



## Frequently Asked Questions on Application Procedures for Authorization of Unit Trusts and Mutual Funds

This FAQ is prepared by the Investment Products Department and aims to provide basic information to market practitioners concerning the application procedures for authorization of unit trusts and mutual funds, subject to the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“Handbook”), including the Code on Unit Trusts and Mutual Funds (“UT Code”) therein. Applicants are encouraged to contact the relevant case team in the Investment Products Department of the Securities and Futures Commission (the “SFC”) if in doubt on any specific issues arising from the application/interpretation of the Handbook or this FAQ. Please note that each application for authorization is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Unless otherwise defined herein, all capitalised terms shall have the meanings given to such terms in the Handbook.

*Note: For ease of reference, collective investment schemes that are generally known as unit trusts or mutual funds are referred to as “funds” in the following FAQ.*

	Question	Answer
<b>Basic Requirements for Fund Application</b>		
1.	When will the application procedures begin to apply?	The procedures set out in this FAQ will apply to all applications submitted on or after 25 June 2010 (the “Effective Date”), the effective date of the Handbook to which the UT Code forms a part, i.e. upon the publication of the Handbook in the Government Gazette.

	Question	Answer															
2.	How do I start an application for authorization?	<p>To start an application, you have to submit to us:</p> <ul style="list-style-type: none"> <li>(a) a duly signed and completed <b><u>Application Form</u></b>;</li> <li>(b) a duly signed and completed <b><u>Information Checklist</u></b>;</li> <li>(c) the fund's offering document and constitutive documents which are properly annotated against the applicable provisions of the UT Code, the disclosure requirements as provided under the "Overarching Principles Section" of the Handbook and, where applicable, such other additional disclosure requirements that may be requested by the SFC from time to time;</li> <li>(d) documents (including any confirmations and/or undertakings) required to be submitted under or pursuant to the Information Checklist;</li> <li>(e) a cheque made payable to "Securities and Futures Commission" in the amount of the applicable application fee (see Q.3 below); and</li> <li>(f) such other documents as set out in Chapter 1.3 of the UT Code.</li> </ul> <p>During the application process, all changes to any subsequent draft documentation must be properly annotated and comprehensively marked up to facilitate review by the SFC.</p> <p>Without prejudice to the Handbook, during the vetting process, the SFC may from time to time request for the submission of additional supporting information or documents which it deems necessary for facilitating its consideration in whether to grant the authorization or in exercise of any of its regulatory powers.</p>															
3.	What fees do I have to pay?	<p>In making your application, you will have to pay an application fee as set out below.</p> <table border="0" data-bbox="954 1129 2051 1228"> <tr> <td></td> <td></td> <td style="text-align: center;"><u>per</u></td> <td style="text-align: center;"><u>per</u></td> <td style="text-align: center;"><u>per</u></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><u>Single Fund</u></td> <td style="text-align: center;"><u>Umbrella Fund</u></td> <td style="text-align: center;"><u>Sub-fund</u></td> </tr> <tr> <td>Application Fee<sup>1</sup></td> <td>HK\$</td> <td style="text-align: center;">20,000</td> <td style="text-align: center;">40,000</td> <td style="text-align: center;">5,000</td> </tr> </table> <p>Upon the granting of authorization, you will also have to pay an authorization fee</p>			<u>per</u>	<u>per</u>	<u>per</u>			<u>Single Fund</u>	<u>Umbrella Fund</u>	<u>Sub-fund</u>	Application Fee <sup>1</sup>	HK\$	20,000	40,000	5,000
		<u>per</u>	<u>per</u>	<u>per</u>													
		<u>Single Fund</u>	<u>Umbrella Fund</u>	<u>Sub-fund</u>													
Application Fee <sup>1</sup>	HK\$	20,000	40,000	5,000													

<sup>1</sup> Application fee is required upon submission of your application and is non-refundable.

	Question	Answer															
		<p>and the first annual fee according to the table below before the authorization is effective.</p> <table data-bbox="954 331 2007 496"> <thead> <tr> <th></th> <th></th> <th><u>per</u> <u>Single Fund</u></th> <th><u>per</u> <u>Umbrella Fund</u></th> <th><u>per</u> <u>Sub-fund</u></th> </tr> </thead> <tbody> <tr> <td>Authorization Fee</td> <td>HK\$</td> <td>10,000</td> <td>20,000</td> <td>2,500</td> </tr> <tr> <td>Annual Fee</td> <td>HK\$</td> <td>6,000</td> <td>7,500</td> <td>4,500</td> </tr> </tbody> </table> <p>The applicable fees payable are as provided in the Securities and Futures (Fees) Rules (Cap. 571AF) (“Fees Rules”)<sup>2</sup>, subject to the SFC’s power to grant waiver pursuant to section 5 (waiver of fees) of the Fees Rules. Upon an application for fee waiver supported by valid reasons, if the SFC is of the opinion that the payment of any of the above-mentioned fees would be unduly burdensome or inappropriate, the SFC may waive in whole or in part, the payment of any fees, or refund in whole or in part, any fees paid, subject to any applicable minimum amount.</p> <p>The SFC will notify market participants of the applicable fee structure from time to time. Please contact the relevant case team if in doubt.</p>			<u>per</u> <u>Single Fund</u>	<u>per</u> <u>Umbrella Fund</u>	<u>per</u> <u>Sub-fund</u>	Authorization Fee	HK\$	10,000	20,000	2,500	Annual Fee	HK\$	6,000	7,500	4,500
		<u>per</u> <u>Single Fund</u>	<u>per</u> <u>Umbrella Fund</u>	<u>per</u> <u>Sub-fund</u>													
Authorization Fee	HK\$	10,000	20,000	2,500													
Annual Fee	HK\$	6,000	7,500	4,500													
4.	When will the SFC take up an application after I have submitted my application?	<p>Generally, an application will only be taken up by the SFC when an applicant has submitted all relevant documents and paid the applicable application fee as mentioned in Q.2 and Q.3 respectively above. If the SFC is not satisfied with the completeness or sufficiency of the information contained in the first submission package, the package will be returned to the applicant and the application will not be taken up. The SFC also reserves the right not to take up an application if such application is accompanied by documents that do not meet the requirements of the UT Code in any material aspect.</p> <p>As a general guide, the Investment Products Department will issue a letter (“Take-up Letter”) within 2 business days upon receipt of the Application Form, Information</p>															

<sup>2</sup> The level of application fees and authorization fees may be varied subject to legislative approval. You are recommended to check with the Investment Products Department if in doubt.

	Question	Answer
		<p>Checklist, all the necessary documents in support of the application and the applicable application fee, to inform the applicant that the SFC will process the application. The date of the Take-up Letter (i.e. the “Take-up Date”) is the date on which the Commission formally takes up the application. Once an application is taken up, the application fee will not be refunded.</p>
5.	<p>Will my application lapse after a certain period of time? If so, how long? What should I do if my application has lapsed?</p>	<p>The SFC considers that a 12-month period to be a reasonably sufficient period for a serious applicant to address the SFC’s requisitions and obtain the relevant authorization. In any event, certain key information (e.g. financial information or market risk disclosure) disclosed in an offering document submitted a long time ago may become stale. The SFC will generally not be prepared to continue processing an application based on outdated information. An applicant is expected to update its disclosure before submitting a new application.</p> <p>If, for any reason, 12 months have elapsed from the Take-up Date (the “12-month Period”) and no authorization has been granted, the application will lapse subject to the SFC’s right to grant an extension at its sole discretion. The application fee in respect of the application will not be refunded to the applicant. In general, the SFC will only consider granting an extension in limited circumstances (see Q.7 and Q.8 below).</p> <p>Once a fund application has lapsed, if the applicant wishes to seek authorization of the fund, it shall make a new application, whereupon it will need to pay the application fee for the new application and repeat the application procedures.</p> <p>Please see Q.13 for the factors which the SFC may take into account when considering whether to grant authorization of a collective investment scheme and/or for the issue of its relevant offering document(s).</p>
6.	<p>Will I be given any prior notice by the SFC in respect of the impending lapse of my application?</p>	<p>If, for any reason, 9 months have elapsed from the Take-up Date (“9-month Period”) and no authorization has been granted, the SFC will issue a letter reminding and informing the applicant that the application will in general lapse at the expiry of 12 months from the Take-up Date.</p>

	Question	Answer
7.	Will the SFC extend the application beyond the 12-month Period?	<p>Any extension of the application period will only be granted by the SFC where there is no substantive outstanding issue at the time that the extension is granted subject to the receipt of the following documents by the SFC:</p> <ul style="list-style-type: none"> <li>(a) in the case of a fund primarily regulated by an overseas regulator, the formal written approval from the home regulator of the fund;</li> <li>(b) in the case where overseas regulatory check has to be conducted on the management company or its delegate, the response from the relevant regulator; and/or</li> <li>(c) the final signed version of the confirmation on compliance and/or Chinese translation confirmation(s) (see Q.9 and Q.10 below).</li> </ul>
8.	If after making an application for an umbrella fund and its sub-funds, I lodge additional sub-fund application(s), how would the 12-month Period be applied to my applications relating to the umbrella fund and its various sub-funds that are made on different dates?	<p>As a general rule, except for the circumstances as described in the answer to Q.7 above, each application (whether it comprises only a single fund, an umbrella fund and its sub-fund(s), or one or more sub-funds) will expire upon the end of the 12-month Period if no authorization is granted by then.</p> <p>With respect to an umbrella fund application, a further exception to the 12-month Period may be granted in the case where additional sub-fund applications are made subsequent to the initial application of the umbrella fund and its first batch of sub-funds. In this case, for as long as there is a valid outstanding application of a sub-fund, the application of the umbrella fund shall remain valid until the expiry of the 12-month Period of the last submitted sub-fund application, or upon the authorization of the last submitted sub-fund, whichever is earlier. It should be noted that:</p> <ul style="list-style-type: none"> <li>(a) the extension of the 12-month Period only applies to the umbrella fund and not to its sub-fund(s);</li> <li>(b) this exception only applies to the case where there is a valid sub-fund application at all times; and</li> <li>(c) the application period applicable to each of its sub-funds will still be the 12-month Period from the Take-up Date of the relevant sub-fund.</li> </ul>

	Question	Answer
		<p>For the avoidance of doubt, if upon the expiry of the 12-month Period of the last submitted sub-fund application, no authorization has been granted to any of the sub-funds in respect of the umbrella fund which seeks authorization from the SFC, the application of such sub-funds and its umbrella fund shall lapse.</p>
9.	<p>Is the offering document of the fund required to be produced in both English and Chinese languages?</p>	<p>You should note that the fund's offering document has to be in English and in Chinese.</p> <p>The Chinese offering document should be accompanied by a written confirmation regarding the truth and accuracy of the Chinese translation.</p> <p>The Chinese translation confirmation may be issued by any of the following parties:</p> <ul style="list-style-type: none"> <li>(a) a qualified lawyer in Hong Kong;</li> <li>(b) the board of directors of the scheme;</li> <li>(c) the board of directors of the scheme's management company;</li> <li>(d) the head of the legal department or the compliance officer-in-charge of the management company or its Hong Kong representative who has overall responsibility for the compliance of the subject application; or</li> <li>(e) such other person acceptable to the SFC.</li> </ul> <p>The person providing the confirmation must be fully conversant in the Chinese language or must certify that an individual who is fully conversant in the Chinese language and competent to review and ensure the truth and accuracy of the relevant Chinese documents has been appointed to do so.</p> <p>In the case where a translator is appointed by one of the above parties, the following should be submitted to us: (i) a confirmation issued by the party appointing the translator to certify that such translator is fully conversant in the Chinese language and competent to review and ensure the truth and accuracy of the relevant Chinese documents; and (ii) the Chinese translation confirmation issued by the translator confirming that the Chinese version of the offering document is a true and accurate translation of the English version of the same.</p> <p>You are reminded that the directors of the scheme or the management company are</p>

	Question	Answer
		responsible for the information contained in the offering document as being accurate, regardless of the language of publication.
10.	What types of confirmations are required to be submitted to the SFC in support of an application?	<p>The Information Checklist (see Q.2 above) sets out the basic documentary requirements in support of an application for authorization of a scheme pursuant to the UT Code. Among other information and documents that are required to be submitted us, the following confirmations are generally required to be submitted to the SFC at the time of submission of an application:</p> <p>(a) a confirmation of compliance to the effect that all documents required to be submitted to the SFC for the purpose of the application for authorization of the fund under the UT Code have been submitted and are in compliance with the applicable provisions of the UT Code and the applicable provisions in the “Overarching Principles” of the Handbook; and</p> <p>(b) where the scheme is an overseas scheme primarily regulated by an overseas regulator and the fund’s Hong Kong offering document is different from its overseas offering document authorized/approved by the fund’s home regulator, a confirmation that the fund’s Hong Kong offering document is consistent with such overseas offering document.</p> <p>For each of (a) and (b) above, an up-to-date confirmation is required to be submitted to us before final authorization of the fund is given.</p> <p>Please also note that the above is by no means exhaustive. Where appropriate, the SFC may require other confirmations be submitted having regard to the particular circumstances and product features of each case.</p>
11.	Will the 12-month Period apply to the existing fund applications that were submitted to and formally taken up by the SFC before the Effective Date but authorizations in respect of which have not been granted as at the Effective Date (“Existing Applications”)? Also, how would the 9-month Period apply to the Existing	All Existing Applications will be subject to the 12-month Period and be deemed to be submitted on the Effective Date (i.e. 25 June 2010). Thus, applicants of these Existing Applications will be given a period of 12 months from the Effective Date to address outstanding issues in respect of their applications. Accordingly, for the purpose of determining the 9-month Period on Existing Applications, the Take-up Date shall be deemed to be the Effective Date (i.e. 25 June 2010).

	Question	Answer
	Applications?	<p><i>Note: The industry is undergoing a transitional period in respect of the new or revised requirements in the Handbook. We note that the industry needs much time and resources to prepare for the transition. In view of this, the SFC is prepared to postpone the strict implementation of this 12-month rule for about 6 months as follows:</i></p> <p><i>Applications that were taken up on or before 15 December 2010 shall be deemed to have been taken up on 15 December 2010 and shall in general lapse if no authorization is granted on or before 15 December 2011.</i></p> <p><i>Please refer to Q.5 above for what will happen upon the expiry of the 12-month Period, as well as the factors which the SFC may take into account when considering whether to grant authorization of a collective investment scheme and/or for the issue of its relevant offering document(s).</i></p>
12.	What are the transitional arrangements for compliance with the UT Code?	<p>As from the Effective Date (i.e. 25 June 2010), the UT Code will apply to new funds for which applications for authorization are submitted to the SFC on or after the Effective Date.</p> <p>As for (i) existing SFC-authorized funds as of the Effective Date which continue to be marketed to the public in Hong Kong thereafter, and (ii) funds for which applications for authorization were submitted to the SFC prior to the Effective Date (together referred to as “Existing Schemes”), they shall comply with the UT Code (other than certain provisions of the UT Code as set out in the table under the section headed “Implementation schedule” of the UT Code (“Implementation Table”).</p> <p>Existing Schemes are not mandated to adopt Chapters 6.14, 6.17, 9.4, 10.13, 11.6 and the Note to Chapter 5.5(b) of the UT Code as set out in the “Miscellaneous” section of the Implementation Table. Managers of Existing Schemes may continue to utilize the existing provisions as already set out in the offering document and constitutive documents of the funds.</p> <p>A transitional period of 12 months from the Effective Date will be provided for Existing Schemes to comply with the Product KFS and other relevant disclosure requirements as shown in the Implementation Table.</p>



	Question	Answer
13.	<p>What would the Commission take into account when considering whether to grant authorization of a collective investment scheme and/or for the issue of its relevant offering document(s)?</p>	<p>Under Part IV of the Securities and Futures Ordinance, on an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, and/or authorize the issue of any offering document or advertisement in respect of a collective investment scheme, subject to any conditions the Commission considers appropriate.</p> <p>The Commission may take any factor into account as it considers appropriate. Without prejudice to the generality of this right, when considering whether to grant authorization, the Commission may take into account, among other things, the following:</p> <ul style="list-style-type: none"> <li>• whether all requisite information and documents have been submitted, in all cases to the Commission’s satisfaction;</li> <li>• compliance with the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“Handbook”), including, without limitation, the general principles laid down in the Overarching Principles Section;</li> <li>• the quality of disclosure in the subject offering document(s); and</li> <li>• any past record of non-compliance with the Handbook on the part of any relevant party to the application, refusal/rejection of application, or involuntary revocation/withdrawal of authorization in respect of a prior application, made in Hong Kong or the home jurisdiction of the product in question relating to a product with materially similar structure or features.</li> </ul> <p>Parties to the application are urged to refer to the <b>Handbook</b> and any Frequently Asked Questions published by the Commission from time to time.</p>