SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Section III:
Code on Investment-Linked Assurance Schemes

Section III:
Code on Investment-Linked Assurance Schemes

Explanatory Notes:

(a) The Securities and Futures Commission is empowered under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (the "SFO") to authorize any collective investment scheme. This Code on Investment-Linked Assurance Schemes ("ILAS Code"), which forms part of the Handbook, provides guidance in relation to the authorization of a collective investment scheme that is an investment-linked assurance scheme. Any change or amendment to this ILAS Code will be made known to the industry and transitional periods for compliance will be allowed where necessary.

(b) The Commission may review its authorization at any time and may modify, add to or withdraw such authorization, as it deems fit.

(c) The issue of any advertisement, invitation or document to the public in Hong Kong to participate in an unauthorized investment-linked assurance scheme may amount to an offence under section 103(1) of the SFO. The Commission is empowered under section 105(1) of the SFO to authorize any advertisement, invitation or document referred to in section 103(1) and to impose any corresponding authorization conditions as it considers appropriate.

(d) This ILAS Code is established having regard to the regulatory objectives of the Commission set out in section 4 of the SFO. The spirit of this ILAS Code should be observed.

(e) The Commission may modify or relax the application of a requirement in this ILAS Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.

(f) This ILAS Code is made under section 399 of the SFO.

(g) This ILAS Code does not have the force of law.

Table of Contents

Part I: General matters	**1**
Chapter 1: Authorization procedures	**1**
Chapter 2: Administrative arrangements	**3**
Chapter 3: Interpretation	**4**
Part II: Authorization requirements	**6**
Chapter 4: Applicant company	**6**
Chapter 5: Operational requirements	**7**
Chapter 6: Guarantee and with-profits or similar features	**11**
Part III: Post-authorization requirements	**14**
Chapter 7: Post-authorization requirements	**14**
Appendix A: Information to be disclosed in the principal brochure	**19**
Appendix B: Contents of the constitutive documents	**23**

Part I: General matters

Chapter 1: Authorization procedures

General

1.1 Investment-linked assurance schemes are insurance policies issued by an Authorized Insurer and they are normally expected to comply with the applicable provisions of the Handbook, including without limitation, all of the applicable provisions of this ILAS Code in order to be authorized in Hong Kong by the SFC pursuant to section 104 of the SFO.

1.2 Authorized Insurers are under the prudential regulation of the Insurance Authority. Therefore, issues such as how the Authorized Insurers operate, their financial conditions or their business conduct are not within the Commission's regulatory ambit. Insurance agents and brokers selling investment-linked assurance schemes are also subject to the regulation of the Insurance Authority in accordance with the Insurance Ordinance.

Note: The Insurance Authority regulates insurance intermediaries through overseeing self-regulatory organisations. At the final stage of the implementation of the Insurance Companies (Amendment) Ordinance 2015, the Insurance Authority will take over the regulation of insurance intermediaries from the self-regulatory organisations and administer a statutory licensing regime.

1.3 Applications for authorization which seek waivers of any of these provisions must give detailed reasons why waivers are sought.

Nomination of an individual as approved person

1.4 According to sections 104(2) and 105(2) of the SFO, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the scheme and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.

1.5 An approved person should:

(a) have his/her ordinary residence in Hong Kong;

(b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;

(c) be capable of being contacted by the Commission during business hours;

(d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and

(e) comply with any other requirements as the Commission considers appropriate.

1.6 An individual approved by the Commission as an approved person for a scheme shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that scheme.

Documents to be supplied to the Commission

1.7 An applicant for authorization of a scheme must submit a completed Application Form and an Information Checklist as set out on the Commission's website. The application must also be accompanied by the following and such other documents as may be required by the Commission from time to time:

(a) the scheme's offering document and constitutive documents;

(b) [deleted]

(c) [deleted]

(d) application fee; and

Note: The current fee schedule is available on the Commission's website.

(e) the letter nominating an individual to be approved by the Commission as an approved person containing the individual's name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address.

Authorized Insurer

1.8 Insurers are required to obtain authorization to carry on Class C of Long Term Business under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) before applying for authorization of its investment-linked assurance schemes.

Chapter 2: Administrative arrangements

Product Advisory Committee

2.1 According to section 8 of the SFO, the Commission is empowered to set up committees, whether for advisory or other purposes. The Commission will establish a Products Advisory Committee for the purpose of consultation and advice on matters which may relate to collective investment schemes within the scope of this ILAS Code of the Handbook. The remit of the Products Advisory Committee and its membership will be set out in its Terms of Reference.

Data privacy

2.2 The information requested under this ILAS Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the SFC.

Chapter 3: Interpretation

Unless otherwise defined, words and expressions used in this ILAS Code are as defined in the SFO:

3.1 "Advertising Guidelines" means the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

3.2 "applicant company" means the company which applies to the Commission, directly or through an authorized representative, to have its scheme authorized pursuant to this ILAS Code.

3.3 "approved person" has the meaning assigned to it by section 102(1) of the SFO.

3.4 "Authorized Insurer" means an insurance company authorized under the Insurance Ordinance to carry on a relevant class of insurance business in Hong Kong.

3.5 "collective investment scheme" has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.

3.6 "Commission" or "SFC" means the Securities and Futures Commission referred to in section 3(1) of the SFO.

3.7 "constitutive documents" means the documents which establish and govern the existence and operation of a scheme and includes the policy document in the case of a scheme established pursuant to an insurance contract.

3.8 "Handbook" means the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.

3.8A "investment delegate" means an entity that has been delegated the investment management function of a scheme.

3.9 "investment-linked assurance scheme" means an insurance policy of the "linked long-term" class as defined in Part 2 of Schedule 1 to the Insurance Ordinance, other than a policy of which the predominant purpose is life assurance and not investment.

3.10 "investment options" means a range of investment choices which are available for scheme participants to choose and may include investment choices that are linked to SFC-authorized funds and/or other pools of assets internally managed on a discretionary basis by the Authorized Insurer, where the returns from the scheme are calculated with reference to the performance of investment choices selected by a scheme participant, whether or not an Authorized Insurer actually invests in the selected investment choices (and the Authorized Insurer does not have to) and notwithstanding scheme participants do not have any ownership or rights over the underlying funds/assets of the investment choices even where the Authorized Insurer has invested in the selected investment choice.

3.11 "offering document" means the principal brochure for distribution in Hong Kong containing the information required by Appendix A to this ILAS Code, and any other information necessary for prospective scheme participants to make an informed judgement about the scheme.

3.12 “Product Code” means any of the following codes administered by the Commission:

(a) Code on Unit Trusts and Mutual Funds

(b) Code on Investment-Linked Assurance Schemes

(c) Code on Pooled Retirement Funds

(d) SFC Code on MPF Products

3.13 “principal brochure” means that document, or documents issued together, issued by an applicant company, containing information on a scheme as stipulated in Appendix A.

3.14 “Product KFS” means the Product Key Facts Statement which is the statement required pursuant to 5.7.

3.15 “scheme participants” means the policy or contract owners and, upon the death of the owner, the beneficiaries appointed by him/her under the scheme.

3.16 “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong).

3.17 “substantial financial institution” means an authorized institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong), or a financial institution which is on an ongoing basis subject to prudential regulation and supervision, with a minimum net asset value of HK$2 billion or its equivalent in foreign currency.

3.18 “UF-driven changes” means changes to an investment option falling within 7.1 of this ILAS Code that solely reflect changes made to the corresponding underlying SFC-authorized fund and such underlying fund changes have been approved, or are not required to be approved by the Commission pursuant to the Code on Unit Trusts and Mutual Funds.

Part II: Authorization requirements

Chapter 4: Applicant company

Regulatory status of applicant company

4.1 No investment-linked assurance scheme will be authorized pursuant to this ILAS Code unless the applicant company is an Authorized Insurer. If the applicant company ceases to be authorized by the Insurance Authority, any existing authorization of the scheme will normally lapse.

Responsibilities of applicant company

4.2 The applicant company will be responsible for observing all requirements of this ILAS Code and any conditions imposed by the Commission in granting authorization during the continued enjoyment of that authorization, except to the extent that the Commission grants waivers in writing.

4.3 The applicant company is responsible for whatever information is given to the Commission on its behalf and should use its best endeavours to ensure that statements of intention in printed matter are followed.

4.4 If a scheme contains a guaranteed investment option, such guarantee should be provided either by the applicant company or a substantial financial institution.

4.5 The applicant company shall:

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner and will ensure that any scheme to which the constitutive documents relate is conducted in a proper and efficient manner; and

(b) exercise best endeavours and due diligence to ensure that the marketing of the scheme is carried out professionally, honestly and fairly.

4.6 The applicant company must ensure the scheme is designed fairly, and operated according to such product design on an ongoing basis, including, among others, managing the scheme in a cost-efficient manner taking into account the size of the scheme and the level of fees and expenses etc.

4.7 The applicant company must provide adequate disclosure of information (as well as any material changes to the information) of the scheme which is necessary for scheme participants to make an informed judgement of their investment in the scheme.

Chapter 5: Operational requirements

Scheme documentation

Matters to be disclosed in the offering document

5.1 An authorized scheme must issue an up-to-date offering document, which should contain all information (including but not limited to product features and risks factors associated with the scheme) necessary for prospective scheme participants to be able to make an informed judgment of the investment proposed to them, and in particular should contain the information listed in Appendix A.

English and Chinese offering document

5.2 Except as provided herein, the offering document must be prepared in English and Chinese. The Commission may waive the requirement that the information be provided in both languages on a case-by-case basis where the applicant company satisfies the Commission that the scheme will only be offered to persons fully conversant in the language in which it is intended to publish the information.

Illustration document

5.3 An illustration document must be prepared by the Authorized Insurer in conjunction with each proposed investment by each prospective scheme participant. This document must be provided to the scheme participant for his review and signature prior to signing of the application form.

5.4 The minimum requirements for the information to be included in the illustration document are set out below. Subject to the approval of the Commission, the Authorized Insurer may customize the document to include additional information provided that such additional information is not misleading and does not otherwise detract from the information disclosed in the minimum requirements.

(a) Surrender values

The Authorized Insurer is required to illustrate, what the scheme participant would be expected to receive if he redeems at the end of each of the first 5 years of the contract, and for every fifth year thereafter until maturity, after deduction of all relevant charges. The computation of these surrender values shall not take into account any non-guaranteed returns, including, without limitation, any discretionary bonus, dividend payments, reimbursements of charges. These expected surrender values should be based on at least 2 different assumptions on the rate of return.

Note: For the avoidance of doubt, assumed rates of return may still be used in the illustration document and further guidance is available on the Commission's website.

(b) Prescribed statements

The following statements should appear in the illustration document:

THE ASSUMED RATES USED BELOW ARE FOR ILLUSTRATIVE PURPOSES. THEY ARE NEITHER GUARANTEED NOR BASED ON PAST PERFORMANCE. THE ACTUAL RETURN MAY BE DIFFERENT!

IMPORTANT:

THIS IS A SUMMARY ILLUSTRATION OF THE SURRENDER VALUES OF [Name of Product]. IT IS INTENDED TO SHOW THE IMPACT OF FEES AND CHARGES ON SURRENDER VALUES BASED ON THE ASSUMPTIONS STATED BELOW AND IN NO WAY AFFECTS THE TERMS OF CONDITIONS STATED IN THE POLICY DOCUMENT.

The following statements should be clearly disclosed before the scheme participant's signature:

Warning: You should only invest in this product if you intend to pay the premium for the whole of your chosen premium payment term. Should you terminate this product early, you may suffer a significant loss.

I confirm having read and understood the information provided in this illustration and received the principal brochure.

Note: A format for the illustration document is available on the Commission's website.

Application form

5.5 The entitlement of the scheme participant to the cooling-off period must be prominently displayed at the bottom of the application form immediately above the space for signature. The language for the cooling-off period should comply with the prevailing cooling off initiative applicable to an investment-linked assurance scheme from time to time.

5.6 No scheme application form may be provided to any member of the public unless it is accompanied by the offering document and the illustration document. To that end the application form should include a statement to the effect that it should only be issued in conjunction with the offering document and the illustration document.

Product KFS

5.7 An authorized scheme must issue a Product KFS. Such statement shall be deemed to form a part of the offering document and shall contain information that enables prospective scheme participant to comprehend the key features and risks of the product.

Note: An illustration template of the Product KFS is available on the Commission's website.

Inclusion of performance data

5.8 If performance data or estimated yield is quoted, the Commission may require supporting documentation. No forecast or illustration of the scheme's future

performance may be made in authorized scheme documents except for the illustration of surrender values or where an investment return at a certain rate is guaranteed.

Naming of unauthorized collective investment schemes

5.9 As a general principle any naming of collective investment schemes in authorized scheme documents should be restricted to those which are authorized by the Commission pursuant to section 104(1) of the SFO.

Contents of constitutive documents

5.10 The constitutive documents of a scheme should contain the information listed in Appendix B.

5.11 Nothing in the constitutive documents may provide for the parties thereto to be exempted from any liability to scheme participants arising out of any breach of trust through fraud or negligence or imposed on them under Hong Kong law or the law of the scheme's place of domicile, under any trust deed or under any contract entered into, nor to be indemnified against any such liability by scheme participants or at scheme participants' expense.

Cooling-off period

5.12 A scheme must allow a scheme participant to withdraw unconditionally within the cooling-off period, subject to a market value adjustment ("MVA") in accordance with the prevailing cooling off initiative applicable to an investment-linked assurance scheme from time to time.

5.13 Any such MVA must be calculated solely with reference to the loss the Authorized Insurer or contract issuer might make in realizing the value of any assets acquired through investment of the premiums made under the contract. It shall therefore not include any allowance for expenses or commissions in connection with the issuance of the contract.

Fees and charges

5.14 Where a scheme proposes to invest in collective investment schemes managed or distributed by the same company or group, all initial charges of the underlying funds must be waived but recurrent management fees and charges may be levied proportionate to the amount invested.

5.15 The level/basis of calculation of all costs and charges payable from the scheme's property must be clearly stated, with percentages expressed on a per annum basis, where applicable. The aggregate level of fees for investment management function should also be disclosed.

5.16 If a performance fee is levied, such fee shall not create an incentive for the Authorized Insurer or its delegates to take excessive risks in the hope of increasing its performance fee.

Various methodologies may be used for the charging and accrual of performance fees and normally, such methodologies shall ensure that cumulative gains are offset in

some way by cumulative losses (i.e. "high-on-high" basis or the scheme's excess performance as compared against a benchmark).

5.17 The performance fee can only be payable:

(a) no more frequently than annually; and

(b) if the net asset value per unit exceeds the net asset value per unit on which the performance fee was last calculated and paid (i.e. on a "high-on-high" basis).

Note: Notwithstanding 5.17(b), the performance fee may also be calculated with reference to the performance of a benchmark or an asset class and the performance fee is only payable upon outperformance of the net asset value per unit/share vis-à-vis that of the benchmark or asset class.

In the case where a scheme or the investment option(s) linked to the scheme is not unitized, a certificate from an actuary must be provided to the Commission on an annual basis to certify compliance with the foregoing except where:

(a) there exists a year-on-year guarantee on investment return where the deficiency, if any, between the guaranteed return and the actual return is credited into the scheme account not less frequently than annually; or

(b) the scheme is a deposit administration policy in which investment returns may be declared by a company, in its discretion, at or above a stated minimum rate not less frequently than annually.

Chapter 6: Guarantee and with-profits or similar features

Guarantee features

The following criteria shall apply to a scheme which contains a guarantee feature or an investment option in which a guaranteed amount will be paid to scheme participants at a specific date in the future.

Guarantor

6.1 If the guarantor is an entity other than the Authorized Insurer which issues the policy, it must be a substantial financial institution.

Disclosure

6.2 The principal brochure must contain:

(a) the name of the guarantor (if other than the Authorized Insurer which issues the policy) and the terms and conditions of the guarantee;

(b) where applicable, a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to scheme participants who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the investment option and/or subject to penalties; and

(c) an illustration or description to clearly demonstrate the guarantee mechanism.

Guarantee features and discretionary benefits features

6.3 In relation to an insurance arrangement, if it is stated that discretionary benefits will or may be paid to scheme participants in excess of the guaranteed amount, and the amounts of those benefits are determined at the discretion of the policy issuer, the principal brochure of the scheme must contain:

(a) a statement to the effect that the [name of policy issuer], at its sole discretion, has the right to retain investment income of the [name of investment option] in excess of that required to be set aside to meet the guaranteed benefits under the [name of investment option];

(b) a readily comprehensible description of the methods of determining the discretionary benefits, including the following information, to the extent applicable:

(I) the reporting date; and

(II) **(i) for a participating product where the policy holder has a right to participate in profits from the long term fund of the policy issuer or any part of that fund:**

(i) details of the fund or part fund to which the right relates;

(ii) the principles on which the distribution of profits among policy holders and shareholders is based and whether these principles are derived from the constitution of the policy issuer or otherwise;

(iii) the bonus rates declared immediately prior to the reporting date and for the four years previous; and

(iv) the proportion of total distributed profits that was distributed to shareholders immediately prior to the reporting date and for the four years previous;

(ii) for an investment-linked product:

(i) a description of the method which will be used to calculate unit prices from time to time; and

(ii) the percentage changes in unit prices for the five yearly intervals immediately preceding the reporting date;

(iii) for an investment account product:

(i) a description of the method which will be used to calculate the interest rate for each period; and

(ii) the rate of interest declared immediately prior to the reporting date and for the four years previous; and

(c) a statement that past performance should not be taken as an indication of future performance.

Note: For investment option with less than five years track record, figures for shorter periods may be shown, provided the date of commencement is shown.

With-profits or similar features

The following shall apply to a scheme with "with-profits" or similar features where the Authorized Insurer can impose a market value adjustment. Where such scheme or any investment option also has guarantee features and discretionary benefits features, the provisions in 6.1-6.3 shall also apply.

6.4 As regards a scheme or an investment option with with-profits or similar features where the Authorized Insurer invests in a mixture of assets, and retains the absolute discretion to declare a rate of return (commonly known as "bonus") determined by reference to the performance of the underlying assets and other factors and is promised on the basis that the ups and downs of the investment performance can be smoothed out over a period, and the Authorized Insurer may, amongst other things, reduce the rate of bonus and/or apply a market value adjustment to the policy value or withdrawal amount in respect of any withdrawals (whether or not this may be on a retrospective basis), the following must be disclosed in the offering document:

(a) a statement to the effect that scheme participants' withdrawal amount may be significantly reduced by the market value adjustments as a result of such with-profits or similar features;

(b) the extent to which the investment can be deducted by such market value adjustments;

(c) a statement as to whether the Authorized Insurer has the sole discretion to determine the market value adjustment level;

(d) a statement as to how the prevailing rate of market value adjustments is disclosed to scheme participants from time to time; and

(e) a statement as to whether any policy issued by the scheme is subject to any market value adjustments.

6.5 An Authorized Insurer must keep scheme participants informed of any exercise of the market value adjustment relating to a scheme having with-profits or similar features.

Part III: Post-authorization requirements

Chapter 7: Post-authorization requirements

Scheme changes

7.1 The proposed changes to a scheme (other than UF-driven changes) in respect of the following must be submitted to the Commission for prior approval:

(a) changes to constitutive documents (other than changes that have been certified by the Authorized Insurer as provided under 7.4 or changes which do not require prior approval from the Commission);

(b) changes of the applicant company / management company and investment delegates, and their regulatory status;

(c) (i) material changes in investment objectives, policies and restrictions of the scheme (including expansion in the purpose or extent of use of financial derivative instruments for investment purposes);

(ii) introduction of new fees and charges, or increase in fees and charges (other than an increase within the permitted maximum level as disclosed in the offering document); and

(iii) material changes in dealing arrangements, pricing arrangements or distribution policy of the scheme; and

(d) any other changes that may have a material adverse impact on scheme participants' rights or interests (including changes that may limit scheme participants' ability in exercising their rights).

7.2 For changes to a scheme that require the Commission's prior approval pursuant to 7.1, the Commission will determine whether scheme participants should be notified and the period of notice (if any) that should be applied before the changes are to take effect as provided under 7.11. The revised offering document as a result of such changes should be submitted to the Commission for prior authorization.

Notes: *(1) [deleted]*

(2) [deleted]

(3) For any increase in fees and charges from the current level up to the permitted maximum level as disclosed in the offering document, prior approval from the Commission is not required, but no less than one month's prior notice must be given to scheme participants. However, a shorter period of notice may be permitted if it is not practicable for the applicant to do so due to circumstances beyond its control.

7.3 For changes to a scheme that do not require the Commission's prior approval pursuant to 7.1, the applicant company should provide scheme participants with reasonable prior notice, or inform scheme participants as soon as reasonably practicable of any information concerning the scheme which is necessary to enable scheme participants

to appraise the position of the scheme as provided under 7.11. The offering document may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised offering document must be filed with the Commission, together with a marked-up version against the previously filed version, within one week from the date of issuance.

Note: Without prejudice to the foregoing, the Authorized Insurer should inform scheme participants as soon as reasonably practicable of any material adverse change in the financial conditions or business of the key counterparties that it is aware of. 'Key counterparties' include but are not limited to the Authorized Insurers and guarantors (where relevant).

7.4 The constitutive documents may be altered by the Authorized Insurer without consulting scheme participants provided that the Authorized Insurer certifies in writing that in its opinion the proposed alteration:

(a) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements;

(b) does not materially prejudice scheme participants' interest, does not to any extent release the parties from any liability to participants and does not increase the costs and charges payable under the scheme; or

(c) is necessary to correct a manifest error.

In all other cases involving any material changes, no alteration may be made except by the approval of the Commission.

7.5 The Commission may accept undertakings from an applicant company to delay making a required amendment to a document until an opportune time, but in such cases the Commission may impose a reasonable time limit for carrying out the required amendment, and require a written undertaking from an applicant company to comply, in the interim period, with the substance of the requirement.

Withdrawal of authorization

7.6 Following the authorization of a scheme, an application for withdrawal of authorization of the scheme must be submitted to the Commission for prior approval. Subject to 7.7 below, at least three months' notice, or any shorter notice period as may be permitted if it is not practicable for the applicant company to do so due to circumstance beyond its control, should be provided to scheme participants of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain information necessary to enable scheme participants to make an informed judgement of the proposed withdrawal of authorization by the applicant company (including the reasons for the withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the scheme and their effects on existing scheme participants, the alternatives available to scheme participants (including, if possible, a right to switch without charge into another authorized scheme) and, where applicable, an estimate of any relevant expenses and who is expected to bear them).

Note: Subject to the scheme having served notice period for merger or termination under 7.7, the applicant company may apply for withdrawal of authorization of the scheme with immediate effect following the completion of the merger or termination (as the case may be).

Merger or termination

7.7 Where a scheme or an investment option linked to the scheme is to be merged or terminated, the applicant company should follow the procedures as set out in the constitutive documents or governing law. Notice should be given to scheme participants. Such notice should be submitted to the Commission for prior approval and contain information necessary to enable scheme participants to make an informed judgement of the proposed merger or termination by the applicant company (including the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the consequences of the merger or termination and their effects on existing scheme participants, the alternatives available to scheme participants (including, if possible, a right to switch without charge into another authorized scheme or investment option), the estimated costs of the merger or termination and who is expected to bear them).

Notes: (1) Normally, the Commission will expect that at least one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) to be provided to scheme participants. However, a shorter period may be permitted if it is not practicable for the applicant company to do so due to circumstances beyond its control.

(2) In effecting a merger or termination, the applicant company must put in place proper measures to minimize the opportunity of any scheme participants to benefit from more favourable or advantageous conditions of the scheme, taking due account of the interests of the scheme participants.

Advertising materials

7.8 Advertisements and other invitations to invest in a scheme must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.

7.9 Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

7.10 The applicant company must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least three years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Notices to scheme participants

7.11 Notification to scheme participants must be made in the language(s) in which the scheme is offered to them. Reasonable notice period(s) should be provided to the scheme participants in order to enable them to appraise the position of the scheme and to make an informed judgement of their investments in the scheme, where applicable.

Notes: In determining the notice period for changes to a scheme falling under 7.1 or 7.3, the following shall apply:

(1) normally, one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) is expected to be provided to scheme participants unless as provided under Notes (2) or (3) to 7.11 or otherwise agreed by the Commission;

(2) a shorter prior notice period may be permitted where the proposed changes to the scheme are of demonstrable benefit to scheme participants or if it is not practicable for the applicant company to do so due to circumstances beyond its control; and

(3) unless otherwise specified by the Commission, scheme participants should be informed as soon as reasonably practicable for changes to the scheme which are to provide clarification or relate to administrative matters.

The applicant company is encouraged to consult the Commission in case of doubt.

7.12 Subject to 7.6 and 7.7 above, notices to scheme participants need not be approved by the Commission prior to issuance but are required to be filed with the Commission within one week from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 7.1 above should be approved by the Commission prior to the distribution of the relevant notices to scheme participants.

7.13 The applicant company has the responsibility to ensure that the notices to scheme participants are not misleading and contain accurate and adequate information to keep them informed. All notices should contain Hong Kong contact details for scheme participants to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of any changes falling under 7.1 and consequential changes made to the principal brochure or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

Reporting to the Commission and the Insurance Authority

7.14 The Authorized Insurer should promptly report to the Commission and the Insurance Authority immediately any material breach, infringement of or non-compliance with the Handbook (including this ILAS Code).

Mention of SFC authorization

7.15 Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the offering document and advertisements and other invitations to invest in the scheme:

SFC authorization is not a recommendation or endorsement of a scheme nor does it guarantee the commercial merits of a scheme or its performance. It does not mean the scheme is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.

Appendix A

Information to be disclosed in the principal brochure

The principal brochure, preferably in one single document, should contain the information necessary for prospective scheme participants to be able to make an informed judgment of the scheme and in particular should contain the following:

(a) Name and type of scheme

The name and description of the scheme must not be misleading to potential scheme participants and should be an accurate reflection of the type of scheme and its objectives.

(b) Parties involved

The names and registered address of all parties involved in the operation of the scheme with a brief description of the applicant company.

(c) Investment returns

(i) Details of how the investment return of the scheme is determined.

(ii) Except where the scheme's investment returns are subject to a non-variable guarantee, a warning should be stated to the effect that investment involves risks.

(iii) A statement to the effect that the unit(s) allocated to the policy is notional and is solely for the purpose determining the value of the policy shall be included.

* See Chapter 6 for additional disclosure requirements for guarantee and with-profits or similar features.

If the nature of the investment policy so dictates, a warning should be given that investment in the scheme or investment option linked to a scheme is subject to abnormal risks, together with a description of the risks involved.

(d) Fees and charges

Explanations of fees and charges may be abbreviated, but should be clearly identified to include:

(i) the level of all fees and charges payable by a scheme participant, including all charges levied on subscription, redemption and switching;

(ii) the level of all fees and charges payable by the scheme or an investment option linked to the scheme; and

(iii) details of whether charges are subject to change and the relevant notice period.

A summary of all fees and charges in tabular form should be provided to give scheme participants an overview of the fees structure at a glance. Where complex calculations are required to disclose fees and charges, illustrative examples should be given for clarity.

(e) Investment objectives and restrictions

Summary of investment objective of the scheme or investment option(s) linked to a scheme, including, where applicable:

(i) the types of intended investments, and their relative proportions in the portfolio;

(ii) the geographical distribution of the intended investments;

(iii) the investment and borrowing restrictions; and

(iv) if the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Where the return of an investment option is determined with reference to one or more SFC-authorized funds, a statement as to how to make available offering documents of such SFC-authorized fund(s) shall be included.

For other cases, the specific investments, associated risks e.g. the use of financial derivative instrument, or leverage (if any) and a statement that the return of the investment option is calculated with reference to a pool of assets internally managed on a discretionary basis by the Authorized Insurer are required to be disclosed.

(f) Borrowing powers

The circumstances under which the scheme or investment option(s) linked to a scheme may have outstanding borrowings and the purpose for which and extent to which such outstanding borrowings were or may be incurred.

(g) Summary of provisions in constitutive documents

A summary of the provisions described in paragraphs (d), (f), (g), (h) and (k) of Appendix B with respect to:

- Valuation of Property and Pricing
- Characteristics of Premiums/Contributions
- Benefits
- Maturity and Early Surrender Values
- Conditions of Termination

(h) Application and surrender procedures

A summary of procedures for application and surrender.

(i) Warning statements

The following warning statements shall be disclosed in the principal brochure, where applicable, in a prominent manner:

(i) Investment-linked assurance schemes are insurance policies issued by the Authorized Insurer.

(ii) A scheme participant's investments are therefore subject to the credit risks of such Authorized Insurer.

(iii) The premiums paid by a scheme participant towards the insurance policy will become part of the assets of the Authorized Insurer. A scheme participant does not have any rights or ownership over any of those assets. The recourse of a scheme participant is against the Authorized Insurer only.

(iv) A scheme participant's return on investments is calculated or determined by the Authorized Insurer with reference to the performance of the underlying funds*/assets.

(v) Where the return of the scheme is based on investment options linked to the scheme which is calculated or determined by the Authorized Insurer with reference to the performance of a corresponding SFC-authorized fund, a warning statement that the return of investments under the scheme shall be subject to the charges of the scheme and may be lower than the return of the corresponding SFC-authorized fund.

(vi) Early surrender or withdrawal of the policy/suspension of or reduction in premium may result in a significant loss of principal and/or bonuses awarded. Poor performance of underlying funds*/assets may further magnify the scheme participant's investment losses, while all charges are still deductible.

(vii) The investment options available under the scheme can have very different features and risk profiles. Some may be of high risk.

Other warning statements as required by this ILAS Code must be prominently displayed in the offering document.

(j) Cooling-off period

A summary of the provisions described in 5.12 and 5.13 with respect to the cooling-off period.

* "Underlying fund(s)" can be used by an Authorized Insurer in the event that it has disclosed in the offering document that it will be investing the net premium received from the scheme participants into the funds corresponding to the investment options as selected by the scheme participants for such Authorized Insurer's asset liability management. Otherwise, the Authorized Insurer should adopt the term "reference fund(s)".

(k) General information

(i) A list of constitutive documents and an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price.

(ii) A statement that the Authorized Insurer accepts full responsibility for the accuracy of the information contained in the offering document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement misleading.

(iii) A statement that the Commission does not take any responsibility for the contents of the offering document, makes no representation as to its accuracy or completeness, expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the offering document.

(iv) Where a scheme is described as having been authorized by the SFC, the prominent note as required under 7.15 should be disclosed.

(v) If available, website address of the scheme which contains publication of its offering document, principal brochures, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value.

(l) Governing law

The governing law of the scheme should be disclosed and an acknowledgment that the parties involved have the right to bring legal action in a Hong Kong court as well as in any court elsewhere which has a relevant connection with the scheme.

(m) Taxation

Where the likely tax benefits to be enjoyed by scheme participants are described, the principal brochure should also briefly explain the applicant company's understanding of the tax implications for Hong Kong scheme participants, based on expert advice received by the applicant company.

Scheme participants should also be advised to seek professional advice regarding their own particular tax circumstances.

(n) Date of publication of the principal brochure

All facts and figures in the principal brochure should be as reasonably up to date as possible.

(o) Authorization statement

Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation.

Appendix B

Contents of the constitutive documents

The constitutive documents should incorporate the detailed terms and conditions of the scheme. The paragraphs which follow illustrate the details which the Commission will look for although it is prepared to be flexible in determining which criteria should apply.

(a) Name and type of scheme

(b) Parties involved

A statement to specify the parties involved including, as applicable, the applicant company, the management company, the guarantor, the trustee and the auditor, giving full particulars of their functions, duties and obligations.

(c) Investment returns

A detailed description of how the investment returns of the scheme is determined, for example, with reference to:

(i) an investment option or its assets held in the name of the policy issuer;

(ii) any notional fund (with its basis stated); or

(iii) a rate determined at the discretion of the policy issuer.

(d) Valuation of property and pricing

(i) For schemes linked to unitized investment options;

- the method of determining the value of the assets and liabilities of the property of the scheme;
- the method of calculating the issue and redemption prices;
- how frequently prices are established;
- the lead times for the allocation of premiums to units and the realization of units; and
- the circumstances under which the above might change; or

(ii) For schemes linked to investment options which are not unitized;

- how and when the investment option is valued;
- how and when the investment return is calculated and distributed amongst the scheme participants; and
- the circumstances under which the above might change.

(e) Guarantee

Whether investment performance or capital is guaranteed and if so details of:

(i) the rate or amount guaranteed;

(ii) the conditions under which the rate or amount may be altered or discontinued;

(iii) the nature of the guarantee, e.g. capital, income, flat guarantee, year on year, or compounded;

(iv) how and when the guarantee is invoked or revoked;

(v) any charges or consideration for the guarantee;

(vi) the date of expiry of the guarantee;

(vii) if the guarantor is an entity other than the policy issuer, the provisions for appointment, retirement or removal;

(viii) where applicable, the methods of determining the discretionary benefits to be paid to scheme participants in excess of the guaranteed amount; and

(ix) where applicable, the extent to which, and the basis on which, the policy issuer may set up a reserve, by whatever name called, so as to smooth the progression of unit prices or rates of return.

(f) Premiums and contributions

(i) The full amount to be paid.

(ii) The currency of payment.

(iii) To whom and where paid.

(iv) How paid and the options if any for payment.

(v) The frequency, due dates and for what periods premiums must be paid.

(vi) If there are fixed due dates, the grace period and penalties if any for late payment.

(vii) The proportion or amount of the premiums paid which will be applied for investment purposes and if these proportions change as the scheme progresses, the stages at which these changes occur and the manner in which they change.

(viii) The consequences and options if any should payment of premiums be discontinued at any time.

(g) Benefits

The currency, dates and places of payment of benefits.

(h) Maturity and early surrender value

(i) The maturity value.

(ii) The methods of calculation of full surrender value, partial surrender value and death benefit.

(iii) Any notice periods for full or partial surrenders.

(iv) Other settlement options or rights.

(v) The circumstances under which payment of benefits may be deferred or suspended.

(vi) The maximum interval between the receipt of a properly documented request for surrender and the date of payment.

(vii) Whether interest is payable in respect of the period between the effective date of claim and the date of payment.

(i) Fees and charges

(i) All specific fees and charges under the scheme whether calculated by way of an amount, percentage or otherwise.

(ii) All indeterminable fees and charges.

(iii) Information as to when and on what event the fees and charges will fall due.

(iv) Any taxes and expenses charged to the scheme or levied against investment option(s) linked to the scheme on a basis deemed fair and reasonable by an actuary or other person of professional standing.

(v) Any fees payable to, as applicable, the applicant company, management company, trustee, guarantor or any other party.

(j) Investment and borrowing restrictions

The restrictions on the investment of the scheme or investment option(s) linked to a scheme (if any) and borrowing restrictions.

(Note: The maximum borrowing limit of the scheme or any investment option linked to a scheme should not exceed 25% of net asset value, inclusive of short-term borrowings to cover redemptions or other special situations.)

(k) Termination of the scheme

The circumstances in which a class of scheme or an investment option linked to a scheme may be terminated and the relevant notice to be given to scheme participants.

(l) Governing law

The governing law of the scheme must be specified.

(m) Cooling-off period

The detailed provision of a cooling-off period, as in 5.12 and 5.13, within which a scheme participant may withdraw unconditionally, subject to a market value adjustment, if any.