

Discussion Paper

*Proposal to establish The Actuarial
Society of Hong Kong as a statutory body*

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The proposal

- 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

- There are two possible approaches to changing the Society into a statutory body:

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. The pros and cons are compared further below:



<i>Statute</i>	<i>vs.</i>	<i>Company</i>
Pros		Cons
Can exercise power over anyone.		Can only exercise power over members.
Sanctions can include criminal penalties.		Sanctions cannot include criminal penalties.
Cons		Pros
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.

- 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

- If the Society is minded to take the proposal to become a statutory body forward, we suggest that the Society proceed by way of the following preparatory steps:

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).

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.



- We have attached some possible key features of the proposed new body, based on proposed revisions to the Society's Memorandum an Articles of Association, and a draft letter of introduction to Government departments and regulators for consideration.

Nathan Dentice / Stephanie Teoh
February 2013



Possible key features for discussion

- The Society will be run by a Council of 7-13 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. The Council may also establish 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.



Draft letter of introduction for discussion

Dear []

As you are aware, the Actuarial Society of Hong Kong is the principal professional body representing actuaries in Hong Kong.

Actuaries are increasingly performing important functions in Hong Kong under various different legislative schemes. Amongst other things, there are requirements relating to actuaries in the:

- 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

A list of statutory provisions containing references to actuaries and actuarial matters is attached for your ease of reference. In addition, references to actuaries are also found in the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited.

Notwithstanding the increasing reference which is being made to actuaries in various legislative schemes, however, there is presently no



requirement for actuaries working in Hong Kong to be qualified with or supervised by any statutory body in Hong Kong. Instead, any supervision is through professional bodies overseas. This appears anomalous, given the importance of the functions being performed by actuaries and Hong Kong's position as a leading financial centre.

The Society is therefore considering seeking legislative changes to change the Society into a statutory body, with specific responsibility for ensuring that actuaries are properly qualified and conduct themselves in accordance with professional standards and conduct requirements appropriate to the jurisdiction. We note that this consideration is presently at a very preliminary stage.

We would like to meet with you as an interested party to discuss matters and obtain your views on the proposal. We attach a list of some possible key features of the proposal for your consideration.

We will contact you shortly to see whether we can arrange a meeting, In the meantime, if you have any questions, please do not hesitate to call [**name**] on [**number**].

Kind regards



References to actuaries or actuarial matters in existing legislation in Hong Kong

<i>Ordinance</i>	<i>Subsidiary Legislation</i>	<i>Section(s)</i>	<i>Heading</i>
Insurance Companies Ordinance - Cap.41		s 2	Interpretation - "former actuary"; "prescribed person"
		s 4A(3)	Functions of Insurance Authority
		s 15(1)(b)	Appointment of auditor and actuary
		s 15B	Notification in respect of actuaries appointed under section 15
		s 15C	Standards to be complied with by an actuary
		s 18	Periodic actuarial investigation of insurer with long term business
		s 20(2)(b)	Deposit of accounts etc. with Insurance Authority
		s 24(2)	Sanction of Court of First Instance for transfer of long term business
		s 32	Actuarial investigations
		s 34(4)(a)(ii)	Power to obtain information and require production of documents
		s 46(6)	Continuation of long term business of insurer in liquidation
		s 53A(3)(f)	Secrecy
		s 53D(1)(a)	Communication by prescribed person with Insurance Authority
		s 53E	Prescribed person to send report directly to Insurance Authority in certain cases
		s 59(1)(ca), (2)(aa)	Regulations
		s 74(a)(ii)	Powers of Insurance Authority to require production, etc.
		Sch 3	Accounts and Statements - Paragraphs 1(1), 5(1), 5(2), 37, 38(1)
Insurance Companies (Actuaries' Qualifications) Regulations - Cap.41A		reg 2	Prescribed qualifications for actuaries
		Schedule	Qualifications for Appointment as Actuary
Insurance Companies (Determination of Long Term Liabilities) Regulation - Cap.41E		s 2	Interpretation - "valuation date"
		s 4(2)(a)	Determination of long term liabilities



<i>Ordinance</i>	<i>Subsidiary Legislation</i>	<i>Section(s)</i>	<i>Heading</i>	
	Insurance Companies (Actuaries' Standards) Regulation - Cap.41H	s 2	Prescribed standards for actuaries	
		Schedule	Standards to be Complied with by an Actuary	
Occupational Retirement Schemes Ordinance - Cap.426		s 2	Interpretation - "actuary"; "full certificate"; "past service liability"; "qualified certificate"; "vested liability"	
		s 20(4)(a), 5(b)	Registered schemes' trustees, etc., to keep proper accounts and records, etc.	
		s 24(1)	General funding requirements and duties	
		s 31(1), (3)(b), (5)	Periodic certification of registered defined benefit schemes	
		s 32(2)(b)	Registrar may require certain reports and certificates	
		s 69	Actuaries and solicitors to be independent of relevant employers	
		s 73(1)(h)	Rules	
		Sch 1	Documents required for registration - Part 1 - 2(c)(ii); Part 2 - 3(ii); Part 3-1,2,3	
		Sch 2	Actuarial Certificates	
		Sch 3	Information to be contained in a statement under section 35	
		Occupational Retirement Schemes (Authentication and Certification of Documents) Rules - Cap.426A	Sch 1	Documents to be authenticated
		Occupational Retirement Schemes (Preparation of Actuarial Certificates) Rules - Cap.426H	s 2	Preparation of actuarial certificates
		Occupational Retirement Schemes (Periodic Certification of Registered Defined Benefit Schemes) Rules - Cap.426I	s 2(b)	Other information in full certificates or qualified certificates
		Occupational Retirement Schemes (Notice of Changes) Rules - Cap.426J	s 3(2)(g)	Notice of change of relevant employer of a registered or exempted scheme by way of replacement
			s 6(2)(g)	Notice of change of administrator of a registered scheme
	Occupational Retirement Schemes (Recovery of Arrears) Rules - Cap.426K	s 2	Interpretation - "contribution requirements"	



<i>Ordinance</i>	<i>Subsidiary Legislation</i>	<i>Section(s)</i>	<i>Heading</i>
Mandatory Provident Fund Ordinance - Cap.485		s 2	Interpretation - "service provider"
	Mandatory Provident Fund Schemes (General) Regulation - Cap.485A	s 2	Interpretation - "actuary"
		s 9(f)	Qualifications of an independent director
		s 23(5)(e)	Application requirements
	Mandatory Provident Fund Schemes (Exemption) Regulation - Cap.485A	Sch 3	Minimum Standards Applicable to Trustees, etc. of Schemes - 1. Interpretation - "actuary" - 5. Trustee standards - (1)(c)(iv)
Surviving Spouses' and Children's Pensions Ordinance - Cap.79		s 8(5)(a)	Surviving spouses' pensions
		s 11(5)(a)	Rate and mode of payment of children's pensions
		s 13(4)	Rate and mode of payment of contributions
Pensions Ordinance - Cap.89		s 18A(2)	Commutation of pensions payable under section 18
Pensions Benefits Ordinance - Cap.99		s 19A(2)	Commutation of pensions payable under section 19
Auxiliary Forces Pay and Allowances Ordinance - Cap.254		s 16(2)(v)	Regulations
	Auxiliary Forces Pay and Allowances (Pensions) Regulations - Cap.254I	s 6(10)	Dependant pension
Pension Benefits (Judicial Officers) Ordinance - Cap. 401		s 20A(2)	Commutation of pensions payable under section 20
Inland Revenue Ordinance - Cap.112		s 23	Ascertainment of assessable profits of life insurance corporations
Companies Ordinance - Cap.32		s 79E(2),(3)	Realised profits of insurance company with long term business
Sex Discrimination Ordinance - Cap.480		s 51(a)	Insurance, etc.
Disability Discrimination Ordinance - Cap.487		s 52(a)	Insurance, etc.
Family Status Discrimination Ordinance - Cap.527		s 38(a)	Insurance, etc.