

Establishment of the Independent Insurance Authority ("IIA")

Questions and Answers

Establishment of IIA

1. When will IIA be established? When will the Office of the Commissioner of Insurance ("OCI") be disbanded?

- A phased approach will be adopted to take forward the transition from the current regulatory regime to the new regime –

Stage 1 – To establish the Provisional Insurance Authority ("PIA");
(without regulatory functions and co-exists with OCI)

Stage 2 – IIA to take over OCI's existing functions (the self-regulatory regime for insurance intermediaries remains unchanged); and

Stage 3 – IIA to implement the statutory licensing regime and take over the regulation of insurance intermediaries from the three Self-regulatory Organisations ("SROs") (i.e. the Insurance Agents Registration Board under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association)

- It is expected that the whole process will take two to three years. Our current target is to set up PIA by end 2015. It is expected to be ready to take over OCI's functions after about one year.

2. What is IIA's governance structure?

- IIA will comprise a chairperson, a chief executive officer and not less than six directors, all appointed by the Chief Executive (“CE”). At least two directors will be persons with knowledge of and experience in the insurance industry.
- The Insurance Ordinance (“the Ordinance”) provides that IIA must appoint two industry advisory committees to advise it on matters in relation to long term and general business respectively.

3. What are the differences between the functions of IIA and those of the existing OCI? How will IIA strike a balance between its functions to regulate the insurance industry and to promote the development of the industry?

- In general, apart from succeeding OCI's existing functions, IIA will be responsible for the implementation of an independent regulatory regime for insurance intermediaries to replace the existing self-regulatory regime administered by the three SROs.
- Moreover, IIA will work with the insurance industry to promote healthy and sustainable development of the insurance industry. While it is important to encourage good practices among insurance practitioners, it is equally important to educate the public on the nature of insurance, features of particular insurance products, and assessment of insurance needs against various risks. In this connection, the Ordinance incorporates the followings as IIA's new functions –
 - (a) to facilitate the sustainable market development of the insurance industry, and promote the

competitiveness of the insurance industry in the global insurance market;

- (b) to promote the understanding by policy holders and potential policy holders of insurance products and the insurance industry; and
- (c) to conduct studies into matters affecting the insurance industry.

- IIA's statutory functions are set out in Annex I.

4. The Ordinance will confer upon IIA the powers of inspection, investigation and taking disciplinary actions. What are the checks and balances on IIA's powers?

- We attach great importance to IIA's accountability. Relevant checks and balances include –
 - (a) IIA will comprise a majority of non-executive directors in order to ensure effective oversight of executive decisions;
 - (b) specified decisions made by IIA, including those on licensing and disciplinary actions, are subject to appeal at the independent Insurance Appeals Tribunal (*See Question 18 for relevant procedures*);
 - (c) an independent Process Review Panel will be appointed by the CE to review IIA's internal operations and procedures in relation to its exercise of powers;
 - (d) IIA must publish a draft of any proposed rules for public consultation; and
 - (e) IIA must publish relevant guidelines before it can exercise the power to impose pecuniary penalty.

5. Will IIA handle complaints in relation to insurance claims?

- No. Depending on the circumstances, policy holders can continue to lodge complaints or seek mediation through the following channels –
 - (a) the Insurance Claims Complaints Bureau;
 - (b) by taking civil action; or
 - (c) the Financial Dispute Resolution Centre.

6. What are the financial arrangements for IIA?

- IIA's main sources of revenue are –
 - (a) fixed and variable licence fees payable by insurers;
 - (b) licence fees payable by insurance intermediaries;
 - (c) user fees for providing specific services; and
 - (d) levy on insurance premiums.
- Licence fees payable by insurance intermediaries will be waived for the first five years. Regarding the levy on insurance premiums, IIA will adopt an incremental approach in achieving the target level of levy in the first five years after its establishment¹. The levy will be capped at \$100 per annum for life policies and \$5,000 for non-life policies.
- The Government will seek the approval of the Legislative Council for a lump sum allocation to fund part of the expenses for IIA's establishment and initial operation.

¹ IIA's target level of levy in the first five years after its establishment will be 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%

7. How can the establishment of IIA enhance the protection of policy holders?

- Protection of policy holders is one of the major functions of IIA. The public should have adequate knowledge of insurance and matters that they should be aware of when taking out an insurance policy in order to make an appropriate decision. As such, one of the new functions of IIA is to promote the public's understanding of insurance products.
- In addition, the licensing regime for insurance intermediaries, statutory conduct principles, effective inspection, and investigation and disciplinary powers will help enhance the professionalism of insurance intermediaries, which will in turn be conducive to the better protection of policy holders.

Licensing and regulatory regime for insurance intermediaries

8. Will existing insurance intermediaries be required to take the professional examinations again? Will there be any changes to the existing categorisation and roles of insurance intermediaries?

- Not required.
- Insurance intermediaries who are currently exempted from certain professional examinations will also not be required to take the examinations again.
- Under the Ordinance, the existing categorisation of the two types of insurance intermediaries will remain unchanged –

- (a) insurance brokers who act on behalf of their clients;
and
 - (b) insurance agents who act on behalf of insurers.
- To ensure a smooth transition to the new regime, the following categorisation of insurance intermediary licences will mirror the existing categorisation of registrants under the self-regulatory regime –
 - (a) insurance agency licence;
 - (b) individual insurance agent licence;
 - (c) technical representative (agent) licence;
 - (d) insurance broker company licence; and
 - (e) technical representative (broker) licence;

9. What will be the transitional arrangements for insurance intermediary licences? When can insurance intermediaries apply for licences from IIA?

- Insurance intermediaries who are validly registered with the three SROs will be deemed as licensees upon commencement of the new statutory licensing regime for a period of three years (*See Question 1 for the timeline of IIA's establishment*). We envisage that IIA will set out the detailed licence application procedures in due course with a view to facilitating their application to IIA for licences during the transition period.

10. Do licences issued by IIA require annual renewal?

- The Ordinance provides that licences issued by IIA will normally be valid for three years.

11. Will IIA raise the entry requirements for insurance intermediaries in future? Will there be any changes to the existing Continuous Professional Development (“CPD”) requirements for insurance intermediaries?

- We have no intention to change the licensing and CPD requirements for insurance intermediaries with the establishment of IIA.
- In line with past practices, the regulator will review from time to time the professional requirements of insurance intermediaries, taking into account development of the insurance market and insurance products, as well as the consumers’ expectations.

12. What does it mean by a “fit and proper” person?

- The Ordinance provides that a controller, director or a key person in control functions of the authorised insurer, and a licensed insurance intermediary must be a fit and proper person.
- In determining whether a person is fit and proper, IIA will have regard to matters stipulated in the Ordinance, such as –
 - (a) the education or other qualifications or experience of the person;
 - (b) the person’s character, integrity and the ability to act competently;
 - (c) the person’s financial status or solvency; and
 - (d) whether any disciplinary action has been taken against the person by any local or overseas financial regulators.

13. What will be the arrangements for the SROs after the establishment of IIA? What will be their roles in future?

- The three existing SROs will continue to carry out their regulatory functions of insurance intermediaries until Stage 3 of the transition (*See Question 1 for timeline of IIA establishment*).
- After the commencement of Stage 3, we expect that the SROs will continue to function as trade bodies representing the interests of their members, and organise CPD activities, training courses and other promotional activities to contribute to the development of the insurance industry.

14. Will there be any changes in relation to the referral of business by insurance intermediaries?

- We expect that IIA will stipulate the detailed requirements on referrals of business by insurance intermediaries in codes or rules.

15. How will IIA regulate the conduct of insurance intermediaries? Will a breach of the conduct requirements constitute a criminal offence, and will the insurance intermediary concerned be required to pay a pecuniary penalty of up to \$10 million?

- The Ordinance sets out the principles of the conduct requirements applicable to licensed insurance intermediaries (*See Annex II*).
- Non-compliance with the conduct requirements under the Ordinance is not a crime. IIA may take disciplinary actions on insurance intermediaries who contravene the conduct requirements, including –

- (a) public or private reprimands;
 - (b) pecuniary penalty;
 - (c) suspension of licence;
 - (d) revocation of licence; and/or
 - (e) prohibition on application for licence during a specified period.
- The maximum amount of pecuniary penalty that may be imposed by IIA is capped at \$10 million, or three times the amount of the profit gained or loss avoided by the person as a result of the misconduct. The Ordinance provides that before imposing a pecuniary penalty, IIA must publish guidelines and have regard to the guidelines in exercising that power. With reference to the relevant fining guidelines issued by other financial regulators, the guiding principles for determining the quantum of a pecuniary penalty includes that it should not have the likely effect of putting the regulatee in financial jeopardy.

16. One of conduct requirements under the Ordinance is that insurance intermediaries must “act in the best interests of policy holders”. How should insurance intermediaries comply with this requirement? Would the requirement on insurance agents be different from that on insurance brokers? Will IIA consult the industry when formulating the relevant code of conduct?

- This conduct requirement is not a new concept to the insurance industry. In overseas jurisdictions such as Australia and Singapore, there are similar conduct requirements in the regulatory regime insurance intermediaries.
- The policy intent of this conduct requirement is to require an insurance intermediary to, in carrying on regulated activities, put the interests of policy holders in the forefront. For example, an insurance intermediary

should thoroughly assess the insurance needs and financial status of his customers, and explain the characteristics of the insurance products clearly to ensure that what he recommends is appropriate to the client.

- To facilitate compliance by insurance intermediaries, IIA will include in the code of conduct further details of the conduct requirements. When IIA draws up the code of conduct, the different roles of insurance agents and insurance brokers will be duly taken into account. We envisage that IIA will work closely with the industry when formulating the code of conduct.

17. What are the procedures of IIA's disciplinary proceedings? Will IIA publish the list of insurance intermediaries who are subject to disciplinary actions?

- The Ordinance provides that IIA may exercise disciplinary powers on an insurance intermediary if the latter is proved to have breached relevant requirements. Before exercising such power, IIA must inform the affected person in writing, and explain the reasons for the decision and provide relevant information.
- The affected person may make oral or written representations, or appoint a lawyer to make representations on his/her behalf. After making a disciplinary decision, IIA may publish details of the relevant decision.
- Furthermore, when dealing with cases that involve specialised classes of business or complex insurance products, IIA may consult the expert panel if it considers expert advice would be necessary for it to make a fair and reasonable disciplinary decision. The expert panel will comprise members from the industry.

- An affected person may apply to the Insurance Appeals Tribunal (“IAT”) for a review of a specified decision of IIA, and may further appeal to the Court of Appeal against the determination of IAT.
- We envisage that IIA will set out the detailed procedures of its disciplinary proceedings in the regulatory guidelines, and will consult the industry when drawing up the guidelines.

18. What are the procedures of applying to IAT for a review of IIA’s decision? Can the decision of IIA be stayed during the appeal period? Will an appeal involve significant legal cost?

- IAT is a quasi-judicial body independent of IIA. It is composed of a chairperson and two other members. The chairperson of IAT must be a person eligible for appointment as a judge of the High Court, or a former or current judge.
- A regulated person may apply to IAT for a review of IIA’s disciplinary decisions. The person may, by notice in writing, apply to IAT for a review within 21 days after the notice informing the person of the disciplinary decision has been served, and at the same time apply for stay of the execution of such decision.
- IAT may confirm, vary or set aside IIA’s decision, or remit the matter to IIA with directions it considers appropriate.
- The Ordinance provides that IAT may by order award to any party to the review the cost incurred. The award of the cost is subject to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A). According to the order, IAT should exercise its discretionary power within reasonable

scope, and take into consideration conduct of the involved parties.

- If agreed by both parties to a review, IAT may only make judgement based on written submissions. This provides potential appellants with an option that may involve lower legal costs.

19. Will IIA handle complaints lodged before the commencement of the new regime? Will the disciplinary actions imposed by the SROs still be effective under the new regime?

- If a complaint is lodged to an SRO but has not been disposed of before the commencement of the new regime; or if a complaint relating to an event which happened before the commencement of the new regime is lodged upon or after the commencement of the new regime, IIA will handle the case based on applicable standards prevailing at the time of the event.
- If an SRO has taken disciplinary actions on a registered insurance intermediary before the commencement date (e.g. suspension of licence for a specified period), such disciplinary action will remain in force until the expiry of the period specified by the SRO.
- If an SRO has imposed a pecuniary penalty on an insurance intermediary before the commencement date, it may recover any unpaid fine as a civil debt on or after the commencement date.

Statutory Functions of the Independent Insurance Authority

- (1) The principal function of the independent Insurance Authority (“IIA”) shall be to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders.
- (2) Without limiting the generality of subsection (1), IIA shall –
 - (a) be responsible for supervising an authorized insurer’s and a licensed insurance intermediary’s compliance with the provisions of the Insurance Ordinance;
 - (b) consider and propose reforms of the law relating to insurance business;
 - (c) promote and encourage the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers;
 - (d) promote and encourage the adoption of proper standards of conduct by licensed insurance intermediaries;
 - (da) review and, if necessary, propose reforms of the systems for regulating authorized insurers and licensed insurance intermediaries;
 - (ea) regulate the conduct of insurance intermediaries through a licensing regime;
 - (eb) promote the understanding by policy holders and potential policy holders of insurance products and the insurance industry;
 - (ec) formulate effective regulatory strategies and facilitate the sustainable market development of the insurance industry, and promote the competitiveness of the insurance industry in the global insurance market;
 - (ed) conduct studies into matters affecting the insurance industry;
 - (ee) assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate measures in relation to the insurance industry;
 - (f) co-operate with and assist financial services supervisory authorities of Hong Kong or of any place outside Hong Kong, whenever appropriate, to the extent permitted by the Insurance Ordinance; and
 - (g) perform functions imposed or conferred on IIA by the Insurance Ordinance or any other Ordinance.

Conduct Requirements for Licensed Insurance Intermediaries

When carrying on a regulated activity, a licensed insurance intermediary –

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;
- (b) 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;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;
- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;
- (h) must ensure that the policy holder's assets are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under the Ordinance.