

Press release

Government launches consultation on key legislative amendments for establishment of independent Insurance Authority

Friday, October 26, 2012

The Government today (October 26) launched a three-month public consultation on the key legislative amendments to the Insurance Companies Ordinance (ICO)(Cap.41) for the establishment of an independent Insurance Authority (IIA).

The Secretary for Financial Services and the Treasury, Professor K C Chan, said, "The establishment of an IIA to replace the Office of the Commissioner of Insurance, a government department, is in line with the international practice for financial regulators to be independent of the Government operationally and financially."

Professor Chan said that during the last consultation exercise, there was general public support for the establishment of an IIA, and the Government published in June 2011 the consultation conclusions and detailed proposals for the establishment of the IIA.

"In drawing up the legislative amendments, the Government has carefully considered the views of insurers, self-regulatory organisations (SROs) and insurance intermediary bodies. They seek to crystallise the detailed proposals published in 2011 and the outcome of further deliberation on industry feedback," he said.

Professor Chan added, "The consultation launched today marks another milestone towards the modernisation of the insurance industry regulatory infrastructure and the introduction of a statutory licensing regime for insurance intermediaries to facilitate the stable development of the industry and provide better protection for policyholders.

"We look forward to receiving views on the legislative amendments. Subject to the views of the Legislative Council and the public, we aim to introduce an Insurance Companies (Amendment) Bill into the Legislative Council in 2013,

with a view to establishing the IIA in 2015."

The legislative amendments in the consultation document cover the functions and governance structure of the IIA; licensing regime for insurance intermediaries; regulatory powers of the IIA; regulatory arrangements for banks' insurance intermediary activities; the appellate mechanism and checks and balances; funding mechanism; and transitional arrangements for insurance intermediaries.

On governance structure, the Government proposes to establish the IIA as a body corporate, consisting predominately of non-executive directors from a cross-section of the community including members with knowledge of the insurance industry and other professionals. To promote the independence of the IIA, the Government will not seek to be represented on the governing board. It is proposed to establish two 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.

On licensing of insurance intermediaries, the Government proposes legislative amendments to define insurance intermediary activities as "regulated activities" which can only be carried on by IIA's licensees, and stipulate in the ICO the eligibility criteria of the five categories of licensees, namely, licensed insurance agencies, licensed individual insurance agents, licensed technical representatives (agent), licensed insurance broker companies and licensed technical representatives (broker). The proposed eligibility criteria for obtaining a licence are modelled on the existing eligibility criteria for registration with the three SROs. The Government also proposes that each and every authorised insurer, licensed insurance agency or licensed insurance broker company will be required to appoint a responsible officer for implementing internal controls and procedures for the purpose of complying with conduct requirements.

On conduct regulation, the Government proposes to lay down in the ICO the broad principles of conduct requirements of insurance intermediaries, such as acting honestly and fairly, exercising a reasonable level of care and diligence, and making necessary disclosure of information. Breaches of such conduct requirements will be subject to proportionate disciplinary sanctions by the IIA, including reprimand, pecuniary penalty, suspension or revocation of licence.

On regulatory powers, the IIA will be vested with powers of inspection, investigation and imposing disciplinary sanctions for the regulation of authorised insurers and insurance intermediaries. To enhance consumer protection, the Government proposes to empower the IIA to suspend a licensee/responsible officer from carrying on a regulated activity for a specified period before a disciplinary decision is available if the IIA considers that it is in the interest of policyholders or the public to do so. This power serves as a stopgap damage control measure to halt further damaging acts by the licensee/responsible officer concerned.

On the regulation of banks' insurance intermediary activities, the Government proposes to empower the IIA to delegate, subject to approval of the Chief Executive-in-Council, to the Hong Kong Monetary Authority (HKMA) specified functions for effective regulation of banks' insurance intermediary activities. These would include the delegation of the inspection, investigation and the above-mentioned suspension powers to the HKMA. The IIA and HKMA will ensure regulatory consistency through entering into a Memorandum of Understanding, liaison meetings, reciprocal staff secondment, joint inspection of banks' insurance intermediary activities, etc.

On the appellate mechanism and checks and balances, the Government proposes to establish an Insurance Appeal Tribunal (IAT) to consider appeals against regulatory decisions, including disciplinary decisions, of the IIA (or HKMA in respect of banks' insurance intermediary activities). The list of regulatory decisions reviewable by the IAT will be listed in a schedule to the ICO. The annual budget and corporate plan of the IIA should be subject to the approval of the Financial Secretary and the annual report tabled before the Legislative Council. The procedures of the use of the regulatory powers by relevant regulators will be subject to external scrutiny by an independent Process Review Panel and IIA's operation will also be subject to the scrutiny of statutory bodies such as the Ombudsman and the Independent Commission Against Corruption.

On financing, the IIA should be self-financed with income streams from licence fees, service charges to insurers and licensees, and a levy of 0.1 per cent on premiums of all insurance policies. The Government proposes that the Chief Executive-in-Council may specify the fees and levy by regulation and order respectively. Both the regulation and order are subsidiary legislation subject to

negative vetting by the Legislative Council, as we have proposed in the last consultation. The licence fees for insurance intermediaries will be waived for the first five years after the establishment of the IIA. We also propose to stipulate in the ICO the requirement that the IIA has 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.

On transitional matters, the Government proposes legislative amendments to deem pre-existing insurance intermediaries and their responsible officers validly registered with the SROs as licensees and responsible officers under the new licensing regime for three years. The Government also sets out in the consultation document the broad approaches to handle transitional matters such as pre-IIA complaints and disciplinary cases not yet completed by the SROs upon the establishment of the IIA. The Government will continue to engage the industry to work out the detailed arrangements for handling transitional matters.

The consultation paper can be downloaded from www.fstb.gov.hk/fsb/ppr/consult/iiakeylegislative.htm. Members of the public and the industry are welcome to send their written comments by mail to Special Duties Division, Financial Services Branch, Financial Services and the Treasury Bureau, 24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong, or by fax to 2527 0292, or by email to iia_consultation@fstb.gov.hk on or before January 26, 2013.