

# The Actuarial Society of Hong Kong

## High-Level Proposal to Establish ASHK as a Statutory Body

Statutory Body Project Committee

March 2013



ACTUARIAL SOCIETY  
of  
HONG KONG  
香港精算學會

# Background

- ASHK Council designated the Statutory Body Project Committee to explore the potential issues such to recommend how to turn ASHK into a Statutory Body.
- ASHK appointed an external lawyer, ReedSmith Richards Butler, to analyse the situation. The lawyer came back with some preliminary recommendation.
- The purpose of these presentation slides are:
  - to keep our members informed of the proposed high-level changes to the ASHK relating to the statutory body project; and
  - to collect comments, if any, and reflect such comments in our preliminary discussion with regulatory bodies, probably in May / June 2013

# Key Timeline

Q4 2012	Statutory Body Project Committee working with external lawyer to formalize the high-level proposal
March 12	Email to all members the current high-level proposal
March 21	Evening meeting with members to walk through the proposal
April 5	Deadline for the collection of comments from members
April	Discussion in Council meeting to finalize the proposal
May / June	Meeting OCI, MPFA, etc. to obtain commitment
Q3 2013	Providing next round of updates to members
Q4 2013*	Obtaining members' feedback on the detailed proposal
2014/2015*	Legislative process for becoming a statutory body

\* The timeline and the steps may change depending on how the government (OCI, MPFA, etc.) respond to our proposal

# The Ultimate Objective

To change the Society into a statutory body with the power to determine who can act as an actuary in Hong Kong and to regulate the conduct of actuaries.



# The Current Position

- The Society is currently a company limited by guarantee. It is governed by a Memorandum and Articles of Association.
- It is not currently mandatory for actuaries practising in Hong Kong to be a member of the Society. However, there is a limited degree of statutory recognition of the Society in that actuaries must in certain circumstances comply with the Society's Professional Standard 1 and Professional Standard 2.
- Specifically, insurers carrying on long term business are required to appoint an actuary under s. 15(1)(b) of the Insurance Companies Ordinance. For this purpose, an actuary is defined as being a fellow of a relevant professional body in England, Scotland, Australia or the US. Regulations made under the Ordinance then stipulate that an actuary appointed under section 15(1)(b) must comply with the Society's Professional Standard 1, and any subsequent amendments made with the approval of the Insurance Authority and the Secretary for Financial Services and the Treasury.
- Additionally, under the Occupational Retirements Schemes Ordinance, certain occupational retirement schemes must be certified by an actuary. For this purpose, an actuary is defined as being a fellow of a relevant professional body in England, Scotland, Australia or the US, or any person who holds such qualification as the Registrar may accept as being of a comparable standard. Regulations made under the Ordinance stipulate that actuarial certificates must be prepared according to the Society's Professional Standard 2 as adopted by the Society on 2 September 1994, and any subsequent amendments made thereto by resolution of the Society and agreed to by the Registrar.
- There are references to actuaries in other legislation in Hong Kong, however there is no specific reference to the Society or requirement that a relevant actuary must be a member of the Society.

# Two Possible Approaches

## **1. Remain a company**

The society could remain a company governed by a Memorandum and Articles of Association, and changes could be made to relevant legislation which refers to actuaries (e.g. the Insurance Companies Ordinance) to require actuaries appointed for the purposes of that legislation to be members of the Society.

## **2. Set up under a new statute**

A new statute could be passed which establishes the Society as a statutory body and confers upon the Society specific statutory powers. A provision could be included in the statute providing that no person shall act as an actuary in Hong Kong unless they are a member of the Society.

- The key difference between being organised as a company and being set up under a statute is that a company relies on the agreement of its members for its authority and may therefore only exercise powers over members, whereas a body set up under a statute can exercise powers over anyone.

# Pros and Cons of Two Possible Approaches

Statute	vs.	Company
<b>Pros</b>		<b>Cons</b>
Can exercise power over anyone.		Can only exercise power over members.
Sanctions can include criminal penalties.		Sanctions cannot include criminal penalties.
<b>Cons</b>		<b>Pros</b>
Changes to a statute are difficult, requiring legislative amendments.		Changes to the M&A of a company are easy, requiring only the agreement of members.
The legislature has control over a statute and the statute may contain provisions members do not like.		The members have control over the M&A of a company, and can ensure it contains whatever provisions members want.



# Two Possible Approaches

- It is noted that professional bodies with regulatory powers are now normally set up under a statute, not organised as a company. Examples of professional bodies set up under a statute include the Medical Council of Hong Kong, the Veterinary Surgeons Board, the Nursing Council and the Surveyors Registration Board. The Hong Kong Institute of Certified Public Accountants and the Architects Registration Board are both “body corporates”, however they are formed under their own special statutes. The Law Society of Hong Kong is incorporated as a company limited by guarantee under the Companies Ordinance and the Bar Council of Hong Kong is registered as a society under the Societies Ordinance, however both have special statutory powers conferred upon them under the Legal Practitioners Ordinance.



# Proposed Way Forward

**Step 1 Decide which of the two possible approaches** the Society would prefer, i.e. remain a company or establish the Society under a new statute.

**Step 2 Decide on the key features** of the proposed new statutory body (i.e. how it will operate).

**Step 3 Consult with interested Government departments and regulators** to obtain their views and support (e.g. the Financial Services and Treasury Bureau, the Insurance Authority, and the Mandatory Provident Fund Schemes Authority, etc.).

**Step 4 (a) If the Government and regulators are supportive**, discuss and draft a detailed proposal for the new statutory body, with a view to procuring required legislative changes by way of a Government sponsored Bill.

**Step 4 (b) If the Government and regulators are supportive but reluctant to sponsor** the necessary Bill, discuss and draft a detailed proposal for the new statutory body, with a view to drafting a private member's Bill and seeking a sympathetic LEGCO Member (e.g. the Member for the Insurance Constituency, Hon Chan Kin - por) to sponsor the Bill.

# Key Features under Consideration

- The Society will be run by a Council of 7 to 13 members, elected by a majority of all members.
- The Society will be made up of Fellow Members and potentially other types of members.
- No person shall be permitted to act in a professional capacity as an actuary in Hong Kong unless they are a Fellow Member of the Society.
- Fellow Members must have objectively demonstrated their understanding of actuarial skills and actuarial judgment. The objective demonstration of actuarial skills and actuarial judgment will be assessed by reference to an examination/qualification programme.
- The examination/qualification programme for Fellow Members will be designed and conducted by the Society. In addition to other matters, candidates will be required to demonstrate their understanding of local regulations, requirements and practices.
- All members must also comply with a fit and proper requirement.
- The Council may pass by - laws/rules governing the operations of the Society and create professional standards, guidance notes and codes of ethics for the members of the Society.

# Key Features under Consideration

- The Council has already established a continuing professional development scheme for members.
- The Council will be responsible for the management and administration of the Society and may appoint committees and/or employ permanent officers/employees to assist.
- Members will be required to comply with professional standards and codes of ethics, and to adhere to continuing professional development requirements. Members will also be required to consider guidance notes, but compliance with guidance notes will not be mandatory.
- There will be a disciplinary process, which will involve the Society having the power to investigate and to establish a disciplinary committee where it appears that a member may be guilty of misconduct or may not be fit and proper to be a member.
- Disciplinary sanctions will include a public reprimand, a pecuniary penalty and suspension/revocation of membership. There will be a right of appeal.
- Changes to professional standards which have a bearing on the performance of functions under specified legislation will be subject to the approval of the appropriate regulators.



# Legislation with reference to “Actuaries”

- Insurance Companies Ordinance;
- Occupational Retirement Schemes Ordinance;
- Mandatory Provident Fund Schemes Ordinance;
- Companies Ordinance;
- Inland Revenue Ordinance;
- Pensions Ordinance;
- Pension Benefits Ordinance;
- Surviving Spouses’ and Children’s Pensions Ordinance;
- Pension Benefits (Judicial Officers) Ordinance; and
- Auxiliary Forces Pay and Allowances Ordinance



# Possible Impact on ASHK Membership Fee

- This can be a costly exercise for becoming a Statutory body. The Society has built up a meaningful amount of reserve to cover these costs including a hefty contingency fund.
- After becoming a Statutory body, there will be upfront costs in establishment of training and examinations. Once operational then these should be self funding. The upfront costs should be covered from the existing reserves.
- We are not sure if there will be a need to increase membership fee as a result of the Society becoming a Statutory Body, but we do not believe that it will be a significant amount.