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## Legal Aspects of the Investment-Linked Assurance Schemes (ILAS)

### (投資相連壽險計劃的法律要點)

To strengthen Hong Kong as the world-class financial services and assets management centre, one of the strategies is to enable the market of Hong Kong to supply high value-added services in fund, insurance and other savings products for the investment of consumers.

During the past few years, we have seen the mushrooming of the innovative insurance products known as Investment-linked Assurance Schemes ( “ILAS” ) which integrate the traditional life insurance with an investment component. They are also commonly known as investment-linked insurance products or saving plans.

Under ILAS, part of the premium paid by the policyholder is put into a special investment account as the investment fund under certain investment schemes/options selected by the policyholder. The fund is operated by the investment professionals specializing in securities and assets management. The policyholder is thus regarded as both a life insurance policyholder and fund investor.

In Hong Kong, sales of ILAS require authorization under both Insurance Companies Ordinance (Cap. 41) ( “ICO” ) and Securities and Futures Ordinance (Cap. 571) ( “SFO” ). The authorization requirements are set out in the Code on Investment-Linked Assurance Schemes (the “Code” ) published by the SFC.

### Authorization of ILAS Policies (投資相連壽險計劃之認可規定)

ILAS bear a definition under Part 2 of Schedule 1 to the Insurance Companies Ordinance (Cap.41) as an insurance policy of the “linked long-term” class. Issue of ILAS has to be authorized by the Securities and Futures Commission ( “SFC” ) under section 105(1) of the SFO, or is exempted by any other relevant provision. It follows that documentations relating to ILAS including the Principal Brochures and illustration documents must be authorized by the SFC.

## Authorization of Insurer and Insurance Intermediaries (保險公司及中介人之認可規定)

ILAS policies could only be issued by an insurer authorized under Class C insurance business of Insurance Companies Ordinance (Cap.41) and they are defined as “*Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).*”

Amongst other things, the Code requires that the insurer shall exercise best endeavors and due diligence to ensure that the marketing activities of ILAS are carried out professionally, honestly and fairly. The Code also provides that advertisements and other invitations to invest in ILAS, including public announcements, must be submitted to the SFC for approval prior to their issue or publication in Hong Kong.

Only the authorized insurance intermediaries (agents or brokers) registered under the Insurance Authority or with appropriate insurance intermediary self-regulatory bodies can be engaged in the sale and promotion of ILAS policies.

In complying with SFO, the insurance intermediaries are required to use only and adhere strictly to the materials provided by the insurer and authorized by the SFC and must not depart, deviate from, or add their own interpretations to these materials.

As a separate and additional requirement, the insurance intermediaries might need to be licensed by SFC if they go further and engage in functions that are an integral part of a business of advising on or dealing in securities, which are activities monitored by SFC.

## Cooling-off Period (冷靜期)

The entitlement of the Policyholder to the cooling-off period must be prominently displayed at the bottom of the application form immediately above the space for signature. This cooling-off period will extend to the later of (a) 14 days after the date of issue of the new contract or (b) 21 days after the date on which the application for the new contract is signed.

*Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: [www.wmleehk.com](http://www.wmleehk.com))*

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