



**CONSULTATION PAPER ON  
ESTABLISHING A POLICY HOLDERS' PROTECTION SCHEME**

**SUBMISSIONS**

**INTRODUCTION**

1. The Law Society has reviewed a Consultation Paper issued in December 2022 by the Financial Services and the Treasury Bureau ("Consultation Paper"). The Law Society provides the following submissions on the questions posed. The same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

**CONSULTATION QUESTIONS**

**Questions relating to Chapter 2 –  
Protection against insurer insolvency in Hong Kong and international developments**  
(p.7 of the Consultation Paper)

- 2(a) Do you agree that there is a need to establish a PPS in Hong Kong to provide an additional safety for protection of policy holders in case of insurer insolvency?**

**Law Society's views:**

- 2(a) Yes, we agree - particularly given the encouragement of the International Monetary Fund (paragraph 2.11 of the Consultation Paper), and the seemingly successful implementation of these programs in other countries. However, we have not had the benefit of seeing the consultancy study commissioned by the IA (paragraph 1.12 of the Consultation Paper), which potentially would provide further insight on this question. We would appreciate being given access to this report to review, after which we may wish to provide further views on this question.

**Questions relating to Chapter 3 –  
Objectives, guiding principles and coverage of the PPS**

(p.12 of the Consultation Paper)

- 3(a) Do you support the objectives and guiding principles for developing the PPS?**
- 3(b) Do you agree with the proposed scope of eligible policy holders under the PPS?**
- **Views are welcome, in particular, on the inclusion of SMEs as well as the definition of SME and the verification procedures to be adopted.**
- 3(c) Do you agree with the proposed compulsory membership of insurers under the PPS?**
- 3(d) Do you agree with the proposed scope of protected long term and general policies under the PPS?**

**Law Society's views:**

- 3(a) Generally yes, except we suggest adding in paragraph 3.2(a) of the Consultation Paper - *“(and on policy holders, through additional premium payments that might be imposed by insurers)”* immediately after *“on insurers”*. Regarding those concerns as mentioned in footnote 4 pertaining to guiding principle as proposed in paragraph 3.2(b) of the Consultation Paper, we believe this is a serious concern that the FSTB should consider further. However, on balance, we are also of the view that the existing (and proposed) regulatory requirements under the IO, including those related to investments, capital and ongoing risk management, are such as to considerably mitigate these concerns.
- 3(b) We note from paragraph 3.3 of the Consultation Paper that the FSTB recommends that the PPS should focus on individual policy holders, and from paragraph 3.7 of the Consultation Paper that on balance the PPS should focus on individual policy holders at the initial stage of implementation, and be expanded to cover SMEs as and when conditions are ripe. We do understand the value of implementing the scheme on a stepwise basis, with inclusion of SMEs to take place at a time later than initial launch - but believe it would be valuable for the FSTB to propose a timeline for such inclusion, and to propose procedures for deciding upon the definition of “SME” eventually adopted.

In the light of those examples of other jurisdictions including the US, the UK, Singapore, Australia and Canada, in which “large corporations are normally excluded” (paragraph 3.3 of the Consultation Paper), it may be easier to formulate the PPS just to EXCLUDE those large corporations (to be defined).

We believe it is much easier to identify / define such large corporations which are generally able to manage their risks and protect their interests in procuring insurance, and such corporations can be excluded from the PPS accordingly.

3(c) In general, yes.

3(d) We have no view at this stage; but would seek more information as to whether the other jurisdictions, identified as having policyholder protection schemes in place, also split their protection funds into a Long Term Fund and General Fund (or along some similar basis). We reserve our position upon receipt and review of the above.

**Questions relating to Chapter 4 –  
Arrangements in the Event of Insurer Insolvency**

(p.18 of the Consultation Paper)

**4(a) What would be the appropriate level of protection offered under PPS? Do you prefer Option 1 (\$1 million), Option 2 (\$2 million) or Option 3 (\$4 million) on the compensation limit?**

**4(b) Do you agree with the relief to be provided under PPS?**

**(i) Do you agree with the arrangement of prioritising transfer of long term policies?**

**(ii) Do you agree with the arrangement of transitional continuity for general policies?**

**Law Society's views:**

4(a) We are not well situated to comment (particularly without access to the study commissioned by the IA) but a higher limit, such as that set out under Option 3 (\$4 million), would seem to be most consistent with the healthy development of the insurance market, and insurance business generally, in Hong Kong.

4(b) (i) In principle yes, the same is in line with the prevailing protection under the CWUMPO and the IO.

(ii) We are not advised as to how the suggested 60-day period for general insurance contracts was chosen, under paragraph 4.10 of the Consultation Paper, and we query whether this could be longer.

**Questions relating to Chapter 5 –**

**Funding mechanism**

(p.23 of the Consultation Paper)

- 5(a) Do you support a progressive funding model with levies collected from participating insurers for the operation of PPS?**
- 5(b) Do you support the borrowing mechanism for the PPS to meet any liquidity gap?**
- 5(c) What are your views on the proposed priority ranking of PPS with the two classes of creditors (i.e. the Employee Compensation Assistance Fund and all other direct insurance claims not met with the PPS) specified in section 265 of the CWUMPO during the winding up process?**
- 5(d) Do you agree with the proposed levy rate and levy cap? Do you have any views on the arrangement for levy review and adjustment?**

**Law Society's views:**

- 5(a) Yes.
- 5(b) Yes, which is subject to scrutiny by the LegCo.
- 5(c) The two classes of creditors should be accorded with priority higher than the ranking of PPS for the purpose of “recovery of assets”, otherwise it may defeat the original legislative purposes of the CWUMPO.
- 5(d) We are not in a position to comment on the levy rate and cap and we express no view on this question. For the record, however, we agree to the statements set out in paragraph 5.12 of the Consultation Paper.

**Questions relating to Chapter 6 –**

**Governance, administration and related matters**

(p.26 of the Consultation Paper)

- 6(a) Do you agree with the proposed establishment of the PPS Board and composition, and that the IA should be its administrative arm?**
- 6(b) Do you agree with the proposed powers and functions of the PPS Board?**
- 6(c) Do you have other suggestions on the proposed governance arrangements?**

**Law Society's views:**

- 6(a) Yes, we agree.
- 6(b) Yes, we agree.
- 6(c) We have no other suggestions.

**CONCLUSION**

- 7. We generally welcome the proposed establishment of a PPS in Hong Kong. We would be pleased to be continually engaged in further consultation when the proposed legislation on the PPS is available.

**The Law Society of Hong Kong  
29 March 2023**