

Frequently Asked Questions

Part IV of the Securities and Futures Ordinance on Offers of Investments

Q: What is a collective investment scheme?

A: A collective investment scheme is basically an arrangement for pooling contributions from different investors into a single investment fund. It generally lets investors acquire a stake in a wide range of investments. Although it is a new term introduced under the Securities and Futures Ordinance (SFO), it embraces the concepts of "unit trust", "mutual fund corporation" and "investment arrangements" as defined in the Securities Ordinance and the Protection of Investors Ordinance. As such, there is no change in substance in terms of the scope of investments that are regulated by the Securities and Futures Commission (SFC) under the existing legislation and the SFO.

It is worth noting that the term "collective investment scheme" is defined in Schedule 1 to the SFO, and not in Part IV of the SFO. To provide the flexibility to address changing market conditions, the definition envisages the scope of the term to be enlarged or limited from time to time by a notice made by the Financial Secretary.

For instance, the Financial Secretary has made the Securities and Futures (Collective Investment Schemes) Notice to prescribe certain "paper gold schemes" as collective investment schemes.

Q: Is it an offence under the SFO for a person to distribute advertisements, invitations or documents for a collective investment scheme to the public in Hong Kong which have not been authorized by the SFC?

A: Yes. It is an offence under section 103(1) of the SFO for a person to distribute unauthorized advertisements, invitations or documents for a collective investment scheme to the public in Hong Kong except where an exemption applies.

Q: What is the new exemption for "professional investors"?

A: The new exemption for "professional investors" is provided in section 103(3)(k) of the SFO. In short, it provides that the general prohibition on financial promotion under section 103(1) does not apply to the issue of advertisements, invitations or documents made in respect of collective investment schemes which are offered only to professional investors.

The term "professional investor" is defined in the Schedule 1 to the SFO and the Securities and Futures (Professional Investor) Rules.

For example, an individual having a portfolio of not less than HK\$8 million or a corporation or partnership having a portfolio of not less than HK\$8 million or total assets of not less than HK\$40 million is regarded as a "professional investor" for the purposes of the section 103(3)(k) exemption.

The term "portfolio" is defined in the Securities and Futures (Professional Investor) Rules to mean a portfolio comprising of securities, money held by a custodian or a certificate of deposit issued by an authorized financial institution or a bank which is regulated under the law of a place outside Hong Kong.

Q: Does Part IV of the SFO impose any new condition of authorization?

A: Yes. As regards the authorization of a collective investment scheme, section 104(2) of the SFO now requires that an individual be approved by the SFC as an approved person for the purpose of being served by the SFC with notices and decisions for the collective investment scheme.

The individual nominated should have his/her ordinary residence in Hong Kong. He/she should be capable of being contacted by the SFC by post, telephone, facsimile and electronic mail during business hours. In addition, the SFC should be informed of any change in his/her contact details within 14 days after the change takes place.

The SFC intends to further improve communications with sponsors of different authorized collective investment schemes by imposing the new authorization condition under Part IV of the SFO.

Q: What may happen if the conditions imposed by the SFC in respect of the authorization for a collective investment scheme are not being complied with?

A: The SFC may withdraw the authorization of the collective investment scheme pursuant to section 106(1) of the SFO. According to section 106(5), the SFC will not withdraw an authorization without first giving the approved person for the scheme a reasonable opportunity of being heard. Where the SFC withdraws the authorization, it will by notice in writing notify the approved person of the decision and the reasons for which it is made.

Q: Besides non-compliance with the corresponding authorization conditions, what are the circumstances under which the SFC may withdraw an authorization?

A: According to section 106(1) of the SFO, the SFC may also withdraw an authorization if it decides that:

- (a) any information provided to the SFC was at the time when it was provided false or misleading in a material particular; or
- (b) it is desirable to withdraw the authorization in order to protect the interest of the investing public.

Q: What are the fees payable to the SFC for authorization of a collective investment scheme?

A: The fees payable to the SFC for authorization of a collective investment scheme are set out in the Schedule 1 to the Securities and Futures (Fees) Rules. In general, a sponsor would generally be required to pay an application fee, authorization fee and annual fee in order for the scheme to be authorized by the SFC.