

13 May 2011

**Circular to issuers of
SFC-authorized Investment-Linked Assurance Schemes (“ILAS Schemes”)**

Preparation for the full implementation of the Code on Investment-Linked Assurance Schemes (“ILAS Code”) commencing 25 June 2011

Background

1. The purpose of this circular is to provide guidance to the issuers of Existing ILAS Schemes¹ who intend to continue to market such schemes to the public in Hong Kong on or after 25 June 2011.
2. Existing ILAS Schemes that will continue to be marketed to the public in Hong Kong on or after 25 June 2011 are required to produce (i) a product key facts statement (“KFS”) and (ii) a revised offering document to satisfy the other disclosure requirements² as contemplated in the SFC Handbook (“Handbook”) for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“ROD”).
3. To help them meet these requirements, the Commission has held 3 briefing sessions to explain to the industry the new requirements under the revised ILAS Code, issued 5 FAQs and a circular in January 2011 regarding the streamlined procedures under the transitional arrangements in respect of the revised ILAS Code (“January Circular”). In addition, we have held numerous telephone discussions with ILAS issuers to answer their questions and enquiries regarding the revised ILAS Code. These discussions are still ongoing.

Existing Schemes that continue to be marketed to the public in Hong Kong

4. We are pleased to announce that with the co-operation of the industry, the Commission has processed and authorized (subject to the filing of certain documents and confirmations) the KFS of all 103 Existing ILAS Schemes which ILAS issuers would like to continue to market to the public in Hong Kong on or after 25 June 2011. In addition to the KFS, the RODs also need to be authorized by the Commission. In March 2011, we agreed with the industry on a submission timetable so that we can

¹ “Existing ILAS Schemes” means (a) ILAS Schemes which have been authorized by the Commission prior to 25 June 2010 and remain authorized on that date; and (b) ILAS Schemes for which applications for authorization were submitted to the Commission before 25 June 2010, but which are authorized on or after 25 June 2010.

² As to the guidance on what falls within the scope of “other disclosure requirements” as contemplated in the Handbook, please refer to the FAQ no. 6 of section 2 of the Frequently Asked Questions relating to Investment-linked Assurance Scheme which can be found on the Commission’s website.



make all reasonable efforts to process the ROD applications prior to 25 June 2011. At present, the Commission has authorized 34 sets of ROD.

5. We note some of the ILAS issuers have not submitted their RODs in accordance with the agreed timetable. This could lead to the ROD applications not being processed in time to meet the deadline. We have discussed with the relevant ILAS issuers and have worked out and agreed with each of them individually revised deadlines for submission of their RODs. We would like ILAS issuers to understand that these are very special arrangements that we have made. We urge these ILAS issuers not to miss the revised deadlines as otherwise their ROD applications would not meet the deadline.
6. The Commission wishes to remind ILAS issuers that, commencing 25 June 2011, any Existing ILAS Scheme that does not have an authorized KFS and a set of authorized ROD shall not continue to be marketed to the public in Hong Kong. **As such, these ILAS Schemes shall not accept premium from new investors³ as from 25 June 2011 regardless of the distribution or subscription channels used.** ILAS issuers should also ensure that they provide all necessary and appropriate notice, training and clarification to the front-line sales staff and their distributors as soon as possible and preferably well before 25 June 2011.

Additional 7.1 Changes to offering documents of Existing ILAS Schemes

7. In addition to the changes in product features as submitted by 17 Existing ILAS Schemes further to the January Circular, some industry participants advised us that for their own business reasons they would like to take this opportunity, as they prepare their ROD, to introduce other amendments to the structure or mechanics of their schemes such as changes in constitutive documents (“Additional 7.1 Changes”). These Additional 7.1 Changes require the Commission’s prior approval pursuant to 7.1 of the ILAS Code.
8. We have over 240 SFC-authorized ILAS Schemes. As an ongoing part of our work, we regularly receive applications for approval of changes to existing offering documents under 7.1 of the ILAS Code. These applications will be, and have all along been, processed according to our established procedures.
9. However, we understand that some ILAS issuers would want us to approve their applications for Additional 7.1 Changes before 25 June 2011 so that when they roll out their KFS and RODs, the RODs will include Additional 7.1 Changes.
10. If the Additional 7.1 Changes are not able to meet our requirements and receive our approval by 25 June 2011, the ILAS issuers still have an option not to proceed with the Additional 7.1 Changes until a later time but to nevertheless continue to market the relevant Existing ILAS Schemes to the public in Hong Kong with an authorized KFS and an authorized ROD without the Additional 7.1 Changes. This will give them additional time to resolve the outstanding issues regarding Additional 7.1 Changes.

³ For the avoidance of doubt, in the absence of marketing, these ILAS Schemes may continue to accept premium from existing investors of such schemes.



Effect of breach of the Handbook

11. The Commission wishes to remind ILAS issuers that commencing 25 June 2011, it is a breach of the Handbook to continue to market, and accept premium from new investors for, Existing ILAS Schemes that do not have an SFC-authorized KFS and/or an SFC-authorized ROD. There could be serious regulatory consequences for breach of the Handbook, including but not limited to causing the Commission to consider whether such failure adversely reflects on whether further products issued, managed and/or originated by such ILAS issuer, and/or offering documents and advertisements in relation to such products, should be granted authorization in the interest of the investing public as set out in 1.6 of the Overarching Principles Section of the Handbook. The Commission therefore urges the ILAS issuers to act in a timely manner and devote sufficient resources to ensure compliance with the requirements in the revised regulatory regime.
12. The Commission would note that if ILAS distributors are in doubt about whether an ILAS Scheme needs to have, and in fact has, an SFC-authorized KFS and/or an SFC-authorized ROD commencing 25 June 2011, they should get clarification from ILAS issuers so as to ensure that they conduct their activities in compliance with the requirements in the revised regulatory regime.
13. Should you have any questions, please contact your case officer in charge.

**Investment Products Department
Securities and Futures Commission**