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**Regulations for Insurance Brokers Engaged in
Advising on Linked Long Term Insurance or
Arranging or Negotiating Policies of Linked Long Term Insurance**

(Promulgated by the General Committee on 22 July 2011)
(With effect from 1 November 2011)

1. Definitions

- 1.1 In these Regulations, the following expressions shall have the following meanings:-
- 1.1.1 "Articles" means the Articles of Association of the Confederation;
- 1.1.2 "Code of Conduct" or "Guidance Notes" means the Code of Conduct or Guidance Notes from time to time of the Confederation.
- 1.1.3 "Confederation" means The Hong Kong Confederation of Insurance Brokers;
- 1.1.4 "Linked Long Term Insurance" has the same meaning as "Linked Long Term" in Paragraph C Part 2 of the First Schedule to the Insurance Companies Ordinance;
- 1.1.5 "Linked Long Term Insurance Business" means advising on Linked Long Term Insurance or arranging or negotiating policies of Linked Long Term Insurance;
- 1.1.6 "Registrant" means persons registered with the Confederation as Chief Executive or Technical Representative of a Member of the Confederation.

2. Interpretation

- 2.1 In these Regulations:-
- 2.1.1 Words importing one gender only shall include the other gender;
- 2.1.2 Words stated in the singular may apply in the plural or vice versa;
- 2.1.3 Any terms not defined shall have the meaning (if any) set out in the Articles or the Membership Regulations of the Confederation;
- 2.2 These Regulations shall be read in conjunction with the Code of Conduct and the Guidance Notes. It does not have the force of law and should not be interpreted in a way that would override the provision of any law.
- 2.3 Subject to the Articles, the interpretation of these Regulations shall be determined by the General Committee whose decision shall be final. The General Committee may issue guidelines or Guidance Notes from time to time as to how Members and/or Registrants may properly fulfil their responsibilities under these Regulations.

3. Persons to which these Regulations applies

- 3.1 These Regulations are applicable to all Members and their Registrants and Directors, and all other Employees of such Members in their carrying on the Linked Long Term Insurance Business.

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4. Effect of breach of these Regulations

- 4.1 A failure to comply with or a breach of any provision of these Regulations may constitute a violation of the Code of Conduct by the Members, their Registrants, their Directors or Employees involved. Any alleged failure to comply with or breach of these Regulations shall be dealt with in accordance with the Articles.
- 4.2 The Confederation will be guided by these Regulations in considering whether a Member or a Registrant, a Director or an Employee of any Member satisfies the Code of Conduct, whenever they are engaged in Linked Long Term Insurance Business.

5. The Regulations

5.1 Supervision and control

- 5.1.1 Supervision – A Member, and its Directors, should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct Linked Long Term Insurance Business on its behalf.
- 5.1.2 Control, financial and operational resources – A Member should have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations and its clients from financial loss arising from error, omission, theft, fraud, or other dishonest acts, professional misconduct or omissions in the course of conducting Linked Long Term Insurance Business. The Member's Directors should ensure the enforcement of such procedures and the sustainability of such capabilities.

5.2 Information for clients

- 5.2.1 Information about the Member – A Member should provide clients with adequate and appropriate information about its business, including but not limited to contact details, nature of business, services available to clients and corresponding remuneration policy, and the identity and status of Registrants acting on its behalf with whom the client may have contact. Where Registrants act for more than one company within a financial services group, the Member concerned should ensure that there is no reasonable basis for confusion on the part of the client as to the company for which these Registrants are acting.
- 5.2.2 Disclosure and fair treatment – If required by clients to do so, a Member should disclose any association or affiliation (e.g. of the same group of companies or with common directorship) it may have with any insurers or service providers whom it is recommending in relation to Linked Long Term Insurance Business. Where a Member or Registrant has a material interest in a transaction or recommendation with or for a client or a relationship which gives rise to an actual or potential conflict of interest in relation to the transaction or recommendation, it should take all reasonable steps to ensure fair treatment of the client.
- 5.2.3 Client agreement in writing – A Member should enter into a written agreement with each client (Client Agreement) before carrying on Linked Long Term Insurance Business with that client. The Member should provide a copy of these documents to

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the client. The minimum contents of the Client Agreement are specified in Guidance Notes.

- 5.2.4 Withdrawal from business – A Member that withdraws in whole or in part from providing any services in relation to Linked Long Term Insurance Business should ensure that affected clients are promptly notified of the action and that any business which remains outstanding is promptly completed or transferred to another authorized insurance intermediary in accordance with any instructions of the affected clients.
- 5.3 Know your client
- 5.3.1 Identification – A Member and/or a Registrant should take all reasonable steps to establish the true and full identity of each client. Identity documents of individuals should be certified by the Registrant himself or a professional person such as a certified public accountant, solicitor or notary public. In respect of clients other than individuals, Members should obtain a business registration certificate and corporate documents or other official documents (certified as above) which uniquely identify the client, its directors and its shareholders. The Member concerned should keep documentary records sufficient to demonstrate that the client identification procedures have been followed satisfactorily.
- 5.3.2 Needs and requirements – A Registrant should take all reasonable steps to understand and record each client's needs and requirements. The Member concerned shall adopt adequate measures to verify that the Registrant's recording of the client's needs and requirements is in line with the information collected from the client.
- 5.3.3 Profile and appetite – A Registrant should take all reasonable steps to understand and assess each client's financial situation, in particular whether the client has sufficient net worth and/or disposable income, investment knowledge and experience, and is of a particular type of risk profile and appetite, such that he is able and/or willing to commit to a policy for Linked Long Term Insurance and/or to assume the risks and to bear the potential losses of committing to any arrangement or transactions under the policy for Linked Long Term Insurance, particularly in case of there being any associated or related leverage/gearing/collateral arrangement. A Member should adopt all reasonable measures to record and confirm that the aforesaid duties have been duly discharged by the Registrant.
- 5.4 Due Skill, care and diligence
- 5.4.1 Accurate representations – Where a Registrant advises a client, he should ensure that any representations made and information provided to the client are accurate and up-to-date.
- 5.4.2 Adequate information – A Registrant should offer the client adequate information, including but not limited to charges, market value adjustment, surrender charges and alternatives, for the client to understand the nature and extent of risks involved before the client commits to a policy for Linked Long Term Insurance, as well as in respect of any underlying funds, or any top-ups to any policy for Linked Long Term Insurance.

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5.4.3 Risk disclosure – A Member should issue a Risk Disclosure Statement for and together with EACH recommendation to client in relation to Linked Long Term Insurance Business, including application for a new policy, and/or top-up to an existing policy, where the Statement should:-

- (a) Be legible and in a language of the client's preference;
- (b) Include a declaration duly signed and dated by the client to confirm that he/she has read the full contents of the Risk Disclosure Statement in relation to the relevant recommendation and has been suggested taking another independent advice on explanation of the risk(s) disclosed, that such declaration shall be made before the execution of the recommendation.
- (c) Include, where appropriate to the relevant recommendation, explanation on the following headings:-

Credit Risk, e.g.

- (1) Policy of Linked Long Term Insurance, like other insurance policies, is issued by insurer. Should the insurer become insolvent, similar to all other life insurance policies, there is a risk of capital loss.
- (2) Return of the policy of Linked Long Term Insurance is contingent upon the performance of the underlying funds. Should any one of the fund managers become insolvent, there is a risk of capital loss.

Exchange Risk, e.g.

- (1) When the denomination used for valuating the policy of Linked Long Term Insurance is not in the currency of your place of residence (or your intended place of residence when the policy matures), there is a risk of capital loss due to depreciation of the currency used for the denomination of the policy.
- (2) When the denomination used for valuating the underlying funds is different from that used for the policy of Linked Long Term Insurance itself, there is a risk of capital loss due to depreciation of the currency used for the denomination of the underlying funds.

Interest rate Risk, e.g.

Should the monies paid into the policy of Linked Long Term Insurance be funded by premium financing, leverage, or gearing, or should the policy of Linked Long Term Insurance be used as collateral, when the rate of returns of the policy net of all charges is lower than the interest rate payable for the premium financing, leverage, gearing or the collateral arrangement. there is a risk of financial loss not limited to the capital put in the policy.

Liquidity Risk and Reinvestment rate Risk, e.g.

- (1) Policy of Linked Long Term Insurance is designed to be held for a long term period, and for regular premium type policy it is to be paid throughout the

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term of policy selected. Early surrender or withdrawal of the policy may result in a significant capital loss due to charges to be imposed. Suspension of or reduction in premium may also result in capital loss, as all fees and charges at full rates are still deductible from the value of the policy during period of premium suspension or reduction (including during period of premium holidays).

- (2) Design of the policy of Linked Long Term Insurance is that while any investment made by the insurer in the underlying funds you selected become and remain the assets of the insurer, should any investment be suspended or subject to a prolonged turnaround time to trade, the insurer may not be able to liquidate those investment in time to switch fund into another investment or to pay proceeds for policy surrender or withdrawal. There is a risk of fund switching or policy surrender or withdrawal being held up or delayed.

Market Risk, e.g.

Return of the policy of Linked Long Term Insurance is contingent upon the performance of the underlying funds that may be bad or good. When the funds perform badly, there is a risk of capital loss. Past performance is no guarantee of future results.

- 5.4.4 Suitability – A Registrant should ensure that any advice and/or recommendation to clients is based on thorough analysis. The Member concerned should conduct research and analysis to facilitate and guide the Registrant in advising clients. A Member and a Registrant should be satisfied as to the suitability of the recommendation in relation to a policy of Linked Long Term Insurance or any underlying funds made to a client, having regard to information about the client of which the Member and the Registrant should be aware of through the exercise of “Know Your Client” procedures referred to above at the time of the making of the recommendation.
- 5.4.5 Prompt execution – A Member and/or a Registrant should take all reasonable steps to execute promptly clients’ instructions in relation to policies for Linked Long Term Insurance.
- 5.4.6 Recommending other service – A Member and/or a Registrant should act in the best interests of clients and avoid any conflict of interest when recommending any affiliates, associates or third party to the clients for services relating to policies for Linked Long Term Insurance arranged or negotiated by the Member or the Registrant.

6. Regulatory Issues

- 6.1 Attention is drawn to the following issues which arise as a result of the blurring of the demarcation between the regulatory role of the Securities and Futures Commission as regulator and the Confederation’s regulatory regime.
- 6.1.1 Policies of Linked Long Term Insurance are excluded from the definition of “securities” in the Securities and Futures Ordinance. The Securities and Futures

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Commission takes the view that arranging policies with the predominant purpose of providing life cover does not constitute dealing in securities and advising on the choice of fund linked to policies does not amount to advising on securities. If there are slight variations in circumstances resulting in different interpretation of statutory provisions or if at some future time, the Securities and Futures Commission changes its view then arranging, negotiating or advising on policies of Linked Long Term Insurance will give rise to the need to obtain licences for type 1 regulated activity (dealing in securities) or type 4 regulated activity (advising on securities). This will need to be kept under review.

- 6.1.2 The Securities and Futures Ordinance continues to regulate the issue of offering documents advertisements etc. of policies of Linked Long Term Insurance and requires these to be approved by the Securities and Futures Commission. Accordingly, policies of Linked Long Term Insurance may not be arranged or negotiated by reference to documents other than approved offering documents or advertisements as that is prohibited by the Securities and Futures Ordinance.
- 6.1.3 In respect of negotiating or arranging policies of Linked Long Term Insurance which are not predominantly policies providing life cover, these may fall within the definition of "securities" thereby requiring a licence for advising on or dealing in securities.
- 6.1.4 If Members are in any doubt regarding the above-mentioned Regulatory Issues, they should take legal advice.

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