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To : Chief Executive of all authorized insurers  
carrying on long term business

Dear Sirs,

**Responsibilities of Insurance Intermediaries  
Engaged in the Sale of Insurance-related Investment Products**

With the growing popularity of insurance-related investment products, more and more insurance intermediaries are increasingly engaged in selling such products. However, many industry practitioners do not have a clear understanding of how these insurance intermediaries are regulated.

The purpose of this letter is to draw your attention to requirements under the Insurance Companies Ordinance (Cap. 41) (“ICO”) and the Securities and Futures Ordinance (Cap. 571) (“SFO”) that would appear to be most relevant for insurance intermediaries engaging in the sale of insurance-related investment products that are collective investment schemes and contracts of insurance in the form of investment-linked assurance schemes (“ILAS”).

**ILAS**

ILAS are, in general, life insurance policies issued under Class C insurance business, or “linked long-term” class, as defined in Part 2, First Schedule to the ICO. They are different from “traditional” life insurance policies where specified benefits are provided, in all cases, against risks of personal death and/or incapacity.

While ILAS can come in various shapes and forms, those currently available in Hong Kong are mostly life insurance policies under which the policyholders make either a lump sum payment or regular contributions to the insurer. The insurer then invests part of the contribution in “funds” chosen by the policyholder and agrees to link the benefits of ILAS policies to the performance of certain “investment option(s)” selected by the policyholder. These “investment option(s)” may be managed by the insurer itself or linked to the performance of a specified fund managed by an independent fund house. Based on the extent of life protection cover, a part of the contribution is reserved for payment of risk premium and for meeting the fees and charges incurred in taking out the policy. Given this special nature of ILAS policies, a person purchasing them may be regarded as both a life insurance policyholder and an investor.

### **The Role of the Insurance Authority (“IA”)**

In terms of regulation, insurers writing Class C insurance business, under which ILAS policies are issued, must be authorized and be subject to regulation by the IA under the ICO. In addition, any person engaging in the sale and promotion of ILAS policies must be an insurance intermediary (agent or broker) who is registered with either the IA or the appropriate insurance intermediary self-regulatory bodies, namely the Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers, or the Professional Insurance Brokers Association. It is an offence under section 6(3) of the ICO for any person to carry on any class of insurance business without obtaining authorization from the IA. It is also an offence under section 77 of the ICO for a person to hold himself out either as an insurance agent or insurance broker without proper appointment, registration or authorization under the prescribed self-regulatory frameworks.

### **The Role of the Securities and Futures Commission (“SFC”)**

Under section 103(1) of the SFO, it is an offence for a person to issue, or to have in his/her possession for the purposes of issue, any advertisement, invitation or document which to his/her knowledge is or contains an invitation to the public to acquire an interest in or participate in any collective investment scheme, including ILAS, unless the issue is authorized by the SFC under section 105(1) of the SFO, or is exempted by any other relevant provision. It follows that documentation relating to ILAS must be authorized by the SFC.

The authorization requirements relating to ILAS (covering, among other things, the regulatory status and responsibilities of an applicant company) are set out in the Code on Investment-Linked Assurance Schemes (the “Code”) published by the SFC. In line with requirements under the ICO, Chapter 4.1 of the Code specifically provides that ILAS will not be authorized by the SFC unless the applicant company is authorized under the ICO to carry on the relevant class of insurance business in Hong Kong. Chapter 4.5 of the Code further requires that the applicant company shall, amongst other things, exercise best endeavours and due diligence to ensure that the marketing activities of ILAS are carried out professionally, honestly and fairly. In addition, Chapter 10.7 of the Code stipulates that advertisements and other invitations to invest in ILAS, including public announcements, must be submitted to the SFC for authorization prior to their issue or publication in Hong Kong.

Therefore, it is incumbent upon authorized insurers and insurance intermediaries to ensure not only that the materials used for marketing and promoting ILAS to the public have been authorized by the SFC, but also that when communicating with prospective customers either verbally or in writing, they must not depart from the information contained therein. Failure to comply with this requirement might constitute a criminal offence under section 103 of the SFO.

Furthermore, insurance intermediaries engaging in the sale and promotion of ILAS or insurance-related investment products should bear in mind the potential implications of Part V of the SFO concerning licensing. In particular, section 114(1) thereof provides that subject to the exemptions set out in section 114(2), (5) and (6), no person shall carry on, or hold himself out as carrying on, a business in a regulated activity. Persons licensed by or registered with the SFC are exempted under section 114(2). The term “regulated activity” and the different types of conduct that constitute each type of regulated activity are respectively defined in Part 1 of Schedule 1 and in Part 2 of Schedule 5 of the SFO. Regulated activity includes, among other types of business, “dealing in securities”. This term is defined in Part 2 of Schedule 5 of the SFO, in relation to a person, to include “making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement ... the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or **by reference to fluctuations in the value of securities**, by the person, except where the person ... issues any advertisement, invitation or document the issue of which has been authorized by the [SFC] under section 105 of [the SFO]”.

Similarly, a key feature of investment-linked insurance policies issued under Class C business, as defined in the ICO, is to link the return of its underlying assets with fluctuations in the value of certain securities. The effect of this common feature between the ICO and the SFO is that an insurance intermediary, who adheres strictly to the advertisements, invitations or documents which have been authorized by the SFC under section 105 (1) of the SFO in his/her offering or promotion of ILAS policies, is unlikely to have to be licensed by the SFC. However, the position could be different should an intermediary, when offering ILAS to the public, depart from the marketing and promotional materials authorized by the SFC, or should an intermediary become involved in marketing other types of financial instruments.

### **Responsibility of Insurance Intermediaries**

In summary, since ILAS fall under the regulation of both the ICO and the SFO, intermediaries engaging in the sale of such schemes should bear in mind that :

- (a) First and foremost, they must register as insurance intermediaries under the ICO;
- (b) To minimize any risk of contravening the SFO, they must ensure that the materials they use to introduce or market ILAS to prospective customers are provided by the insurer and have been authorized by the SFC;
- (c) In explaining ILAS, they must adhere strictly to the information and illustration provided in the authorized materials and must not depart or deviate from, or add their own interpretation to, information contained in such materials; and
- (d) If they go further and engage in functions that are an integral part of a business of advising on, or dealing in, securities, they will probably be required to be licensed by the SFC as a consequence of the performance by them of those functions. In that event, they will fall within the regulatory regime created by the SFO and will be obliged to comply with all of the relevant provisions of the SFO and such additional regulatory requirements as may be imposed on them by the SFC.

## **Compliance with the ICO and the SFO**

As chief executive/controller of an authorized insurer, you should draw attention of your appointed insurance agents engaging in the sale of ILAS to the contents of this letter as well as all relevant requirements under the ICO and the SFO. They should in turn ensure that their responsible officers/technical representatives are fully conversant with these requirements. You and your appointed insurance agents should also review and, if necessary, revise the internal controls and procedures to facilitate compliance with these requirements.

Since there is a wide diversity of ILAS policies and other insurance-related investment products in an evolving market, the advice given in this circular letter is inevitably meant to be general. Any insurance intermediaries who have doubts as to whether a particular activity or practice is regulated by the SFC may seek clarification from the IA or the respective self-regulatory bodies, which will consult the SFC if necessary.

To facilitate better understanding of the practical aspects of compliance for the sale of ILAS, we are liaising with the Hong Kong Federation of Insurers with a view to organising a seminar for industry practitioners and will let you have the relevant details separately.

Yours faithfully,

(Clement Cheung)  
Commissioner of Insurance

c.c. Securities and Futures Commission  
Hong Kong Federation of Insurers  
Insurance Agents Registration Board  
The Hong Kong Confederation of Insurance Brokers  
Professional Insurance Brokers Association