found on the premises from –

- removing the record or document from the premises;

- erasing anything from, adding anything to or otherwise altering anything in, the record or document; or

- otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or

- (ii) *take any other step that appears to the authorized person to be necessary for –*
 - *preserving the record or document; or*
 - *preventing interference with the record or document.*

- (e) *To provide that any record or document removed under para. (5)(a) may be retained –*
 - *for a period not exceeding 6 months beginning on the day of its removal; or*
 - *if the record or document is or may be required for the purpose of any criminal proceedings or any proceedings under the ICO, for any longer period that may be necessary for the purpose of those proceedings.*

- (f) *To provide that if an authorized person removes any record or document, the authorized person must, as soon as reasonably practicable after the removal, give a receipt for the record or document.*

- (g) *To provide that an authorized person who has removed any record or document may permit any person who would be entitled to inspect the record or document but for the removal to inspect it and to make copies or otherwise record details of it at all reasonable times.*

- (h) *To provide that an authorized person who enters any business premises under this section must, if required, produce the warrant for inspection.*

- (i) *To provide that section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has come into the possession of the IIA, as it applies to property that has come into the possession of the police.*

- (j) *To provide that a person commits an offence if the person –*
 - *without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under para. (5)(c) or (d); or*
 - *obstructs an authorized person exercising a power conferred by para. (5)(c) or (d).*

- (k) *To provide that a person who commits an offence under para. (5)(j) is liable³⁹ –*
- *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(6) Destruction of documents

- (a) *To provide that a person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that he is required by an inspector or an investigator to produce, with intent to conceal, from the inspector or an investigator, facts or matters capable of being disclosed by the record or document.*
- (b) *To provide that a person who commits an offence under para. (6)(a) is liable⁴⁰ –*
- (i) *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - (ii) *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(7) Prosecution of offences by the IIA

- (a) *To provide that an offence under the ICO, and an offence of conspiracy to commit such an offence, may be prosecuted by the IIA in its own name but where the IIA prosecutes an offence under such circumstances, the offence shall be tried before a magistrate as an offence which is triable summarily.*
- (b) *To provide that for, and only for, the purpose of the prosecution of an offence referred to in para. (7)(a), an employee of the IIA who is not qualified to practise as a barrister or to act as a solicitor under the Legal*

³⁹ C.f. section 17 of AMLO and section 34ZZF the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

⁴⁰ C.f. section 192 of the SFO and section 20 of the AMLO.

Practitioners Ordinance (Cap. 159) may appear and plead before a magistrate any case of which the employee has charge and is to have, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under the ICO.

- (c) *To provide that nothing in this para. (7) derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.*

(8) Specified suspension

- (a) *To provide that where disciplinary power is contemplated to be exercised at any time against a licensed insurance intermediary or an RO, the IIA may suspend –*
- (i) that licensed insurance intermediary from engaging in any, or any part of, regulated activity; or*
 - (ii) the approval of that person as an RO*
- for such period as the IIA may specify prior to the effective date of an appropriate disciplinary action against the licensed insurance intermediary or RO if the IIA considers that it is in the interests of existing policy holders or potential policy holders or in the public interest to do so.*
- (b) *To provide that a suspension under para. (8)(a) is to cease to have effect on –*
- (i) the expiry of the suspension period specified by the IIA;*
 - or*
 - (ii) the effective date of a disciplinary action to be imposed on the licensed insurance intermediary or RO in respect of the same matter, whichever is earlier.*

(9) Procedural requirements in respect of exercise of specified suspension power

- (a) *To provide that the IIA must not exercise the power under para. (8) without first giving the licensed insurance intermediary or RO in respect of whom the power is to be exercised a reasonable opportunity of being heard.*
- (b) *To provide that if the IIA decides to exercise any power under para. (8), the IIA must inform the licensed insurance intermediary or RO in respect of whom the power is*

exercised of its decision to do so by notice in writing, and the notice must include –

- (i) a statement of the reasons for which the decision is made;*
 - (ii) the time at which the decision is to take effect; and*
 - (iii) in so far as applicable, the duration and terms of suspension to be imposed under the decision.*
- (c) To provide that where the IIA has exercised its power under para. (8), it may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case⁴¹.*
- (d) To provide that the IIA must consult the HKMA before exercising the specified suspension power in respect of a bank's insurance intermediary activities.*
- (e) To provide that the HKMA must consult the IIA before exercising the specified suspension power in respect of a bank's insurance intermediary activities.*

(10) Effect of specified suspension⁴²

To provide that if a licence of a licensed insurance intermediary or the approval of a person as an RO is suspended under para. (8), the licensed insurance intermediary or the RO, during the suspension period –

- (i) is to continue to be regarded as licensed or to be such an RO for the purposes of the relevant provisions of the ICO which relate to a licensed insurance intermediary or an RO, but not those mentioned in paras. 4.2.3 (about restrictions on carrying on regulated activities), 4.5.1 (about the requirement to appoint an RO) and 4.5.3 (about the*

⁴¹ The decision to exercise the power of specified suspension is a specified decision by the IIA or HKMA (in case the HKMA exercises the power delegated by the IIA as mentioned in para. 6.4 of Chapter 6 of this document) may be subject to appeal to the IAT (see item 29 of Schedule B in Chapter 7 of this document).

⁴² C.f. section 200 of the SFO. During the suspension, the licensed insurance intermediary or RO will not be able to comply with certain provisions of the ICO. There will be more precise language in the amended ICO to define what provisions the licensed insurance intermediary or RO need to comply with.

suspension of a licensee who ceases to have an RO) of this document; and

- (ii) is to continue to be required to comply with the relevant 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.*

(11) Specified suspension does not avoid or affect agreement

To provide that the suspension of a licence of a licensed insurance intermediary under para. (8) does not operate so as to –

- (i) avoid or affect an agreement, transaction or arrangement entered into by the licensed insurance intermediary, regardless of whether the agreement, transaction or arrangement was entered into before or after the suspension; or*
- (ii) affect a right, obligation or liability arising under the agreement, transaction or arrangement.*

(12) Requirement to transfer records on specified suspension

- (a) To provide that if a licence of a licensed insurance intermediary is suspended under para. (8), the IIA may, by notice in writing, require the licensed insurance intermediary to transfer to any policyholder of the licensed insurance intermediary such records relating to the policyholder's assets or to the affairs of the policyholder held at any time for the policyholder as the IIA may specify in the notice.*
- (b) To provide that a person who, without reasonable excuse, fails to comply with a requirement imposed under para. (12)(a) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years⁴³.*

⁴³ C.f. section 202 of the SFO.

(13) Permission to carry on business operations on specified suspension

- (a) To provide that if a licence of a licensed insurance intermediary is suspended under para. (8), the IIA may by notice in writing permit the licensed insurance intermediary, subject to such conditions as the IIA may specify in the notice, 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 specified suspension.*
- (b) To provide that if the IIA has granted a permission to a licensed insurance intermediary under para. (13)(a), the licensed insurance intermediary is not to be regarded as having contravened the restriction on carrying on regulated activities by reason of its carrying on essential business operations in accordance with the permission.*
- (c) To provide that a permission granted under para. (13)(a), and the imposition of conditions, take effect at the time of the service of the notice⁴⁴ or at the time specified in the notice, whichever is the later.*

5.3 Disciplinary Sanctions

Detailed Proposals issued in June 2011 (c.f. para. 18-21 of Annex A to the document)

5.3.1 We have proposed that –

- (a) the IIA will be empowered to impose a range of proportionate disciplinary sanctions (viz. reprimand, fines, partial or full suspension of licence, revocation of licence and prohibition of licence application within a specified period) to deal with misconduct of varying nature and severity committed by licensed insurance intermediaries;

⁴⁴ The meaning of “at the time of the service of the notice” will be defined in the amended ICO with reference to section 141 of the SFO.

- (b) before exercising the power in (a), the IIA shall inform the person concerned in writing of its intention and give the person a reasonable opportunity to be heard;
- (c) the IIA will consider all investigation reports completed and decide whether and, if so, what disciplinary sanctions are warranted;
- (d) the IIA will establish a Disciplinary Committee with participation from HKMA to support it in exercising its disciplinary power. The Disciplinary Committee will be chaired by a senior IIA executive with members from both the IIA and HKMA; and
- (e) the IIA will establish an Expert Panel from which it may seek advice on the nature of a specific product, related industry practices or experiences to facilitate its deliberation during the disciplinary process. The Expert Panel will comprise members with industry knowledge and necessary measures will be in place to avoid any conflict of interest.

As explained in para. 3.4 of Chapter 3, the IIA will be empowered in the legislation to establish committees to support its work. We will elaborate on the arrangements for the regulation of banks' insurance intermediary activities in Chapter 6.

Key Legislative Proposals

- 5.3.2 Recognizing the need to provide insurance intermediaries with regulatory certainty and confidence that the IIA will follow due process in exercising its disciplinary powers, after further internal deliberation, we have refined our proposals above such that the ICO should also specify the procedures the IIA must follow in exercising its disciplinary powers and require the IIA to publish guidelines on imposing pecuniary penalties.
- 5.3.3 On the basis of the above, we **propose** 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 –

(1) Definition of Misconduct

- (a) To provide that “misconduct” means –**
- (i) a contravention of any provisions of the ICO;**
 - (ii) a contravention of any of the terms and conditions of any licence granted under the ICO;**
 - (iii) a contravention of any other condition imposed under or pursuant to any provision of the ICO; or**
 - (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.**
- (b) To provide that for the purposes of para. (1)(a)(iv), the IIA must not form any opinion that any act or omission is or is likely to be prejudicial to the interests of policyholders or potential policyholders or to the public interest, unless it has had regard to such of the provisions set out in any guideline published by it as are in force at the time of the occurrence of, and applicable in relation to, the act or omission.**
- (c) To provide that “regulated person”⁴⁵ means a person who is or at the relevant time was any of the following types of person –**
- (i) a licensed insurance intermediary; or**
 - (ii) an RO of a licensed insurance agency or a licensed insurance broker company.**
- (d) To provide that “relevant time”, in relation to a person, means –**
- (i) where para. (2)(a)(i) applies, the time when the person is, or was, guilty of misconduct; or**
 - (ii) where para. (2)(a)(ii) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the IIA to form the opinion that the person is not a fit and proper person.**
- (e) To provide that, where a licensed insurance agency or licensed insurance broker company is, or was at any time,**

⁴⁵ C.f. section 194(7) of the SFO (Cap. 571).

guilty of misconduct within the meaning of the definition of misconduct in para. (1)(a) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of another person as –

- (i) the RO of the licensed insurance agency or licensed insurance broker company; or*
- (ii) a person involved in the management of the regulated activities of the licensed insurance agency or licensed insurance broker company,*

the conduct shall also be regarded as misconduct on the part of that other person, and guilty of misconduct shall also be construed accordingly.

(2) Disciplinary action in respect of licensed insurance intermediaries and ROs

(a) To provide that the IIA may exercise any one or more of the powers specified in para. (2)(c) as it considers appropriate in the circumstances of the case if –

- (i) a regulated person is, or was at any time, guilty of misconduct; or*
- (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.*

(b) To provide that the IIA, in determining whether a regulated person is a fit and proper person for the purposes of para. (2)(a)(ii), may, amongst other matters, take into account such present or past conduct of the regulated person as the IIA considers appropriate in the circumstances of the case.

(c) To provide that the powers referred to in para. (2)(a) are⁴⁶ –

- (i) where the regulated person is a licensed insurance intermediary –*
 - 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*

⁴⁶ C.f. section 194 of the SFO and section 34ZW of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

- 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 until the occurrence of such event as the IIA may specify;*
- (ii) *where the regulated person is an RO –*
- *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;*
- (iii) *to reprimand the regulated person publicly or privately;*
- (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 –*
- *\$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 para. (2)(a)(ii)(as the case may be).*
- (d) *To provide that a regulated person ordered to pay a pecuniary penalty under para. (2)(c) must pay the penalty to the IIA within 30 days, or such further period as the IIA may specify by notice, after the order has taken effect.*
- (e) *To provide that if a regulated person fails to comply with an order in para. (2)(c), the IIA may further order the regulated person to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues after the date specified in the order as being the date by which the remedial action must be taken.*
- (f) *To provide that the Court of First Instance may, on an application of the IIA made in the manner specified in para.*

2(g), register an order to pay a pecuniary penalty made under paras. (2)(c) or (2)(e) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

- (g) To provide that for the purpose of making an application under para. (2)(f), the IIA must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.*
- (h) To provide that any pecuniary penalty paid to or recovered by the IIA pursuant to an order made under para. (2)(b) must be paid by the IIA into the general revenue.*
- (i) To provide that the disciplinary powers are also exercisable by the IIA in relation to a person if the person was a licensed insurance intermediary at the time of his being guilty of misconduct or not fit and proper, regardless of whether the person is a licensed insurance intermediary when the power is being exercised⁴⁷.*
- (j) To provide that where the IA has exercised its power under para. (2)(a), it may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.*

(3) Procedural requirements in respect of exercise of powers

- (a) To provide that the IIA must not exercise any disciplinary power without first giving to the regulated person in respect of whom the power is to be exercised a reasonable opportunity of being heard.*
- (b) To provide that if the IIA decides to exercise any disciplinary power, the IIA must inform the regulated person in respect of whom the power is exercised of its decision to do so by notice*

⁴⁷ C.f. section 34ZZA of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

in writing, and the notice must include –

- (i) a statement of the reasons for which the decision is made;*
 - (ii) the time at which the decision is to take effect;*
 - (iii) in so far as applicable, the duration and terms of any revocation, suspension, or prohibition to be imposed under the decision;*
 - (iv) in so far as applicable, the terms in which the regulated person is to be reprimanded under the decision; and*
 - (v) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.*
- (c) To provide that the IIA must consult HKMA before exercising any disciplinary power in respect of a bank in relation to its insurance intermediary activities.*

(4) Guidelines for exercise of powers to impose a pecuniary penalty

- (a) To provide that the IIA must not exercise its powers to impose a pecuniary penalty unless –*
- (i) it has published guidelines to indicate the manner in which it proposes to exercise such power; and*
 - (ii) in exercising such power, it has had regard to the guidelines so published.*
- (b) To provide that without prejudice to the inclusion of any other factors that the IIA may consider relevant, guidelines published under para. (4)(a) 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.*
- (c) To provide that the guidelines published under para. (4)(a) are not subsidiary legislation.*

(d) To provide that the IIA must consult HKMA on the guidelines in para. 4(a)(i).

(5) Effect of suspension⁴⁸

(a) To provide that 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, –

(i) 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 (about restrictions on carrying on regulated activities), 4.5.1 (about the requirement to appoint an RO) and 4.5.3 in Chapter 4 (about the suspension of a licensee who ceases to have an RO) of this document, which relate to a licensed insurance intermediary or an RO; and

(ii) is to continue to be required to comply with the relevant 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.

(b) To provide that a licence of a licensed insurance intermediary or approval of an RO may be revoked despite that the licence or approval is suspended under this Part 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.

(6) General provision relating to the exercise of disciplinary powers

(a) To provide that 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 –

(i) exercise any power that the IIA may exercise in respect

⁴⁸ See footnote 43.

of the regulated person; and
(ii) take such additional action as it considers appropriate in the circumstances of the case.

(b) To provide that if the IIA exercises any power or takes any additional action in respect of a person under para. (6)(a), it must comply with paras. (3)(a) and (b) unless the person agrees otherwise.

(c) To provide that 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.

(d) To provide that the IIA must consult HKMA when exercising the power under para. (6)(a) in respect of a bank in relation to its insurance intermediary activities.

(7) Revocation and suspension does not avoid or affect agreement

To provide that the revocation or suspension of a licence of a licensed insurance intermediary does not operate so as to –

(i) avoid or affect an agreement, transaction or arrangement entered into by the licensed insurance intermediary, regardless of whether the agreement, transaction or arrangement 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.

(8) Requirement to transfer records on revocation or suspension of licence

(a) To provide that if a licence of a licensed insurance intermediary is revoked or suspended, the IIA may, by notice in writing, require the licensed insurance intermediary to transfer to any policyholder of the licensed insurance intermediary such records relating to the policyholder's assets or to the affairs of the policyholder held at any time for the policyholder as the IIA may specify in the notice.

(b) To provide that a person who, without reasonable excuse, fails to comply with a requirement imposed on the person under para. (8)(a) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years⁴⁹.

(9) Permission to carry on business operations on revocation or suspension of licence

(a) To provide that if the licence of a licensed insurance intermediary is revoked or suspended, the IIA may by notice in writing permit the licensed insurance intermediary, subject to such conditions as the IIA may specify in the notice –

(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

(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.

(b) To provide that if the IIA has granted a permission to a licensed insurance intermediary under para. (9)(a), the licensed insurance intermediary is not to be regarded as having contravened the restriction on carrying on regulated activities by reason of its carrying on business essential operations in accordance with the permission.

(c) To provide that a permission granted under para. (9)(a), and the imposition of conditions, take effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

Regulation of Insurers

5.4 Additional Power of the IIA to Regulate Insurers

Detailed Proposals issued in June 2011 (c.f. para. 3 – 4 of Annex A to the

⁴⁹ C.f. Section 202 of the SFO.

document)

- 5.4.1 At present, the IA is vested with powers for prudential regulation of insurers under the ICO including those in respect of capital adequacy, solvency margin, handling of assets and liabilities, proper keeping/preserving and submission of financial information, as well as fitness and properness of directors and controllers of insurers. Part V of the ICO also empowers the IA to take interventionary actions (e.g. requirements for maintaining assets in Hong Kong and placing of assets in the IA's custody) for protecting the interests of existing and potential policyholders where causes of concern are identified in respect of an insurer.
- 5.4.2 To align with the enforcement approach in other international financial centres and as suggested by the International Association of Insurance Supervisors, we need to modernise the existing regulatory approach by giving the IIA the following additional powers, subject to safeguards as explained in Chapter 7 (paras. 7.1 – 7.2) of this document, for regulating insurers –
- (a) At any reasonable time, the IIA may appoint authorized persons to conduct inspections by:
 - (i) entering into the premises (other than domestic premises) of the insurer;
 - (ii) inspecting and making copies or recording details of any records or document relating to the business, transaction or activity conducted by the insurer; and
 - (iii) making inquiries of the insurer or any other person whom the IIA has reasonable cause to believe that he has information that cannot be obtained from the insurer.
 - (b) The IIA may initiate investigation if it has reasonable cause to believe that obligations in relation to the authorization of insurers under the ICO may have been breached by appointing one or more persons as investigators. The investigator may require the person under investigation or a person whom he has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to the investigation to –
 - (i) produce any record or document relevant to the

- investigation;
 - (ii) give explanations or further particulars in respect of records/documents produced;
 - (iii) attend before the investigator at the time and place required and answer any questions related to the matters under investigation; and
 - (iv) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.
- (c) The IIA may make an application to the Court of First Instance for court orders to compel compliance with the requirements in the course of inspection and investigation. Failure to comply with the order will be a contempt of court.
- (d) To enforce the inspection and investigation powers of the IIA, the following criminal offences will be provided under the legislation –
- (i) failure to comply with the requirements in relation to inspection or investigation imposed by the IIA without reasonable excuse;
 - (ii) knowingly or recklessly providing false or misleading information in purported compliance with a requirement in relation to inspection or investigation imposed by the IIA;
 - (iii) failure to comply with a requirement in relation to inspection or investigation or providing false or misleading information or causing/allowing a company to do the above, with an intent to defraud; and
 - (iv) destruction, falsification concealment or disposal of any record or document required by an inspector or investigator, with an intent to conceal.
- (e) The IIA may apply to a Magistrate for a warrant to search for, seize and remove any records or documents required to be produced if there are reasonable grounds to suspect that there is, or is likely to be, on the premises specified any record or document required to be produced.
- (f) The IIA may prosecute offences under this legislation in its own name summarily.

- (g) the IIA may impose a range of proportionate disciplinary sanctions to deal with misconduct of varying nature and severity committed by insurers (viz. to issue a reprimand, to impose fines, and to fully or partially suspend or revoke authorization of carrying on all or any class of insurance business).

Key Legislative Proposals

- 5.4.3 On the basis of the above, we **propose** to introduce a new part in the ICO to provide the IIA with additional powers with regard to the regulation of insurers along the following line –

Interpretation

- (a) *To define “business record” as any record or document relating to the business conducted by the insurer; or any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer.*
- (b) *To define “inspector” as a person authorized by the IIA under para. (1) to ascertain any matter specified in para. (1)(a) in relation to an insurer.*
- (c) *To define “investigator” as a person appointed by the IIA under para. (2)(a) to investigate the matter referred to in para. (2).*

(1) Power to conduct inspection

- (a) *To provide that an inspector may exercise the powers under para. (1)(c) for the purpose of ascertaining whether an insurer is complying, has complied with, or is likely to be able to comply with the requirement specified in para. (1)(b).*
- (b) *To provide that the specified requirement in para. (1)(a) is the requirement not to contravene –*
- (i) *any provision of the ICO ;*
 - (ii) *any notice or requirement given or imposed under the ICO;*
 - (iii) *any of the terms or conditions of authorization given under section (8) of the ICO; and*
 - (iv) *any other condition imposed under the ICO.*

- (c) *To provide that an inspector may, at any reasonable time –*
- (i) *enter any business premises of the insurer;*
 - (ii) *inspect, and make copies or otherwise record details of, any business record of the insurer;*
 - (iii) *make inquiries of the insurer or a person specified in para. (1)(g) –*
 - *concerning any business record of the insurer, or*
 - *concerning any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the insurer.*
- (d) *To provide that in exercising a power under para. (1)(c)(ii), the inspector may require the insurer, or a person specified in para. (1)(g) –*
- (i) *to give the inspector access to any business record of the insurer;*
 - (ii) *to produce to the inspector, within the time and at the place specified in the requirement, any business record of the insurer; and*
 - (iii) *to answer any question regarding any business record of the insurer.*
- (e) *To provide that in exercising a power under para. (1)(c)(iii), the inspector may require the insurer, or a person specified in para. (1)(g) –*
- (i) *to give the inspector access to any business record of the insurer;*
 - (ii) *to produce to the inspector, within the time and at the place specified, any business record of the insurer; and*
 - (iii) *to answer any question raised for the purposes of para.(1)(c)(iii).*
- (f) *To provide that the power under para. (1)(c)(iii), (d) and (e) is not exercisable in relation to a person specified in para. (1)(g) unless the inspector has reasonable cause to believe that the information or record sought under para. (1)(c), (d) or (e) cannot be obtained by exercising the power in relation to the insurer.*
- (g) *To provide that the person specified for the purposes of paras. (1)(c)(iii), (d) and (e) is a person whom the inspector has reasonable cause to believe has information relating to, or is*

in possession of, any business record of the insurer.

- (h) To provide that if a person gives an answer in compliance with a requirement imposed under paras. (1)(c)(iii) (d), or (e), the inspector may, in writing, require the person to verify, within the time specified in the requirement, the answer by a statutory declaration.*
- (i) To provide that if, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer in compliance with a requirement imposed under paras. (1)(c)(iii), (d), or (e), the inspector may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.*
- (j) To provide that a statutory declaration under paras. (1)(h) and (i) may be made before the inspector and for that purpose the inspector shall have full power and authority to administer the statutory declaration.*
- (k) To provide that the IIA may authorize in writing any person, or any person belonging to a class of persons, as an inspector for the purposes of conducting inspection.*
- (l) To provide that the IIA may exercise the inspection powers and may authorize another person for the purpose of ascertaining whether or not a person, who was formerly an authorized insurer, has complied, or has failed to comply, with the specified requirements under para. 1(b) at any time during the period the person was an authorized insurer.*

(2) Power to conduct investigation

- (a) To provide that if –*
 - (i) the IIA has reasonable cause to believe that an offence under the ICO may have been committed;*
 - (ii) the IIA has reasonable cause to believe that an insurer may have engaged in defalcation, fraud, misfeasance or other misconduct in relation to carrying on insurance business;*
 - (iii) the IIA has reasonable cause to believe that the manner in which any person has engaged or is engaging in any*

activities is prejudicial to the interest of policyholders or potential policyholders or the public interest;

(iv) the IIA, for the purpose of considering whether any disciplinary power under the ICO is to be exercised, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not fit and proper; or

(v) the IIA has reasonable cause to believe that any provisions under the ICO may have been breached

the IIA may in writing direct one or more of its employees or, with the consent of the FS, appoint one or more other persons, to investigate any of the matters referred in para. (2)(a)(i) – (v).

(b) To provide that the costs and expenses incurred by an investigator, other than an employee of the IIA, are to be paid out of moneys provided by LegCo.

(c) To provide that the IIA shall furnish an investigator with a copy of its direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person in relation to an investigation, shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

(d) To provide that para. (2)(e) applies to –

(i) any person in relation to whom an investigator is appointed to investigate any matter referred to in para. (2)(a)(i) – (v); or

(ii) a person whom an investigator has reasonable cause to believe to be in possession of any record or document that contains, or is likely to contain, information relevant to an investigation of any matter referred to in para. (2)(a)(i) – (v).

(e) To provide that an investigator may require a person in relation to whom this paragraph applies to –

(i) produce, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator that is or may be relevant to the investigation; and is in the person's possession;

(ii) give an explanation or further particulars in respect of any record or document produced;

- (iii) *attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to any matter under investigation that may be raised by the investigator;*
 - (iv) *respond to any written question relating to any matter under investigation that the investigator may raise with the person; and*
 - (v) *give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.*
- (f) *To provide that if a person gives any answer, response, explanation or particulars in accordance with a requirement imposed under paras. (2)(e), the investigator may in writing require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.*
- (g) *To provide that if a person does not give any answer, response, explanation or particulars in accordance with a requirement under paras. (2)(e) for the reason that the information concerned is not within the person's knowledge or in the person's possession, the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.*
- (h) *To provide that a statutory declaration under paras. (2)(f) and (g) may be made before the investigator and for that purpose the investigator shall have full power and authority to administer the statutory declaration .*

(3) Application to Court of First Instance

- (a) *To provide that if a person fails to comply with a requirement imposed by an inspector under para. (1) or by an investigator under para. (2), the inspector or the investigator may apply by originating summons to the Court of First Instance for an inquiry into the failure.*
- (b) *To provide that on an application under para. (3)(a), the Court of First Instance may –*
- (i) *on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order*

- the person to comply with the requirement within the time specified by the Court; and*
- (ii) *on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.*
- (c) *To provide that an originating summons under para. (3)(a) is to be in Form No. 10 in Appendix A to the Rules of the High Court.*
- (d) *To provide that despite anything in the ICO, no proceedings may be instituted against a person for the purposes of para. (3)(b)(ii) in respect of any conduct if –*
- (i) *criminal proceedings have previously been instituted against the person under paras. (4)(a), (b), (c), (d) or (e) below in respect of the same conduct; and*
- (ii) *those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under para. (4)(a), (b), (c), (d) or (e) below in respect of the same conduct.*

(4) Offences in relation to inspections and investigations

- (a) *To provide that a person commits an offence if the person, without reasonable excuse, fails to comply with a specified requirement imposed on the person.*
- (b) *To provide that a person commits an offence if the person, with intent to defraud, fails to comply with a specified requirement imposed on the person.*
- (c) *To provide that a person commits an offence if –*
- (i) *in purported compliance with a specified requirement imposed on the person, the person produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect; and*
- (ii) *the person knows that, or is reckless as to whether, the record or document, or the answer or response, or the*

explanation or particulars, are false or misleading in a material respect.

- (d) To provide that a person commits an offence if, in purported compliance with a specified requirement imposed on the person, the person, with intent to defraud, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect.*
- (e) To provide that a person commits an offence if, being an officer or employee of a company, the person, with intent to defraud –*
 - (i) causes or allows the company to fail to comply with a specified requirement imposed on the company; or*
 - (ii) causes or allows the company, in purported compliance with a specified requirement imposed on the company, to produce any record or document, or give an answer or response, or give any explanation or particulars, that are false or misleading in a material respect.*
- (f) To provide that a person is not excused from complying with a specified requirement imposed on the person only on the ground that to do so might tend to incriminate the person.*
- (g) To provide that a person who commits an offence under⁵⁰ –*
 - (i) para. (4)(a) is liable –*
 - on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or*
 - on summary conviction to a fine at level 5 and to imprisonment for 6 months.*
 - (ii) para. (4)(c) is liable –*
 - on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months.*
 - (iii) paras. (4)(b), (d) or (e) is liable –*
 - on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or*
 - on summary conviction to a fine at level 6 and to*

⁵⁰ C.f. section 184 of the SFO and section 13 of the AMLO.

imprisonment for 6 months.

- (h) To provide that 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 the person to pay to the IIA the whole or a part of the costs and expenses of the investigation and the IIA may recover the whole or the part of the costs and expenses as a civil debt due to it.*
- (i) To provide that if the IIA receives an amount under an order made under para. (4)(h) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have already been paid out of moneys provided by LegCo, the IIA must pay to the FS the amount received under the order to the extent that it has already been paid out of moneys provided by LegCo.*
- (j) To provide that for the purpose of para. (4), a specified requirement means a requirement imposed under para. (1) or (2).*

(5) Magistrate's warrant

- (a) To provide that if a magistrate is satisfied on information on oath laid by an inspector or an investigator that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under para. (1) or (2), the magistrate may issue a warrant authorizing a person set out in the warrant, and such other person as may be necessary to assist in the execution of the warrant –
 - (i) to enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and*
 - (ii) to search for, seize and remove any record or document that the person specified in the warrant has reasonable cause to believe may be required to be produced under para. (1) or (2), as the case may be.**
- (b) To provide that the person specified for the purposes of para. (5)(a) is –
 - (i) in the case of para. (1), an inspector; or*
 - (ii) in the case of para. (2), an investigator.**

- (c) *To provide that if an authorized person has reasonable cause to believe that a person found on the premises is employed, or engaged to provide a service, in connection with a business that is or has been conducted on the premises, the authorized person may require that person to produce for examination any record or document that –*
- *is in the possession of that person; and*
 - *the authorized person has reasonable cause to believe may be required to be produced under para. (1) or (2), as the case may be.*
- (d) *To provide that an authorized person may, in relation to any record or document required to be produced under para. (5)(c) –*
- (i) *prohibit any person found on the premises from –*
 - *removing the record or document from the premises;*
 - *erasing anything from, adding anything to or otherwise altering anything in, the record or document; or*
 - *otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or*
 - (ii) *take any other step that appears to the authorized person to be necessary for –*
 - *preserving the record or document; or*
 - *preventing interference with the record or document.*
- (e) *To provide that any record or document removed under para. (5)(a) may be retained –*
- *for a period not exceeding 6 months beginning on the day of its removal; or*
 - *if the record or document is or may be required for the purpose of any criminal proceedings or any proceedings under the ICO, for any longer period that may be necessary for the purpose of those proceedings.*
- (f) *To provide that if an authorized person removes any record or document, the authorized person must, as soon as reasonably practicable after the removal, give a receipt for the record or document.*

- (g) *To provide that an authorized person who has removed any record or document may permit any person who would be entitled to inspect the record or document but for the removal to inspect it and to make copies or otherwise record details of it at all reasonable times.*
- (h) *To provide that an authorized person who enters any premises under this section must, if required, produce the warrant for inspection.*
- (i) *To provide that section 102 of the Criminal Procedure Ordinance applies to any property that has come into the possession of the IIA, as it applies to property that has come into the possession of the police.*
- (j) *To provide that a person commits an offence if the person –*
 - *without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under para. (5)(c) or (d); or*
 - *obstructs an authorized person exercising a power conferred by para. (5)(c) or (d).*
- (k) *To provide that a person who commits an offence under para. (5)(j) is liable⁵¹ –*
 - *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(6) Destruction of documents

- (a) *To provide that a person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that he is required by an inspector or investigator to produce, with intent to conceal, from the inspector or the investigator, facts or matters capable of being disclosed by the record or document.*

⁵¹ C.f. section 17 of AMLO and section 34ZZF the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

- (b) *A person who commits an offence under para. (6)(a) is liable⁵² –*
- (i) *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - (ii) *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(7) Prosecution of offences by the IIA

- (a) *To provide that an offence under the ICO, and an offence of conspiracy to commit such an offence, may be prosecuted by the IIA in its own name but where the IIA prosecutes an offence under such circumstances, the offence shall be tried before a magistrate as an offence which is triable summarily.*
- (b) *To provide that for, and only for, the purpose of the prosecution of an offence referred to in para. (7)(a), an employee of the IIA who is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance may appear and plead before a magistrate any case of which the employee has charge and is to have, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under the ICO.*
- (c) *To provide that nothing in this para. (7) derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.*

(8) Disciplinary actions in respect of insurers

- (a) *To provide that subject to para. (9), the IIA may exercise any one or more of the powers specified in para. (8)(b) as it considers appropriate in the circumstances of the case if –*
- (i) *an authorized insurer is, or was at any time, guilty of misconduct; or*
 - (ii) *the IIA is of the opinion that any person who is a director⁵³ or controller⁵⁴ of an authorized insurer is not*

⁵² C.f. section 192 of the SFO and section 20 of the AMLO.

⁵³ “Director” has the meaning as defined in section 2 of the ICO.

a fit and proper person to hold the position held by the person.

- (b) *To provide that the powers referred to in para. (8)(a) are⁵⁵ –*
- (i) *to revoke 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; or*
 - (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;*
 - (iii) *to reprimand the authorized insurer publicly or privately;*
 - (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*
 - (v) *to order the authorized insurer to pay a pecuniary penalty not exceeding the amount which is the greater of –*
 - *\$10,000,000; or*
 - *three times the amount of the profit gained or loss avoided by the authorized insurer as a result of the misconduct, or of the other conduct of the authorized insurer which leads the IIA to form the opinion referred to in para. (8)(a)(ii) (as the case may be).*
- (c) *To provide that an authorized insurer ordered to pay a pecuniary penalty under para. (8)(b) must pay the penalty to the IIA within 30 days, or such further period as the IIA may specify by notice, after the order has taken effect.*
- (d) *To provide that if a regulated person fails to comply with an order in para. (8)(b), the IIA may further order the regulated person to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues after*

⁵⁴ “Controller” has the meaning as defined in section 9 of the ICO.

⁵⁵ C.f. section 196 of the SFO and section 34ZW of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

the date specified in the order as being the date by which the remedial action must be taken.

- (e) To provide that the Court of First Instance may, on an application of the IIA made in the manner specified in para. (8)(f), register an order to pay a pecuniary penalty made under paras. (8)(b) or (8)(d) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.*
- (f) To provide that for the purpose of making an application under para. (8)(e), the IIA must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.*
- (g) To provide that any pecuniary penalty paid to or recovered by the IIA pursuant to an order made under para. (8)(b) must be paid by the IIA into the general revenue.*
- (h) To provide that where the IIA has exercised its power under para. (8)(a), it may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.*
- (i) To provide that in this paragraph (8), “misconduct” means –*
 - (i) a contravention of any provision of the ICO;*
 - (ii) a contravention of any of the terms and conditions of any authorization granted under section 8 of the ICO;*
 - (iii) a contravention of any other condition imposed on an authorized insurer under or pursuant to any provision of the ICO; or*
 - (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 interests of existing policyholders or potential policyholders, or to the public interest,*
and “guilty of misconduct” is to be construed accordingly.
- (j) To provide that, where an authorized insurer is, or was at any time, guilty of misconduct within the meaning of the*

definition of misconduct in para.(8)(i) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of another person as –

- (i) the RO of the authorized insurer; or*
- (ii) a person involved in the management of the authorized insurance business of the authorized insurer,*
the conduct shall also be regarded as misconduct on the part of that other person, and guilty of misconduct shall also be construed accordingly.

(9) Procedural requirements in respect of exercise of powers under para. (8)

- (a) To provide that the IIA must not exercise any disciplinary power under para. (8)(b) without first giving to the authorized insurer in respect of whom the power is to be exercised a reasonable opportunity of being heard.*
- (b) To provide that if the IIA decides to exercise any disciplinary power under para. (8), the IIA must inform the authorized insurer in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice must include –*
 - (i) a statement of the reasons for which the decision is made;*
 - (ii) the time at which the decision is to take effect;*
 - (iii) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;*
 - (iv) in so far as applicable, the terms in which the authorized insurer is to be reprimanded under the decision; and*
 - (v) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.*

(10) Guidelines for exercise of powers to impose a pecuniary penalty

- (a) To provide that the IIA must not exercise its powers to impose a pecuniary penalty unless –*
 - (i) it has published guidelines to indicate the manner in which it proposes to exercise such power; and*

- (ii) *in exercising such power, it has had regard to the guidelines so published.*
- (b) *To provide that without prejudice to the inclusion of any other factors that the IIA may consider relevant, guidelines published under para. (10)(a) 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 insurer or any other person.*
- (c) *To provide that guidelines published under para. (10)(a) are not subsidiary legislation.*

(11) Effect of suspension

- (a) *To provide that if authorization of an authorized insurer is suspended, the authorized insurer, during the suspension period –*
 - (i) *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*
 - (ii) *is to continue to be 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.*
- (b) *To provide that 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.*

(12) General provision relating to the exercise of disciplinary

powers

- (a) *To provide that 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 policy holders or potential policy holders or in the public interest, by agreement with the authorized insurer in question –
 - (i) *exercise any disciplinary power that the IIA may exercise in respect of the authorized insurer; and*
 - (ii) *take such additional action as it considers appropriate in the circumstances of the case.**
- (b) *To provide that if the IIA exercises any power or takes any additional action in respect of an authorized insurer under para. (12)(a), it must comply with paras. (9)(a) and (b) unless the authorized insurer agrees otherwise.*
- (c) *In reaching a disciplinary decision, 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.*

(13) Revocation and suspension does not avoid or affect agreement

To provide that the revocation or suspension of an authorization of an authorized insurer does not operate so as to –

- (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*
- (ii) *affect a right, obligation or liability arising under the agreement, transaction or arrangement.*

(14) Requirement to transfer records on revocation or suspension of authorization

- (a) *To provide that if an authorization of an authorized insurer is revoked or suspended, the IIA may, by notice in writing, 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 as the IIA may specify in the notice.

- (b) To provide that a person who, without reasonable excuse, fails to comply with a requirement imposed on it under para. (14)(a) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.*

(15) Permission to carry on business operations on revocation or suspension of authorization

- (a) To provide that if an authorization of an authorized insurer is revoked or suspended, the IIA may by notice in writing permit the authorized insurer, subject to such conditions as the IIA may specify in the notice –*
- (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*
 - (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.*
- (b) To provide that if the IIA has granted a permission to an authorized insurer under para. (15)(a), the authorized insurer is not to be regarded as having contravened the restriction on carrying on regulated activities by reason of its carrying on essential business operations in accordance with the permission.*
- (c) To provide that a permission granted under para. (15)(a), and the imposition of conditions, take effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.*

CHAPTER 6

KEY LEGISLATIVE PROPOSALS – REGULATORY ARRANGEMENTS FOR BANKS' INSURANCE INTERMEDIARY ACTIVITIES

Detailed Proposals issued in June 2011 (c.f. paras. 13 – 16 of the document and paras. 22 – 30 of Annex A to the document)

- 6.1 Noting the different client base and sale environment in banks, as well as HKMA's role as the primary and lead regulator of banks, we have proposed that the IIA and HKMA should work closely on the regulation of insurance intermediary activities of banks, and that it would be necessary for the IIA to delegate specified functions to HKMA for this purpose. To ensure regulatory consistency and enhance transparency and certainty, we have proposed that –
- (a) the IIA should be the primary and lead regulator for all insurance intermediaries, including banks which act as insurance intermediaries of insurance companies and their employees who act as their TRs, and be the sole regulator to set conduct standards and requirements. The IIA should be vested with the powers to regulate all insurance intermediary activities;
 - (b) the IIA would delegate specified functions (including inspection and investigative functions in respect of banks' insurance intermediary activities)⁵⁶ to HKMA and the delegable functions would be stipulated in the Amendment Bill. Delegation of any functions and withdrawal of any such delegation would be subject to the approval of the CE in Council, which may impose conditions in approving the delegation; and

⁵⁶ As explained in para. 5.2.2 of Chapter 5 of this document, we propose conferring on the IIA a specified suspension power to suspend a licensee from carrying on any, or any part of, a regulated activity for a specified period before the effective date of an appropriate disciplinary action if it is in the interest of the existing or potential policyholders or the general public to do so. This specified suspension power will also be delegated to HKMA in respect of regulation of banks' insurance intermediary activities.

- (c) despite the proposed delegation, the IIA would be able to carry out the specified functions in para. (b) above concurrently with the HKMA. In particular, the IIA and HKMA would carry out joint inspection of banks' insurance intermediary activities. If the inspection findings warrant (e.g. in cases where the principal insurer concerned is involved in the misconduct of banks' insurance intermediary activities), the IIA may initiate investigation of such activities, take over such investigation from HKMA, or participate in HKMA's investigation.

6.2 Apart from the above proposals to be reflected in the Amendment Bill, we have also proposed, inter alia, to enhance regulatory consistency and cooperation between the IIA and HKMA –

- (a) the IIA and HKMA will sign a Memorandum of Understanding (“MoU”) setting out the detailed arrangements for the two regulators to cooperate in the regulation of insurance intermediary activities of banks;
- (b) the IIA and HKMA will put in place arrangements to formulate reciprocal staff secondment, as and when appropriate, to get involved in inspection and/or investigation work related to insurance intermediary activities of banks with a view to facilitating experience sharing and promoting consistency in regulation between the two regulators;
- (c) the IIA and HKMA will agree on the annual supervisory focus in the supervision of insurance intermediary activities of banks; and
- (d) the IIA and HKMA will exchange information at regular liaison meetings and keep each other posted of investigations and follow-up actions for cases with mutual regulatory concerns.

6.3 As set out in paragraph 5.3.1 in Chapter 5 of this document, we have proposed that the IIA, being the primary and lead regulator for all insurance intermediaries, should be the sole authority to be vested with the power to impose disciplinary sanctions on

licensed insurance intermediaries. For example,

- (a) the IIA will consider all investigation reports completed (including those cases referred by HKMA that warrant disciplinary actions). The IIA will decide whether and, if so, what disciplinary sanctions are warranted;
- (b) the IIA will establish a Disciplinary Committee with participation from HKMA to support it in exercising its disciplinary power. The Disciplinary Committee will be chaired by a senior IIA executive with members from both the IIA and HKMA; and
- (c) the IIA will establish an Expert Panel from which it may seek advice on the nature of a specific product, related industry practices or experiences, to facilitate its deliberations during the disciplinary process. The Expert Panel will comprise members with industry knowledge and necessary measures will be in place to avoid any conflict of interest.

Key Legislative Proposals

6.4 On the basis of the above, we **propose** to introduce new provisions in the ICO in respect of delegation of functions to HKMA along the following line –

- (a) *to provide that the IIA may, subject to the approval of the CE in Council, delegate its power of inspection, power of investigation⁵⁷ and specified suspension power to HKMA for the purpose of regulating any regulated activity carried on by an authorized institution and licensed insurance intermediaries engaged by it.*

[Remarks: HKMA will be required to consult the IIA before it exercises the specified suspension power (see Chapter 5 of this document). The IIA will also consult

⁵⁷ The delegated powers will include the power to apply to the Court of First Instance to compel compliance with a requirement imposed by the inspector or investigator and the power to apply a Magistrate's warrant to enter premises to search for, seize and remove record for inspection or investigation purposes.

HKMA before it exercises such power in respect of banks' insurance intermediary activities.]

- (b) to provide that 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.*
- (c) to provide that any such delegation does not prevent the IIA from performing the function delegated.*
- (d) to provide that 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.*
- (e) to provide that without prejudice to para. (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.*

Other checks and balances

6.5 It should be noted that in addition to the measures set out in paras. 6.2 and 6.3 above, we also propose to introduce other checks and balances to ensure consistency between the IIA and HKMA in exercising their regulatory powers, including –

- (a) regulatory decisions by the IIA and HKMA, including all disciplinary decisions by the IIA, will be subject to review by the independent Insurance Appeals Tribunal (c.f. para. 7.1.1 of this document);
- (b) an independent Process Review Panel will be established by the CE to review the internal process and procedures of the use of the proposed regulatory powers by relevant regulators in respect of the regulation of insurance intermediaries (c.f. para. 7.2.1(e) of this document); and
- (c) the IIA will table its annual report before LegCo (c.f. para.

7.2.1(a) of this document).

CHAPTER 7

KEY LEGISLATIVE PROPOSALS – APPELLATE MECHANISM AND CHECKS AND BALANCES

7.1 Insurance Appeals Tribunal

Detailed Proposals issued in June 2011 (c.f. para. 19 of the document and para. 35 of Annex A to the document)

7.1.1 We have proposed to modernise the existing appellate mechanism prescribed under the ICO, under which all appeals are to be made to the FS, by establishing an independent, full-time Insurance Appeals Tribunal (“IAT”) with the following features –

- (a) the IAT has jurisdiction to review regulatory decisions, including all disciplinary decisions, of the IIA as well as those of HKMA regarding the insurance intermediary activities of banks;
- (b) the IAT may confirm, vary or set aside any such decision of the IIA and HKMA, as well as direct the IIA or HKMA, as the case may be, to make a decision afresh in respect of any specified matter;
- (c) the office of the IAT will operate on a full-time basis; it will be chaired by a person eligible for appointment as a judge of the High Court and its members will include, inter alia, market practitioners and others with appropriate knowledge and experience of the insurance industry, all to be appointed by the CE; and
- (d) 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 fact⁵⁸.

⁵⁸ In the Detailed Proposals, we have proposed that the appeal to the Court of Appeal must be on a point of law. After further deliberation, in order to further strengthen the fairness of the regulatory regime, we are inclined to set out in the legislation that an aggrieved party may appeal to the Court of Appeal on a question of law, fact, or mixed law and fact.

Key Legislative Proposals

7.1.2 Modelling on the relevant provisions on appeal tribunals in the SFO (primarily sections 216 and Schedule 8) and Part 6 of the AMLO, we **propose** to –

- (a) introduce a new Part in the ICO on the establishment of the IAT, covering the following –
 - (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;
 - (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;
 - (iii) the IAT may confirm, vary or set aside the decision or remit the matter to the IIA or HKMA with directions as appropriate;
 - (iv) the IAT must give the parties to the review a reasonable opportunity to be heard during a review;
 - (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 private⁵⁹;
 - (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 considers appropriate) for the purpose of a review.

⁵⁹ Modelling on section 20 of Part 1 of Schedule 8 to the SFO, we will set out in the Amendment Bill that sittings of the IAT are held in public unless the IAT determines that in the interests of justice a sitting or any part thereof shall be held in private. This will be stipulated in Schedule A as it concerns the proceedings of IAT (please see para. 7.1.2(a)(vii)).

In addition, the IAT has the same powers as the Court of First Instance to punish for contempt; and

- (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 (viz. Schedule A and B respectively); and

- (b) delete all existing provisions in the ICO which provide for the application for and handling of appeals.

7.1.3 We **propose** to introduce new provisions in the ICO for the establishment of the IAT along the following line –

(1) Establishment of the IAT

- (a) To provide that there is established a tribunal to be known as the “Insurance Appeals Tribunal”.*
- (b) To provide that the IAT has jurisdiction to review specified decisions and to hear and determine any question or issue arising out of or in connection with any review, in accordance with Schedule B (which lists the specified decisions reviewable by the IAT).*
- (c) To provide that if the CE considers it appropriate to do so, the CE may establish additional tribunals for the purposes of any reviews, and the provisions of the ICO apply, with necessary modifications, to each of those additional tribunals as they apply to the IAT.*
- (d) The CE in Council may, by notice published in the Gazette, amend Schedule A (which sets out the appointment of members of the IAT and its proceedings)⁶⁰ or Schedule B (which lists the specified decisions reviewable by the IAT) and*

⁶⁰ Schedule A is primarily related to procedural matters. It is not included in this document.

the notice will be subject to negative vetting procedures in LegCo.

(2) Composition of IAT

- (a) *To provide that the IAT –*
- *is to consist of a chairperson and two other members to be appointed by the Chief Executive; and*
 - *is to be presided over by the chairperson who is to sit with the two other members.*
- (b) *To provide that the chairperson of the IAT must be a person who –*
- *is a judge or a deputy judge of the Court of First Instance;*
 - *is a former Justice of Appeal of the Court of Appeal;*
 - *is a former judge or a former deputy judge of the Court of First Instance; or*
 - *is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4).*
- (c) *To provide that the chairperson of the IAT must be a person who (except where the chairperson is a judge, or a deputy judge, of the Court of First Instance) is not a public officer, or is a public officer by virtue only of being the chairperson of a board or tribunal established under an Ordinance; and is not a member of the IIA or HKMA.*
- (d) *To provide that a member of the IAT must be a person who is not a public officer, or is a public officer by virtue only of being the chairperson of a board or tribunal established under an Ordinance; and who is not a member of the IIA or HKMA.*
- (e) *To provide that the chairperson (except where the chairperson is a judge, or a deputy judge, of the Court of First Instance), and other members of the Tribunal may be paid, as a fee for their services, such amount as the FS considers appropriate.*
- (f) *To provide that the amounts payable under this para. are a charge on the general revenue.*

(3) Schedule A has effect in relation to the IAT

To provide that Schedule A has effect in relation to the appointment of members of the IAT, and to the proceedings and sittings of, and procedural and other matters concerning, the IAT.

(4) Applications for review of specified decisions

(a) To provide that a person who is aggrieved by a specified decision made in respect of the person may, by notice in writing to the IAT, 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.

(b) To provide that despite para.(4)(a) and subject to para. (4)(c), on an application by a person who is aggrieved by a specified decision made in respect of the person –

- the IAT may by order extend the time within which an application for review of the specified decision may be made under para.(4)(a); and*
- on the making of the order, the time within which the application may be made under para. (4)(a) is extended accordingly.*

(c) To provide that the IAT may only grant an extension under para. (4)(b) after the applicant and the IIA or HKMA (“the relevant authority”) have been given a reasonable opportunity to be heard; and if it is satisfied that there is a good cause for granting the extension.

(d) To provide that an application for review must be in writing; and must state the grounds for the application.

(e) To provide that IAT must, as soon as reasonably practicable after receiving an application for review, send a copy of the application to the IIA or HKMA.

(5) Determination of review by the IAT

(a) To provide that the IAT may determine a review of a specified decision by –

- (i) confirming, varying or setting aside the decision and, if the decision is set aside, substituting for the decision any*

other decision that the IAT considers appropriate; or
(ii) *remitting the matter to the relevant authority with any directions it considers appropriate.*

(b) *To provide that if the IAT varies, or substitutes any other decision for, a specified decision under para. (5)(a)(i), the decision as varied or the other decision substituting for the specified decision may be any decision (whether more or less onerous than the decision varied or substituted) that the relevant authority had power to make in respect of the person who makes the application for review in question, whether or not under the same provision as that under which the specified decision has been made.*

(c) *To provide that in reviewing a specified decision, the IAT must give the parties to the review a reasonable opportunity to be heard.*

(d) *To provide that for the purposes of proceedings before the IAT, matters of fact are to be established on a balance of probabilities.*

(6) Powers of IAT

(a) *To provide that the IAT may, for the purposes of a review, on its own initiative or on the application of any party to the review –*

(i) *receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;*

(ii) *determine the manner in which any material mentioned in para.(6)(a)(i) is received;*

(iii) *by notice in writing signed by the chairperson of the IAT, require a person to attend before it at any sitting and to give evidence and produce any article, record or document in the person's possession or control relating to the subject matter of the review;*

(iv) *administer oaths;*

(v) *examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question that the IAT considers appropriate for the purpose of the review;*

(vi) *order a witness to provide evidence for the purpose of the*

- review by affidavit;*
- (vii) order a person not to publish or otherwise disclose any material the IAT receives;*
 - (viii) prohibit the publication or disclosure of any material the IAT receives at any sitting, or any part of a sitting, that is held in private;*
 - (ix) stay any of the proceedings in the review on any grounds and on any terms and conditions that it considers appropriate having regard to the interests of justice;*
 - (x) determine the procedure to be followed in the review; and*
 - (xi) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.*
- (b) To provide that a person commits an offence if the person, without reasonable excuse –*
- (i) fails to comply with an order, notice, prohibition or requirement of the IAT made, given or imposed under para. (6)(a);*
 - (ii) disrupts any sitting of the IAT or otherwise misbehaves during any sitting of the IAT;*
 - (iii) having been required by the IAT under para. (6)(a) to attend before the IAT, leaves the place where the person's attendance is so required without the permission of the IAT;*
 - (iv) hinders or deters any person from attending before the IAT, giving evidence or producing any article, record or document, for the purpose of a review;*
 - (v) threatens, insults or causes any loss to be suffered by any person who has attended before the IAT, on account of that attendance; or*
 - (vi) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the IAT at any time on account of the performance of the chairperson's or member's functions in that capacity.*
- (c) To provide that a person who commits an offence under para. (6)(b) is liable –*
- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(d) To provide that a person is not excused from complying with an order, notice, prohibition or requirement of the IAT made, given or imposed under para. (a) only on the ground that to do so might tend to incriminate the person.

(7) Use of incriminating evidence given for the purposes of a review

(a) This para. (7) applies to any evidence, answer or information given or provided by a person in accordance with a requirement or order of the IAT imposed or made in accordance with paragraph (6)(a)(iii), (v), (vi) or (xi).

(b) To provide that despite anything in the ICO and subject to para. (7)(c), neither the evidence, answer or information given or provided by the person nor the requirement or order imposed or made by the IAT is admissible in evidence against the person in criminal proceedings in a court of law.

(c) To provide that para. (7)(b) does not apply to criminal proceedings in which the person is charged with an offence under para. (6)(b)(i), or under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

(8) Contempt dealt with by the IAT

(a) To provide that the IAT has the same powers as the Court of First Instance to punish for contempt.

(b) To provide that without limiting the powers of the IAT under para. (8)(a), the IAT has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, engages in any conduct falling within para. (6)(b)(i), (ii), (iii), (iv), (v) or (vi).

(c) To provide that the IAT must, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

- (d) To provide that despite anything in the ICO –*
- (i) no power may be exercised under this section to determine whether to punish a person for contempt in respect of any conduct if –*
 - criminal proceedings have previously been instituted against the person under para. (6)(b) in respect of the same conduct; and*
 - (a) those criminal proceedings remain pending or (b) because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under that section in respect of the same conduct; and*
 - (ii) no criminal proceedings may be instituted against a person under para. (6)(b) in respect of any conduct if –*
 - any power has previously been exercised under this section to determine whether to punish the person for contempt in respect of the same conduct; and*
 - (a) proceedings arising from the exercise of that power remain pending or (b) because of the previous exercise of that power, no power may again be lawfully exercised under this section to determine whether to punish the person for contempt in respect of the same conduct.*

(9) Privileged information

To provide that this Part of the Amendment Bill and Schedule A do not require an authorized institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information in relation to the affairs of any of its customers other than that person.

(10) Costs

- (a) To provide that the IAT may, in relation to a review, by order award to –*
- (i) any person whose attendance, whether or not as a witness, has been necessary or required for the purposes of the review; or*
 - (ii) any party to the review, any sum that it considers appropriate in respect of the costs reasonably incurred by the person, or the party, in relation to the review and the application for review in question.*

- (b) *To provide that costs awarded under para. (10)(a) must be paid by, and are recoverable as a civil debt from –*
 - (i) *if they are awarded to a person under para. (10)(a)(i), any party to the review that the IAT considers appropriate; or*
 - (ii) *if they are awarded to a party to the review under para. (10) (a)(ii), the other party to the review.*
- (c) *To provide that Order 62 of the Rules of the High Court apply to the award of costs, and to the taxation of any costs awarded, by the IAT under para. (10)(a).*

(11) Notification of determinations of the IAT

- (a) *To provide that the IAT must, as soon as reasonably practicable after completing a review, deliver –*
 - (i) *its determination and the reasons for the determination; and*
 - (ii) *any order made under para. (10) in relation to the review and the reasons for the order.*
- (b) *To provide that if a sitting, or any part of a sitting, of the IAT relating to a review is held in private, the IAT may by order prohibit the publication or disclosure of –*
 - (i) *its determination, or the reasons for the determination, referred to in para. (11)(a)(i), or any part of the determination or reasons; or*
 - (ii) *an order, or the reasons for an order, referred to in para. (11)(a)(ii), or any part of such an order or any part of the reasons for such an order.*
- (c) *To provide that a person commits an offence if the person, without reasonable excuse, fails to comply with an order of the IAT made under para. (11)(b).*
- (d) *To provide that a person who commits an offence under para. (11)(c) is liable –*
 - *on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or*
 - *on summary conviction to a fine at level 6 and to imprisonment for 6 months.*

(12) Form and proof of orders of the IAT

- (a) To provide that an order made by the IAT must be recorded in writing and be signed by the chairperson of the IAT.***
- (b) To provide that a document purporting to be an order of the IAT signed by the chairperson of the IAT is, in the absence of evidence to the contrary, presumed to be an order of the IAT duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairperson of the IAT.***

(13) Orders of IAT may be registered in Court of First Instance

- (a) To provide that after receiving a notice in writing given by the IAT in the manner prescribed by rules made by the Chief Justice under para. (21), the Court of First Instance may register an order of the IAT in the Court of First Instance.***
- (b) To provide that an order registered under para. (21) is to be regarded for all purposes as an order of the Court of First Instance made within the jurisdiction of that Court.***

(14) Application for stay of execution of specified decisions

- (a) To provide that subject to paras. (14)(b) and (d), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.***
- (b) To provide that a person who makes an application for review or an application referred to in para. (4)(b) may, at any time before the review or the application is determined by the IAT, apply to the IAT for a stay of execution of the specified decision to which the application relates.***
- (c) To provide that the IAT must, as soon as reasonably practicable after receiving an application under para. (14)(b), conduct a hearing to determine the application.***
- (d) To provide that the IAT may by order grant the stay subject to any condition as to costs, payment of money into the IAT or other conditions that the IAT considers appropriate.***

(15) Applications for stay of execution of determinations of the IAT

- (a) To provide that a party to a review may, at any time after the determination of the review by the IAT, apply to the IAT for a stay of execution of the determination.***
- (b) To provide that on an application under para. (15)(a), the IAT may by order grant the stay subject to any condition as to costs, payment of money into the IAT or other conditions that the IAT considers appropriate.***

(16) Appeal to the Court of Appeal with leave

- (a) To provide that subject to para. (16)(b), if a party to a review is dissatisfied with the determination of the review, the party may appeal to the Court of Appeal against the determination on a question of law or a question of fact or a question of mixed law and fact.***
- (b) To provide that no appeal may be made under para. (16)(a) unless leave to appeal has been granted by the Court of Appeal.***
- (c) To provide that leave to appeal for the purpose of para. (16)(b) may be granted –***
 - in respect of a particular issue arising out of the determination; and***
 - subject to any condition that the Court of Appeal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.***
- (d) To provide that leave to appeal for the purpose of para. (16)(b) may only be granted if the Court of Appeal is satisfied that the appeal has a reasonable prospect of success; or there is some other reason in the interests of justice why the appeal should be heard.***

(17) Powers of the Court of Appeal

- (a) To provide that the Court of Appeal may, in relation to an appeal against a determination of the IAT –***

- (i) *allow the appeal;*
 - (ii) *dismiss the appeal;*
 - (iii) *vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination that it considers appropriate; or*
 - (iv) *remit the matter to the IAT or to the relevant authority with any directions it considers appropriate.*
- (b) *To provide that if the Court of Appeal varies, or substitutes any other determination for, a determination under para. (17)(a)(iii), the determination as varied or the other determination substituting for the determination may be any determination (whether more or less onerous than the determination varied or substituted) that the IAT had power to make in respect of the review in question, whether or not under the same provision as that under which the determination has been made.*
- (c) *To provide that in an appeal under this section, the Court of Appeal may make any order for payment of costs as it considers appropriate.*

(18) No stay of execution of the IAT's determination on appeal

- (a) *Without prejudice to para. (15), the lodging of an appeal under para. (16) does not by itself operate as a stay of execution of the determination of the IAT appealed against.*
- (b) *If an appeal is lodged under para. (16), the Court of Appeal may, on an application made to it by any party to the review, order a stay of execution of the determination of the IAT appealed against.*
- (c) *To provide that the Court of Appeal may, when making an order under para. (16)(b), impose any condition that the Court of Appeal considers appropriate, including conditions as to costs and payment of money into the IAT.*

(19) No other right of appeal

To provide that subject to section 50 of the High Court Ordinance and para. (16), the determination of the IAT is final and is not

subject to appeal.

(20) Time when specified decisions take effect

- (a) To provide that except as otherwise provided in the ICO, a specified decision takes effect –*
- (i) where, before the expiry of the period of 21 days specified in para. (4), the person in respect of whom the decision is made notifies the relevant authority in writing that the person will not apply for a review of the decision, at the time the person so notifies the relevant authority;*
 - (ii) where, within the period of 21 days specified in para. (4), the person neither notifies the relevant authority that the person will not apply for a review of the decision nor applies for a review of the decision, at the time the period expires; or*
 - (iii) where the person applies for a review of the decision within the period of 21 days specified in para. (4) –*
 - if the decision is confirmed by the IAT, at the time the decision is so confirmed;*
 - if the decision is varied, or substituted by another decision, by the IAT, at the time the decision is varied or substituted, subject however to the terms of the variation or substitution; or*
 - if the application is withdrawn, at the time the application is withdrawn.*
- (b) To provide that despite para. (20)(a), the relevant authority may, if it considers it appropriate in the public interest to do so in relation to a specified decision, specify in the notice in respect of the decision any time, other than that at which the decision is apart from this para. to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.*

(21) Power of Chief Justice to make rules

To provide that the Chief Justice may make rules –

- (i) providing for the award of costs under para. (10) and the taxation of those costs;*
- (ii) providing for matters relating to the registration of an order of the IAT in the Court of First Instance under para. (13);*
- (iii) regulating the procedure for the hearing of appeals under*

- para. (16);*
- (iv) requiring the payment of the fees specified in the rules for any matter relating to applications for review;*
 - (v) providing for matters of procedure or other matters relating to applications for review, which are not provided for in this Part of the Amendment Bill or in Schedule A;*
 - (vi) providing for the issue or service of any document (however described) for the purposes of this Part of the Amendment Bill or Schedule A; and*
 - (vii) prescribing any matter which this Part of the Amendment Bill provides is, or may be, prescribed by rules made by the Chief Justice.*

Schedule B – Specified decisions

| <i>Item</i> | <i>Provision</i> | <i>Description of decision</i> |
|----------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <i>Specified decisions made in relation to insurers</i> | | |
| <i>1</i> | <i>ICO Sections 8(2), 11</i> | <i>Refusal to authorize a company to carry on insurance business</i> |
| <i>2</i> | <i>ICO Sections 8(1)(a), 12</i> | <i>Imposition or revocation of conditions on an authorization of a company to carry on insurance business</i> |
| <i>3</i> | <i>ICO Section 13A(8)</i> | <i>Objection to an insurer’s appointment of a controller</i> |
| <i>4</i> | <i>ICO Section 13B(7)</i> | <i>Objection to an individual’s becoming of a controller of an insurer</i> |
| <i>5</i> | <i>ICO Section 14(6)</i> | <i>Objection to an insurer’s appointment of a new director / controller</i> |
| <i>6</i> | <i>ICO Section 38D(2)</i> | <i>Direction to an insurer to appoint an Advisor / a Manager</i> |
| <i>7</i> | <i>ICO Section 38E(8)</i> | <i>Determination of remuneration and expenses to be paid by an insurer to an Advisor / a Manager</i> |
| <i>8</i> | <i>ICO Section 50B</i> | <i>Removal of an authorized representative of Lloyd’s</i> |
| <i>9</i> | <i>Para. 5.4.3 of this document para. (8)(b)(i)</i> | <i>Exercise of power to revoke authorization of an insurer</i> |
| <i>10</i> | <i>Para. 5.4.3 of this document para. (8)(b)(ii)</i> | <i>Exercise of power to suspend authorization of an insurer</i> |

| <i>Item</i> | <i>Provision</i> | <i>Description of decision</i> |
|--------------------------------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| 11 | <i>Para. 5.4.3 of this document para. (8)(b)(iii)</i> | <i>Exercise of power to reprimand an insurer</i> |
| 12 | <i>Para. 5.4.3 of this document para. (8)(b)(iv)</i> | <i>Exercise of power to impose a prohibition on an insurer from applying to be authorized to carry on insurance business</i> |
| 13 | <i>Para. 5.4.3 of this document para. (8)(b)(v)</i> | <i>Exercise of power to order an insurer to pay a pecuniary penalty</i> |
| <i>Specified decisions made in relation to insurance intermediaries</i> | | |
| 14 | <i>Para. 4.3.3 of this document para. (1)(b), (c)</i> | <i>Refusal to grant a licence as licensed insurance agency</i> |
| 15 | <i>Para. 4.3.3 of this document para. (1)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to a licence for insurance agency</i> |
| 16 | <i>Para. 4.3.3 of this document para. (2)(b), (c)</i> | <i>Refusal to grant a licence as licensed individual insurance agent</i> |
| 17 | <i>Para. 4.3.3 of this document para. (2)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to a licence for individual insurance agent</i> |
| 18 | <i>Para. 4.3.3 of this document para. (3)(b), (c)</i> | <i>Refusal to grant a licence as licensed TR (agent)</i> |
| 19 | <i>Para. 4.3.3 of this document para. (3)(e)</i> | <i>Imposition, amendment or revocation of any condition in relation to a licence for TR (agent)</i> |
| 20 | <i>Para. 4.3.3 of this document para. (4)(b), (c)</i> | <i>Refusal to grant a licence as licensed insurance broker company</i> |
| 21 | <i>Para. 4.3.3 of this document para. (4)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to a licence for insurance broker company</i> |
| 22 | <i>Para. 4.3.3 of this document paras. (5)(b), (c)</i> | <i>Refusal to grant a licence as licensed TR (broker)</i> |
| 23 | <i>Para. 4.3.3 of this document para. (5)(e)</i> | <i>Imposition, amendment or revocation of any condition in relation to a licence for TR (broker)</i> |

| <i>Item</i> | <i>Provision</i> | <i>Description of decision</i> |
|-------------|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 24 | <i>Para. 4.5.5 of this document paras. (2)(b), (c)</i> | <i>Approval of RO of licensed insurance agency</i> |
| 25 | <i>Para. 4.5.5 of this document para. (2)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to an approval of RO appointment for a licensed insurance agency</i> |
| 26 | <i>Para. 4.5.5 of this document para. (3)(b), (c)</i> | <i>Approval of RO of licensed insurance broker company</i> |
| 27 | <i>Para. 4.5.5 of this document para. (3)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to an approval of RO appointment for a licensed insurance broker company</i> |
| 28 | <i>Para. 4.3.3 of this document para. (8)(c)</i> | <i>Refusal to renew a licence as an insurance agent</i> |
| 29 | <i>Para. 4.3.3 of this document para. (8)(d)</i> | <i>Imposition, amendment or revocation of any condition in relation to renewal of a licence as an insurance agent</i> |
| 30 | <i>Para. 5.3.3 of this document para. (2)(c)(i)</i> | <i>Exercise of power to revoke or suspend the licence of a licensed insurance intermediary or to impose a prohibition on insurance intermediary from applying to be licensed for carrying on regulated activities</i> |
| 31 | <i>Para. 5.3.3 of this document para. (2)(c)(ii)</i> | <i>Exercise of power to revoke or suspend the approval of an RO or to impose a prohibition on RO from applying to be approved as an RO</i> |
| 32 | <i>Para. 5.3.3 of this document para. (2)(c)(iii)</i> | <i>Exercise of power to reprimand a regulated person</i> |
| 33 | <i>Para. 5.3.3 of this document para. (2)(c)(iv)</i> | <i>Exercise of power to order a regulated person to pay a pecuniary penalty</i> |
| 34 | <i>Para. 5.2.5 of this document para. (8)</i> | <i>Exercise of the specified suspension power on a licensed insurance intermediary</i> |

7.2 Other checks and balances

Detailed Proposals issued in June 2011 (c.f. para. 35 of Annex A to the document)

7.2.1 Apart from the proposal to establish an IAT, we have proposed the following checks and balances to enhance the accountability of the IIA –

- (a) the IIA would table its annual report before LegCo;
- (b) the annual budget and corporate plan of the IIA would be subject to the approval of FS;
- (c) some functions of the IIA would be non-delegable (i.e. such functions must be performed by the IIA 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 banks) may be lodged with the Office of the Ombudsman;
- (g) the Director of Audit may conduct value for money audit on the IIA;
- (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 (“ICAC”) would be able to examine the practices and procedures of the IIA to facilitate the discovery of corrupt

practices⁶¹; and

- (i) the use of personal data by the IIA would be in compliance with the Personal Data (Privacy) Ordinance (Cap. 486).

Key Legislative Proposals

7.2.2 We **propose** to introduce the following new provisions in the ICO to reflect (a) – (c) in para. 7.2.1 above –

- (a) to require the IIA to table its annual report before LegCo and to submit its annual budget and corporate plan to FS for approval; and

- (b) with reference to Part 2 of Schedule 2 to the SFO, to specify the non-delegable functions in a Schedule to the ICO.

7.2.3 The proposal in para. 7.2.1(d) is reflected in the key legislative proposals in relation to disciplinary sanctions on insurance intermediaries (c.f. item 2(g) under para. 5.3.3 of Chapter 5 of this document). With reference to the arrangements applicable to other financial regulators such as SFC and MPFA, the proposal under para. 7.2.1(e) would be implemented via administrative arrangements.

7.2.4 For proposals in para. 7.2.1(f) and (h), we propose to amend Schedule 1 to the Ombudsman Ordinance (Cap. 397) and Schedule 1 to the Prevention of Bribery Ordinance respectively to include the IIA as one of organisations to which the two Ordinances apply. On the other hand, it would not be necessary to make any legislative amendments for implementing proposals in para. 7.2.1 (g) and (i) in respect of the oversight by the Director of Audit and ICAC as well as the IIA's compliance with the Personal Data (Privacy) Ordinance.

7.2.5 We **propose** that the legislative proposals for implementing the proposals in para. 7.2.2 above would be along the following line –

- (a) To provide that the IIA shall, as soon as reasonably*

⁶¹ HKMA's practice and procedures are already subject to examination by ICAC.

practicable after the end of each financial year of the IIA, prepare an annual report on its activities during the financial year and send a copy of the report to the FS who shall cause a copy thereof to be laid on the table of the LegCo.

- (b) To provide that the IIA must, before the end of each financial year of the IIA, prepare a corporate plan for its next financial year.*
- (c) To provide that a corporate plan in para. (b) must specify –*
 - the objectives of the IIA's activities for the financial year concerned; and*
 - the nature and scope of the activities to be undertaken in order to achieve those objectives; and*
 - an annual budget of estimated expenditure for achieving those objectives.*
- (d) To provide that before completing the preparation of a corporate plan, the IIA must submit a draft of the plan for approval by the FS and must take into account any comments made by the FS on the draft.*
- (e) To provide that as soon as practicable after completing the preparation of a corporate plan, the IIA must deliver the plan to the FS.*
- (f) To provide that the FS may publish the corporate plan delivered in accordance with para. (e) in such manner as the FS thinks appropriate.*
- (g) To provide that the IIA may also, if it thinks fit, attach to a corporate plan a proposed corporate plan for one or more financial years following the financial year to which the first-mentioned plan relates.*

CHAPTER 8

KEY LEGISLATIVE PROPOSALS – LEVY AND FEES

Detailed Proposals issued in June 2011 (c.f. para. 20 of the document and paras. 31-33 of Annex A to the document)

8.1.1 At present, the IA collects fixed annual licence fees from authorized insurers in accordance with the ICO. The fees have remained unchanged since 1996 and the IA currently recovers some 37% of its annual operating cost from the insurer licence fees.

8.1.2 We have proposed that the IIA be provided with stable sources of revenue to fully recover its cost from the market so as to achieve the objective of being financially independent of the Government. The IIA would have the following four major sources of revenues –

(a) licence fees payable by insurers

- a fixed licence fee of \$300,000 payable by insurers, and \$30,000 payable by captive insurers; and
- a variable licence fee of 0.0039% calculated on the basis of individual liabilities, collected in an incremental approach in the first 5 years after the establishment of the IIA⁶²;

(b) licensed fees payable by insurance intermediaries

- only a fixed licence fee will be charged. The fee would be waived in the first 5 years after the establishment of the IIA⁶³. The fee level would be specified in the legislation before expiry of the waiver period;

⁶²

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|------------------------------------------------|---------|---------|---------|---------|---------|---------|
| Variable fee (as a % of insurance liabilities) | 0.0001% | 0.0005% | 0.0013% | 0.0026% | 0.0031% | 0.0039% |

⁶³ In the indicative budget at Annex C to the Detailed Proposals, we projected that the IIA would record a surplus in the sixth year after its establishment with licence fees collected from insurance intermediaries assumed to be frozen at the level of registration fees in 2011.

(c) user fees for providing specific services

- the IIA would charge fees to recover the cost of providing specific services such as processing the following matters –
 - (i) application for authorization or de-authorization of insurers / class of business conducted by insurers;
 - (ii) renewal of authorization of insurers;
 - (iii) appointment / cessation / retirement / change of particulars of controllers, directors, auditors and appointed actuaries of insurers;
 - (iv) notification in relation to changes of particulars of insurers;
 - (v) transfer of business of insurers;
 - (vi) application for accounting concession, relaxation of regulations or issue of compliance certificate, etc.; and
 - (vii) issuing a copy / certified copy of the register of licensed insurance intermediaries, etc.;

(d) a levy of 0.1% on insurance premiums for all insurance policies

- the IIA would collect a levy of 0.1% on insurance premiums for all insurance policies from policyholders via insurers / insurance intermediaries;
- the IIA would adopt an incremental approach in achieving the target level of levy in the first 5 years after the IIA's establishment⁶⁴;
- the IIA would 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;
- premiums of reinsurance contracts should be exempted from the levy; and
- a cap would be imposed on the levy on non-life insurance policies with annual premiums at or above \$5 million and life insurance policies with single or

64

| | 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% |

annualized premiums at or above \$100,000. The cap level would be subject to review by the IIA.

- 8.1.3 We have also proposed that the IIA may, after consultation with the industry, make recommendation to the CE in Council for making regulations to provide for the payment of fees and prescribe fee levels. Separately, the CE in Council may specify the levy rates by order and make regulations on the collection and payment of levies, which would be subject to negative vetting by LegCo. 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 lump sum of \$500 million to the IIA upon its inception to meet part of its expenses in the initial 5 years before it can meet the aforesaid target.

Key Legislative Proposals

- 8.1.4 On the basis of the above, we **propose** to amend the ICO along the following line⁶⁵ to empower the CE in Council to make regulations on fees and levy which are subsidiary legislation subject to negative vetting by LegCo –

(1) Regulations on fees

- (a) To provide that the CE in Council may make regulations to –***
- (i) require and provide for the payment to the IIA of, and prescribe, fees –***
 - for an application to the IIA under the ICO;***
 - for anything done by the IIA or a committee established in the performance of a function under the ICO;***
 - for any other matter with regard to which provision is made under the ICO; and***
 - (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.***

⁶⁵ C.f. sections 394 to 396 of the SFO.

- (b) *To provide that without prejudice to para. (1)(c) below, 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.*
- (c) *To provide that 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.*
- (d) *To provide that the regulations made may provide –*
- (i) *that the amount of any fee shall be fixed by reference to a scale set out in the regulations;*
 - (ii) *for the payment of different fees by or in relation to persons or cases of different classes or descriptions;*
 - (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*
 - (iv) *for the payment of fees annually or at other intervals.*
- (e) *To provide that the IIA may recover the amount of any fees payable under the regulations as a civil debt due to it.*

(2) Order for levies

- (a) *To provide that 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.*
- (b) *To provide that each authorized insurer shall collect, account for, and pay to the IIA, the levy (if any) payable under para. (2)(a).*
- (c) *To provide that the IIA may recover the amount of any levy payable as a civil debt due to it.*
- (d) *To provide that the CE in Council may make regulations for –*

- (i) the payment of levies⁶⁶;*
- (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.*

(3) Reduction of levies

- (a) To provide that if during a financial year of the IIA –
 - *the reserves of the IIA, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and*
 - *the IIA has no outstanding borrowings,*the IIA shall consult the FS with a view to recommending to the CE in Council that the rate of a levy be reduced under para. (2).*

- (b) To provide that the IIA may, after consulting the F S, recommend to the CE in Council that the rate of a levy be reduced under para. (2).*

⁶⁶ The regulations would set out procedures in respect of the payment of levies, such as remittance procedures and requirement on late charges.

CHAPTER 9

KEY LEGISLATIVE PROPOSALS – TRANSITIONAL ARRANGEMENTS FOR INSURANCE INTERMEDIARIES

9.1 Deeming provision

Detailed Proposals issued in June 2011 (c.f. para. 11 of Annex A to the document)

9.1.1 We have proposed to introduce a deeming provision to the effect that pre-existing insurance intermediaries validly registered with the SROs would be deemed to be licensed with the IIA for 3 years upon commencement of the statutory licensing regime. The pre-existing insurance intermediaries, as deemed licensees, would be required to comply with relevant obligations under the new legislation. They will also be subject to IIA's inspection, investigation and disciplinary powers. Deemed licensees who wish to carry on regulated activities after expiry of the three-year period would be required to submit a licence application to the IIA under the new regime before the end of that three-year period, and for better management of licence applications, the IIA may mandate the deemed licensees to submit their applications within a specified timeframe.

Key Legislative Proposals

9.1.2 We **propose** to introduce transitional provisions to give effect to the following –

- (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 regime⁶⁷. 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

⁶⁷ There will also be corresponding provisions in the ICO to deem pre-IIA appointed RO of a registered insurance agency or appointed chief executive of a registered insurance broker as RO of the respective licensee under the new IIA regime.

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, to avoid bunching up of applications towards the end of the transitional period given the large number of deemed licensees);

- (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
- (c) a deemed licensee may opt to exit the licensing regime upon cessation of business by notifying the IIA in a form specified by the IIA.

9.1.3 We **propose** that the deeming provisions for each type of SRO registrants should be along the following line –

(1) Registered insurance agencies

- (a) To provide that a person who immediately before the establishment of the IIA –*
 - (i) is an appointed insurance agent within the meaning of the ICO; and*
 - (ii) is registered with IARB as an insurance agency, is, on the establishment of the IIA, deemed to be a licensed insurance agency and, subject to para. (1)(b), remains to be so deemed for the 3-year transitional period that follows.*
- (b) To provide that if the person referred to in para. (1)(a) makes an application for an insurance agency licence during the transitional period but before the specified date (i.e. a date which is, say, 12 months before expiry of the 3-year transitional period), then the licence deemed to have been granted under para. (1)(a) will be in force until –*
 - (i) if the application is approved, the date on which a licence is granted by the IIA; or*

- (ii) if the application is refused by the IIA, –*
 - 21 days after the notice informing the person of the IIA’s decision has been sent⁶⁸; or*
 - where an appeal is made against IIA’s decision within the period ending 21 days after the notice informing the person of the IIA’s decision has been sent, until such appeal is disposed of.*

(2) Registered insurance agents

- (a) To provide that an individual who immediately before the establishment of the IIA –*
 - (i) is an appointed insurance agent within the meaning of the ICO; and*
 - (ii) is registered with IARB as an insurance agent, is, on the establishment of the IIA, deemed to be a licensed individual insurance agent and, subject to para. (2)(b), remains to be so deemed for the 3-year transitional period that follows.*

- (b) To provide that if the individual referred to in para. (2)(a) makes an application for an individual insurance agent licence during the transitional period but before the specified date (i.e. a date which is, say, 12 months before expiry of the 3-year transitional period), then the licence deemed to have been granted under para. (2)(a) will be in force until –*
 - (i) if the application is approved, the date on which a licence is granted by the IIA; or*
 - (ii) if the application is refused by the IIA, –*
 - 21 days after the notice informing the individual of the IIA’s decision has been sent; or*
 - where an appeal is made against IIA’s decision within the period ending 21 days after the notice informing the individual of the IIA’s decision has been sent, until such appeal is disposed of.*

⁶⁸ Refusal to grant a licence under such circumstances amounts to a revocation of the deemed licence and the person concerned cannot carry on a regulated activity on such revocation. The person concerned is entitled to lodge an appeal to the IAT for a review of IIA’s decision within the period ending 21 days after the notice informing the person of IIA’s decision has been sent (see para. (4) under para. 7.1.3 of Chapter 7 of this document).

(3) Registered TRs of appointed insurance agencies

- (a) *To provide that an individual who immediately before the establishment of the IIA –*
- (i) *is an insurance agent within the meaning of the ICO;*
 - and*
 - (ii) *is registered with IARB as a TR that is engaged by a person referred to in para. (1),*
- is, on the establishment of the IIA, deemed to be a licensed TR who is engaged by the person and, subject to para. (3)(b), is to be so deemed for the transitional period that follows.*
- (b) *To provide that if the individual referred to in para. (3)(a) makes an application for a TR(agent) licence during the transitional period but before the specified date (i.e. a date which is, say, 12 months before expiry of the 3-year transitional period), then the licence deemed to have been granted under para. (3)(a) will be in force until –*
- (i) *if the application is approved, the date on which a licence is granted by the IIA; or*
 - (ii) *if the application is refused by the IIA, –*
 - *21 days after the notice informing the individual of the IIA’s decision has been sent; or*
 - *where an appeal is made against IIA’s decision within the period ending 21 days after the notice informing the individual of the IIA’s decision has been sent, until such appeal is disposed of.*

(4) Registered insurance brokers

- (a) *To provide that a person, who immediately before the establishment of the IIA is an authorized insurance broker within the meaning of the ICO (which includes a person registered with the CIB or PIBA as an insurance broker), is on the establishment of the IIA deemed to be a licensed insurance broker company and, subject to para. (4)(b), is to be so deemed for the transitional period that follows.*
- (b) *To provide that if the person referred to in para. (4)(a) makes an application for an insurance broker company licence during the transitional period but before the specified date (i.e. a date which is, say, 12 months before*

expiry of the 3-year transitional period), then the licence deemed to have been granted under para. (4)(a) will be in force until –

- (i) if the application is approved, the date on which a licence is granted by the IIA; or*
- (ii) if the application is refused by the IIA, –*
 - 21 days after the notice informing the person of the IIA’s decision has been sent; or*
 - where an appeal is made against IIA’s decision within the period ending 21 days after the notice informing the person of the IIA’s decision has been sent, until such appeal is disposed of.*

(5) TRs of registered insurance brokers

(a) To provide that an individual, who immediately before the establishment of the IIA is registered with the CIB or PIBA as a TR that is engaged by a registered insurance broker, is on the establishment of the IIA deemed to be a licensed TR(broker) who is engaged by the registered insurance broker and, subject to para. (5)(b), is to be so deemed for the transitional period that follows.

(b) To provide that if the individual referred to in para. (5)(a) makes an application for a TR(broker) licence during the transitional period but before the specified date (i.e. a date which is, say, 12 months before expiry of the 3-year transitional period), then the licence deemed to have been granted under para. (5)(a) will be in force until –

- (i) if the application is approved, the date on which a licence is granted by the IIA; or*
- (ii) if the application is refused by the IIA, –*
 - 21 days after the notice informing the individual of the IIA’s decision has been sent; or*
 - where an appeal is made against IIA’s decision within the period ending 21 days after the notice informing the individual of the IIA’s decision has been sent, until such appeal is disposed of.*

(6) Authority may vary, suspend or revoke licences deemed to have been granted

(a) To provide that the IIA may, at any time during the

transitional period, by notice in writing, vary, suspend or revoke a licence deemed to have been granted to a person if the IIA decides that the following information was, at the time when it was provided by the person, wrong, incomplete, false or misleading in a material particular –

(i) any information provided to the IARB in relation to the application of the person for registration as an insurance agency, an insurance agent or a TR(agent); or

(ii) any information provided to the CIB or PIBA in relation to the application of the person for registration as an insurance broker or a TR(broker).

(b) To provide that the IIA must not amend, suspend or revoke a licence under para. (6)(a) without first giving the person a reasonable opportunity of being heard.

(c) To provide that a notice given under para. (6)(a) must be accompanied by a statement specifying the reasons for the variation, suspension or revocation of the licence deemed to have been granted.

(d) To provide that the amendment, suspension or revocation takes effect at the time the notice is received by the person or at the time specified in the notice, whichever is the later.

Registration applications not yet approved before the establishment of the IIA

9.1.4 It follows from the proposal in para. 9.1.2(a) that an application for registration as an insurance intermediary submitted to, but not yet approved by, an SRO before the establishment of the IIA will not be covered in the deeming provision. The person concerned may apply to IIA direct for a licence under the new regime.

9.2 Other transitional matters

9.2.1 Apart from the proposed deeming provision for pre-existing insurance intermediaries validly registered with the SROs, we **propose** that the IIA legislation should also contain express legislative provisions on the following transitional matters –

- (a) handling of pre-IIA complaint and disciplinary cases⁶⁹;
- (b) handling of pre-IIA appeal cases;
- (c) effect of pre-IIA disciplinary sanctions after inception of IIA;
and
- (d) handling of outstanding pre-IIA notifications on changes of
particulars and appointments of registrants and ROs.

9.2.2 We **propose** to take into account the following major considerations in working out detailed arrangements for handling these transitional matters –

- (a) protecting policyholders’ interests by safeguarding their right to seek redress in respect of a pre-IIA event despite a change in the regulatory regime for insurance intermediaries;
- (b) ensuring fair and reasonable treatment to the insurance intermediaries concerned;
- (c) maintaining integrity of the regulatory system;
- (d) minimizing any inconvenience to the public and pre-existing insurance intermediaries; and
- (e) having regard to the operational efficiency of the IIA and the proportionality of administrative efforts required to handle such transitional matters.

9.2.3 With reference to relevant local and overseas examples⁷⁰ and balancing the major considerations above, we **propose** to adopt

⁶⁹ This will include provisions on the powers that the IIA (or HKMA under delegated power) may exercise, and procedures to follow, in conducting investigation as to the intermediary’s compliance with the conduct standards and requirements prevailing at the time of the pre-IIA transactions or activities.

⁷⁰ We have made reference to the transitional arrangements adopted by the UK Financial Ombudsman Service for handling complaints which remained unresolved before its commencement and complaints lodged with it about an event that had occurred before its commencement, and the arrangements adopted by the SFC in handling applications for securities licences submitted before the operation of the revamped SFO regime in 2003.

the broad approaches set out in paras. 9.2.4 – 9.2.9 below for handling the transitional matters referred to in para. 9.2.1. Subject to comments and views we receive in this consultation exercise, these will form the basis for drafting the relevant provisions in the IIA legislation.

Pre-IIA complaint and disciplinary cases

9.2.4 After establishment of the IIA, the SROs will cease to have regulatory functions over insurance intermediaries. We **propose** that, 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 IIA⁷¹. This will safeguard policyholders’ right to seek redress. The IIA will be the “one-stop shop” for handling all these cases.

9.2.5 We **propose** that 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. This will ensure fair and reasonable treatment to the insurance intermediaries concerned whilst maintaining integrity of the regulatory system.

Pre-IIA appeal cases

9.2.6 Following the same proposed arrangements for handling pre-IIA complaint and disciplinary cases, we **propose** that 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

⁷¹ The IIA may delegate relevant investigation power to HKMA for investigation of such complaints.

decision made by an SRO⁷² 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 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.

Effect of pre-IIA disciplinary sanctions imposed by SROs

- 9.2.7 Corresponding to the proposal of a deeming provision for all pre-existing insurance intermediaries validly registered with the SROs as set out in paras. 9.1.1 and 9.1.2 above, we **propose** that 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.
- 9.2.8 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.

⁷² At present, an aggrieved insurance intermediary may appeal against a decision by an SRO within 28 days after the decision was made. The IAT will only entertain an appeal against an SRO decision lodged by an aggrieved insurance intermediary within 28 days after the decision was made.

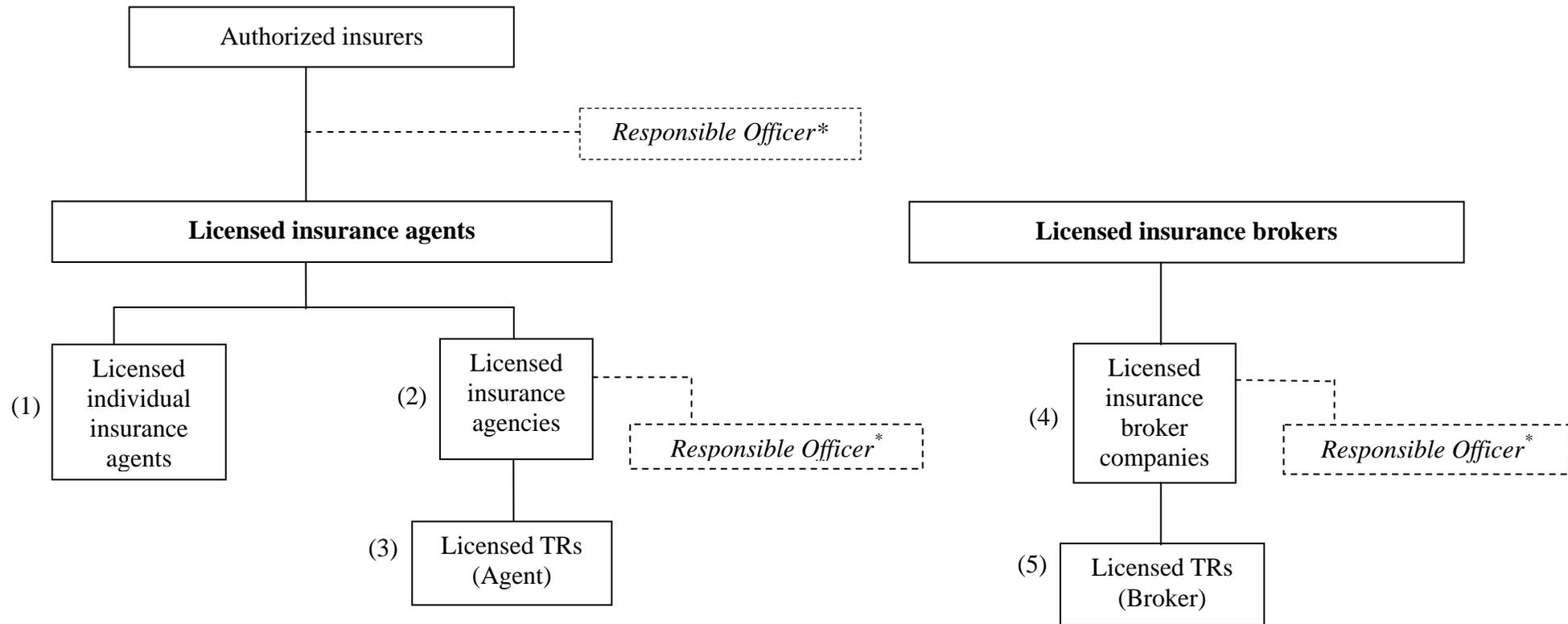
Pre-IIA notifications on changes of particulars and appointments of registrants and ROs

9.2.9 Similar to the deeming proposal to facilitate a smooth transition of pre-existing insurance intermediaries validly registered with the SROs into the new licensing regime, we **propose** that 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 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.

Further engagement with the industry on transitional matters

9.3 The OCI has set up liaison platforms with the industry to discuss, inter alia, transitional matters related to the proposed establishment of the IIA. We will continue to make use of these platforms in our next phase of engagement with the industry to discuss the detailed arrangements for handling the relevant transitional matters as we finalise the IIA legislation.

Independent Insurance Authority
Proposed Licensing Regime for Insurance Intermediaries



Note:

* Every licensed insurance agency / licensed insurance broker company shall appoint a responsible officer (“RO”) and the appointment shall be subject to the IIA’s approval. Chief executive officer of each authorized insurer shall be deemed to be the RO of the authorized insurer.

- Types of insurance intermediary licences to be issued by the IIA**
- A. Licensed insurance agents**
- (1) Licensed individual insurance agents
 - (2) Licensed insurance agencies
 - (3) Licensed technical representatives (“TRs”)(Agent)
- B. Licensed insurance brokers**
- (4) Licensed insurance broker companies
 - (5) Licensed TRs(Broker)

Pursuant to section 113C(2) of the Criminal Procedure Ordinance (Cap. 221), the different levels of fines are as follow –

| <u>Fine</u> | <u>Level applied</u> |
|-----------------------|-----------------------------|
| \$1 to \$2,000 | Level 1 |
| \$2,001 to \$5,000 | Level 2 |
| \$5,001 to \$10,000 | Level 3 |
| \$10,001 to \$25,000 | Level 4 |
| \$25,001 to \$50,000 | Level 5 |
| \$50,001 to \$100,000 | Level 6 |