

Press Release

LCQ4: Regulation of sale of investment-linked assurance scheme products

Wednesday, June 10, 2015

Following is a question by the Hon Sin Chung-kai and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 10):

Question:

Investment-linked assurance schemes (ILAS) are long-term investment-cum-life insurance products and the related policy values (and may also include death benefit) are subject to investment risks and market fluctuations. The Securities and Futures Commission (SFC) pointed out in the Circular Clarifying the Licensing Requirements arising out of the Promotion, Offering or Sale of Investment-Linked Assurance Schemes to the Public (the Circular) issued on August 13, 2009 that even if the underlying funds selected by ILAS policyholders usually are securities, advising or making recommendations to ILAS policyholders concerning the selection of funds does not constitute advising on securities as specified in Schedule 5 to the Securities and Futures Ordinance (SFO). SFC is of the view that insurers, corporate insurance brokers and individuals who are insurance agents or insurance brokers (collectively referred to as "insurance intermediaries") are not required to be licensed by SFC under SFO by virtue of their engaging in promoting, offering or selling ILAS to the public. In this connection, will the Government inform this Council:

(1) whether it knows if SFC, since the issuance of the aforesaid Circular, has changed its policy on regulation of ILAS products; if SFC has, of the reasons for and the details of such changes;

(2) given that ILAS involves fund investments, market risks and the interests of policyholders, whether it knows the justifications of SFC for not regulating the sale of ILAS (including advising the policyholders concerning the selection of funds) by insurance intermediaries and not requiring such persons to apply for licences for engaging in relevant activities; and

(3) whether the authorities will step up regulation of the selling activities of this

kind of investment performance-linked insurance products, including enacting legislation to classify relevant selling activities as regulated activities under SFO, so as to better protect the interests of the policyholders of this kind of insurance products; if they will, of the details; if not, the reasons for that?

Reply:

President,

(1) and (2) Investment-Linked Assurance Schemes (ILAS) are insurance contracts under the Insurance Companies Ordinance (Cap. 41) and insurance contracts are deliberately excluded from the definition of "securities" under the Securities and Futures Ordinance (SFO) (Cap. 571). Therefore, insurers or insurance intermediaries engaging in promoting, offering or selling ILAS to the public or advising members of the public on ILAS are not, by virtue of those particular activities, required to be licensed under SFO for the purpose of advising on securities or dealing in securities.

Under the current self-regulatory regime for insurance intermediaries, intermediaries selling ILAS must be registered with a Self-Regulatory Organisation and have passed the relevant ILAS examination.

(3) To enhance protection of policyholders of ILAS, the Office of the Commissioner of Insurance (OCI) has rolled out a number of measures since 2009, including new regulatory requirements made last year. Relevant measures include:

On ILAS products:

- * products should comply with the principle of fair treatment of customers. Charges should be fair and commensurate with the insurance protection offered. High charges are not allowed for an ILAS product carrying only minimal insurance protection;

- * customers need to sign the Important Facts Statement which contains those product features that may be easily overlooked by policyholders, e.g. fees, surrender charges, contribution amount and premium term, etc., to enhance disclosure at the point of sale; and

- * the offering of gifts for sale promotion is prohibited.

On intermediaries' remuneration and disclosure:

- * products must adopt a uniformed method for calculation and disclosure of the remuneration received by the intermediaries; and

- * indemnity commission to intermediaries by insurers is not allowed.

On suitability assessment:

- * intermediaries must perform suitability assessment for customers and then, according to the financial needs and risk appetite of customers, analyse and compare different choices of product which suit their needs; and

- * intermediaries should not recommend any ILAS products to customers who do not have both investment and protection needs.

On post-sales controls:

- * where there is objective information showing that the customers do not have needs for, or are not suitable to procure ILAS products, for example, the risk levels of the chosen funds are higher than the levels of risk the customers can bear and they did not provide any explanation in their own handwriting in the Applicant's Declaration which is duly signed, insurers could not accept applications from these customers;

- * insurers are required to make audio-recorded post-sale calls to all ILAS customers confirming that customers understand the content of the ILAS products they procure, as well as their rights and obligations before they procure the ILAS products; and

- * policyholders can cancel the policies within the 21-day cooling-off period.

We believe that the number of complaints will continue to drop with the implementation of the new regulatory requirements on product design and the sales process introduced by OCI. The OCI will keep in view the latest market

development from time to time and examine the effectiveness of the regulatory measures.

Moreover, the Legislative Council is scrutinising the Insurance Companies (Amendment) Bill 2014 for the establishment of an independent Insurance Authority (IIA) and introduction of a statutory licensing regime for insurance intermediaries to replace the existing self-regulatory regime. In future, insurance intermediaries must be licensed by IIA. If a licensed insurance intermediary is found to have committed misconduct, IIA may impose disciplinary sanctions. This would further enhance the regulation of insurance intermediaries and strengthen consumer protection.

Ends