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2013年10月2日

致尊敬的議員

關於「成立獨立保險監管局主要立法建議」補充意見

香港保險中介人商會 (HKCII) 關於政府建議「成立獨立保險監管局的主要立法建議」，已於 2/8/2013 聯同「保險及財策從業員大聯盟 Insurance & Financial Practitioners Alliance (IFPA)」發表了書面意見 (附 IFPA 意見書)。本會現於 2/10/2013 作出補充意見。這補充意見可作為 IFPA 意見書的附件，也可以視為 HKCII 獨立意見書，兩者是相輔相承的。

HKCII 發現「保監獨立主要立法建議」內容有很多不妥善的地方。我們認為事件影響深遠，業界如不加意見，袖手旁觀，勢必延禍下一代。我們現把補充意見交立法會每一位議員參考，希望得到您們的支持，把不利業界的措施移除。閣下閱畢此意見書後倘有任何疑問，歡迎隨時致電賜教。

據保險監理處表示，「保監獨立主要立法建議」將在本年度 11 月左右提交立法會審議。

(附 IFPA 及 HKCII 意見書)

此致

關億信 (Harley Kwan)
2012, 2013 會長 暨
業界事務委員會

香港保險中介人商會 (HKCII) 關於政府建議成立獨立「保險監管局」的主要立法建議，已於 2/8/2013 聯同「保險及財策從業員大聯盟 Insurance & Financial Practitioners Alliance (IFPA)」發表了書面意見 (附IFPA意見書)。本會現於 2/10/2013 作出補充意見。這補充意見可作為 IFPA 意見書的附件，也可以視為 HKCII 獨立意見書，兩者是相輔相承的。

建議成立的「保險監管局」以 2個主要職能為大前題：

(1) 保障投保人利益 (2) 推廣保險業發展 先評論這 2個主要職能。

(1) 關於「保障投保人利益」方面:

保險業的產業鏈包括: 投保人、中介人、保險公司、監管機構，當中和投保人關係最密切，最關心投保人利益是誰? 當然是中介人! 投保人是中介人的衣食父母，中介人直接和投保人聯繫，了解投保人需要，為投保人揀選合適產品、奔走送單及協助理賠。監管機構、保險公司絕無中介人對投保人了解之深刻。我們贊成「適度立法」，如中介人以不合法的手法為自己利益或為了保存客戶而為客戶取得保單額外利益的，我們堅決支持以法律條文處罰之。

看過保監獨立諮詢文件，我們覺得建議成立獨立保監局是「未見其利，先見其害」，極度損害投保人利益:

- (i) 增加徵費。建議成立的「保監局」人數即時多一倍，支出多一倍幾，政府先注資 5億港元，往後自負盈虧。按其它「局」的慣例，「保監局」新任主席年薪動輒4、5 百萬以上，且需增設多個高級職位。此等「局」一向被市民詬病為「高官樂園」，其高級職位均有為退休高官度身訂造之嫌! 新「局」的支出美其名由投保人、保險公司及中介人攤分，但其實最後都是羊毛出在羊身上，即投保人付! 相比之下，目前「自律規管」模式下投保人的負擔會輕鬆得多!
- (ii) 建議中的苛嚴監管扼殺了中介人的生存空間，年輕人不敢投身，中小型獨立中介公司退出市場，抹殺了個人及中小企過去 30多年努力對業界的貢獻，容易造成大食細，然後是寡頭壟斷，正如美國雖行超級監管，但仍爆出大經紀行和保險公司聯手托價，損害投保人利益的醜聞。敢問這是投保人的福氣嗎?

(2) 關於「推廣保險業發展」方面:

道理如同一轍，既然中介人比任何人更了解投保人需要，與其由「監管機構」大灑金錢 (我們敢說一定花業界很多冤枉錢)，倒不如用預算的百分之一 (象徵式!) 資助，由前線人員聯同保險公司負責去策劃推廣，我們敢說效果一定較「監管機構」做好得多!

現在保監既然打正旗號，以「保障投保人利益」作幌子要求獨立，我們中介人提出反對，似乎不容易獲得公眾體諒。不過我們認為「保險監理處」也好、「保險監管局」也好，都只是機構名稱，只是運作上稍有不同，是否「獨立」毫不重要，我們只希望目前或將來的保險監管機構能堅持香港十多二十年來行之有效的兩大原則:

- (1) 自律規管精神
- (2) 審慎理財

兩者的關係亦非常密切 - 現行 (1)自律規管精神的運作下，部份監管及推廣工作由業界人士義務參與，我們既樂於參與，運作良好之下卻毫無「成本」可言，於是應對了 (2)審慎理財 - 監管機構根本毋須耗用大量金錢聘請行外人士去作「盲公式」管理，簡直費時失事! 因而又何需額外廣徵費用? 要審慎理財才對得住投保人呀!

我們發覺香港近年成立了很多「局」，把很多以前屬於政府的工作「外判」了，通過徵費自負盈虧，卻不見得政府架構及支出縮少了; 但因此又增加多條法例去規管各行各業，窒礙商界尤其是中小企發展，各行各業都叫苦連天! 目前保險業佔香港 GPD 12.3%，從業員約10萬人，而前線人員達7萬3千多名，對社會的影響可謂舉足輕重，希望政府改動任何政策都要慎而行之，深思熟慮下才可推行。

我們詳細閱讀「成立獨立保險監管局主要立法建議」，發現內容有許多不妥善的地方，現以附頁把問題分類列出。

類別	關注點
1 「保監局」缺乏中介人代表	<p>1 立法建議文件中董事會不少於 6 位非業界人士，亦將包括最少 2 位「保險業」人士。我們重申，我們反對全部自己人管自己人，這樣會令公眾擔心出現偏頗，但亦不同意由全部外行人管內行人，試問不懂得業界操作及前線銷售的人怎知到如何監察是最恰當，不會因腳痛而醫錯頭，窒礙發展？因此我們認為董事會成員比例應 50%由業界擔任，另 50%由非業界人士至為合適。 最近草擬在 2015 年成立的「旅遊發展局」，業界也佔董事會 36%啊！</p> <p>2 董事會保險業界成員中，應有50%為前線人員。前線人員達 73,000人，他們瞭解市場，了解保戶；他們應能將正面的監管規則帶給大眾市民，令公眾更放心投保。</p> <p>3 法例應清楚寫明董事會保險業界成員委任資格及委任年期。</p> <p>4 最高職位(主席)應由有公信力的保險業資深人士或其它專業如律師、會計師、法官等人士擔任。我們反對由前政務官出任，因政務官多不懂商業及專業操作。</p>
2 懲處標準及罰則過嚴, 規管條例成業界「虎頭鉗」	<p>1 持牌人更改個人資料，必須於7天內以書面向「保監局」呈報，否則最高可被罰款5萬。我們認為時間太短，罰款亦過高。</p> <p>2 干犯刑事行為的受規管人士最高罰款金額達 1千萬元，或其取得利潤或避免損失金額3倍(較高者為準)，實在非常嚇人。我們明白政府須制定措施嚴防大鱷，但此措施卻又嚇壞守法的保險公司CEO及中小型中介公司。建議政府清楚列明不同情況不一樣的罰則，釋除上述人士的憂慮。</p> <p>3 中介人如因保監局的調查而被法庭判罪，法庭可命令該人繳付全部或部份調查成本及費用，肯定嚇怕年輕人不敢入行。但我們贊成此命令可對付案情較嚴重者。</p> <p>4 「保監局」備存持牌人登記冊，並公開持牌人5年內的違規紀錄，將對有關中介人帶來沉重的聲譽及經濟打擊。建議輕微違規應用較短年期「洗底」。</p> <p>5 須為一切訴投及失當行為定下合理「不可追溯期」，以保障中介人在投資環境波動的情況下被無理投訴(踢契)。這主要是針對投資相連保單而言。</p> <p>6 「保監局」有權向涉嫌違規之中介人進行暫緩銷售，及向公眾披露有關主要事實，這有違法庭「預定無罪」的公平原則。應由定案後才能執行處罰。</p> <p>7 「保監局」的擬定規管條文及罰則主要參照證監會及積金局。其實保險中介人大部份工作都放在「服務」方面，較少機會直接影響到客戶的大量財產，實不應和證監及強積金條例看齊。</p> <p>8 目前香港專業團體如律師會、會計師公會及醫務委員會都由其自己界別人士規管會員的操守。保監可在條例的框架之下在操守這方面成立一個主要由保險業界尤其是前線人員組成的「紀律委員會」。我們認為保險業界人士在熟悉業界操作情況下絕對能夠有效率、有效益地去管好前線人員的操守，又不會扼殺從業員的發展機會。</p>
3 徵費問題	<p>1 保監局成立後將自負盈虧，政府一筆過撥款 5億元，預計於 5年過渡期後便開始徵費來維持營運。保監局初期員工比現時多一倍，營運支出多一倍幾。假若保監局在這 5年內發覺不夠用，是否提早向業界及公眾徵費？還是再向立法會申請撥款？</p> <p>2 保監局成立 5年過渡期後，除了從所有投保人的保費中徵收0.1%外，尚會向保險公司及中介人徵費來維持營運。有關徵費將令保險業營運成本上升，羊毛出在羊身上，恐怕會窒礙部份市民的投保意欲，亦令香港失去國際市場競爭力。</p>
4 一業兩管	<p>1 保險及銀行的中介服務涉及保監局及金管局兩個不同的機構及人員，監管寬緊不一的情況看不到能改善。雖然政府聲稱將來的保監是「一業一管」，是用同一把尺去度，但銀行又可以擁有客戶其它私人資料為由作出拖延或不合作，保監如何處理？一業兩管，如何能有一致標準？</p> <p>2 保險中介人常訴說面對銀行不公平競爭；而銀行又訴說面對保監及金管局雙重規管不公平。我們認為最好的方法是要「銀行保險」獨立經營，辦事處及電腦系統應和銀行分開，百份百成為獨立保險中介機構，確保公平競爭，問題可迎刃而解。</p>
5 忽略行業長遠發展	<p>1 立法建議文件僅定下連串規管措施，以及就現行保險公司的產品及政策作出規管，對協助行業長遠發展的目標及方向一字不提！保險業佔香港GPD 12.3%，對社會的影響舉足輕重，若由不懂得業界操作的人士負責推廣，只會浪費金錢而得不到預期效益，因此，我們認為保監可在條例的框架之下成立一個「市場推廣委員會」，由業界有公信力的義務工作人士操作，可收事半功倍之效。</p> <p>2 單一追趕國際做法，却沒有向外國推崇香港奉行廿年「自律規管制度」的好處。求變亦應認真考慮：新制度提出的目標是否明確，執行是否簡單，以達致「自律規管」的低成本，高效益。</p>
6 過渡期牌照安排	<p>1 保監局成立3年後，有權覆核已獲准執業的中介人。這措施是主要針對代理商及經紀商的負責人，還是所有中介人？為何不是順利過渡？</p> <p>2 中介人轉換新公司，3個月內要重新登記，否則要重考。建議重新登記的時間為1年。</p>

INSURANCE & FINANCIAL PRACTITIONERS ALLIANCE (IFPA)

- ◆ Hong Kong Chamber of Insurance Intermediaries (HKCII)
- ◆ Independent Financial Advisors Association Limited (IFAA)
- ◆ The General Agents and Managers Association of Hong Kong (GAMAHK)
- ◆ The Hong Kong General Insurance Agents Association (HKGIAA)
- ◆ The Life Underwriters Association of Hong Kong (LUAHK)
- ◆ LOMA Society of Hong Kong (LOMA) - Observer

2 August 2013

Ms. Au King Chi, JP
Permanent Secretary (Financial Services)
Financial Services Branch
Financial Services and The Treasury Bureau
Government of the Hong Kong Special Administrative Region
24th Floor, Central Government Offices
2 Tim Mei Avenue, Admiralty
Hong Kong

Fax No.: 2527 0292

Dear Ms. Au,

Re: The Consultation Conclusions on the Key Legislative Proposals for the Establishment of an Independent Insurance Authority (IIA)

I am writing on behalf of Insurance & Financial Practitioners Alliance (IFPA) regarding the Consultation Conclusions on the Key Legislative Proposals for the Establishment of an Independent Insurance Authority (IIA). We urge your kind attention to our concerns and comments about the Key Legislative Proposals as below:

1. Governing Board

Refer to the (b) Composition of the Board of the IIA which stated that the Board will include at least two directors with knowledge of and experience in the insurance industry. However, in order to tap the true voice from the industry, we suggest that the Board should include at least 50% of directors who are active in the Insurance Industry and of whom at least 50% is from frontline intermediaries of both the life and non-life insurance areas instead of only with knowledge of and experience in the insurance industry.

2. Disciplinary Panel

We do concern very much on the composition of Disciplinary Panel members. However, in the consultation conclusion, we found that our inclusion has been ignored. We strongly suggest that at least 50% of panel members who are frontline intermediaries in both the life and non-life insurance areas should be included.

3. Sole Regulatory Governance

As bank is still supervised by Hong Kong Monetary Authority, to ensure reasonability and

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consistency of the regulations, we insist that the IIA should be the primary and leading regulator for all insurance intermediaries inclusive of banks and their employees and the IIA be the sole regulator to set conduct standards and requirements.

For example, only the IIA should be allowed to investigate and process a complaint made by a Policyholder who has bought an insurance policy through a bank. At the time when the Policyholder makes the complaint, he/she should sign a permission form to overcome any secrecy provision of the bank giving the IIA access to that person's bank accounts and banking related information thus allowing the IIA to be the full and sole authority to investigate the complaint. This eliminates the need for the bank/HKMA) to investigate itself, which is a practice creating conflict of interests.

4. Disciplinary Sanctions

Regarding (h) Disciplinary Sanctions of the proposal, it is stated that the proposal is comparable to the disciplinary sanctions under the regimes for intermediaries regulated by the Mandatory Provident Fund Schemes Authority and the Securities and Futures Commission. However, we oppose to the high pecuniary penalty being the greater of HKD 10,000,000; or 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct. We urge the upper limit to be reduced to HKD 3,000,000 or 3 times of the fraud; also the financial condition of the party in case should be included in the sanction consideration.

5. Selective attachments on The Consultation Conclusions on the Key Legislative Proposals

In the proposal, it is found that the written submissions of consultation papers are selectively attached on the Consultation on Key Legislative Proposals. Part of the IFAA submission was omitted from the middle (2nd) column and therefore the proposal was not given an answer/response in the right-hand (third) column of the "Consultation Conclusions on the Key Legislative Proposals.

(An example can be refer to Appendix 1)

Therefore, this may arouse suspicion on the integrity of the document as it may have left out from the submissions made by other respondents (and therefore the FSTB did not have to give a response to these other submissions in that 3rd column). We sincerely wonder if the selection system is fair to all submitters and we do suggest to attach all submissions on consultation

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papers from public.

6. Promotion of development of industry

Regarding the (a) Functions of the IIA, we suggest and insist that promotion and development of the industry has to be more pragmatic and result-oriented with correct vision in the proposal which should go further with extensive and objective consultation with the industry. We propose to establish our own training center run by the insurance associations for the professional development and education for the practitioners and employees of the industry and for the insuring public.

7. Levy Issue

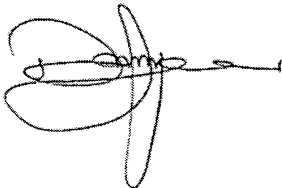
Should there be any shortfall in the operation costs of IIA after 5 years of its establishment, it should not be transferred to the shoulders of the policyholders or the insurance practitioners in whatever manner so as to maintain and uphold the competitiveness of insurance industry in Hong Kong. The Government, instead of the stakeholders, should borne the misjudgment of consequence.

We look forward to receiving your updates on the subject matter and please feel free to contact me at 9673-1813 or the IFPA Secretariat Ms. Epehele Wong at 2893-9699 (Email: info@gama.com.hk) for any question.

Yours sincerely,

For and on behalf of

Insurance & Financial Practitioners Alliance (IFPA)



Davey Lee Kwun Kwan

1st Convener

c.c.: Ms. Annie Choi, OCI

Mr. Thomas Lee, Chairman of HKFI

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Appendix 1 (IFAA Submission on IIA Consultation Paper)

HKMA SELLING INSURANCE

IA] DISMANTLING the SECURITY REQUIREMENTS

Presumably, the selling of insurance is a privilege that has been given to the banks. We assume that the IA is not forced to allow the banks to sell insurance. Therefore;

1] For Policyholder Complaints

- (a) The ability of the FDRC to investigate insurance complaints cease and all complaints are entertained only by the IIA
- (b) The complainant sign a declaration allowing the IIA access to all personal private data, including bank information, for the purposes of investigating the insurance complaint. (This form could even also be incorporated in the point of sale material for bank insurance sales.)
- (c) Banks should not in any manner investigate themselves.

2] For Compliance Audits both Corporate and Sales

- (a) For sales the Policyholder signs a form at the point of sale allowing the IIA access to all personal data required to carry out a sales audit on insurance products by bank staff.
- (b) For corporate compliance audit when a bank is acting as an Insurance Agency it signs an agreement with the IIA allowing the IIA access to relevant related information to carry out the audit
- (c) The privacy section of the BO be amended to reflect permission (by the banks) to release information (both corporate and individual) to the IIA for the purposes of insurance related compliance. [A money laundering equivalent.]

With these building blocks in place then the banks will be given the privilege of selling insurance. If not then the IIA will not renew the license of these insurance agencies to sell insurance.

That bank customers are a "different client base" is an illusion and this phrase should not be used and reflects a continued superiority complex in line with the banks wanting special privileges under the proposed IIA.

IB] ONE REGULATOR

The IFAA goes further and says that the IIA should not be the prime regulator (with the emphasis on "prime") as stated in the proposals, but instead it should be the only regulator (with the emphasis on

INSURANCE & FINANCIAL PRACTITIONERS ALLIANCE (IFPA)

- Hong Kong Chamber of Insurance Intermediaries (HKCI)
- Independent Financial Advisors Association Limited (IFAA)
- The General Agents and Managers Association of Hong Kong (GAMAHK)
- The Hong Kong General Insurance Agents Association (HKGIAA)
- The Life Underwriters Association of Hong Kong (LU/AHK)
- LOMA Society of Hong Kong (LOMA) - Observer

"only") of insurance intermediaries in Hong Kong. If the IIA were to become the only regulator then it will create a much needed level playing field for all distribution channels. For the avoidance of doubt the IFAA are strongly against the HKMA being "delegated special functions" as we believe that in doing so it will weaken and slant the IIA's authority and objectives. An example of this imbalance would be in the case of complaints. Our understanding of the proposed new regime is that in the event of a complaint the IIA will empower the HKMA and jointly inspect banks intermediary activities. If the HKMA are allowed to investigate internally and then end up referring the complainant to the FDRC (as they do now) then anybody found guilty by the FDRC could well be dealt with more leniently than if convicted for a similar offence by the IIA (or the complainant "paid off" to eliminate a follow through procedure and eventual conviction of the bank employee, especially if the bank employee is on a steep pro motion trajectory as a high-flyer.

Nowhere else in the world under a westernized democratic rule does there exist a system of "one industry" - "two (insurance) regulators". We believe that Hong Kong should be no different and that it is immoral to have a dual system, with many opportunities by the HKMA for product and regulatory arbitrage.