

15 May 2019

Mutual Recognition of Funds (MRF) between the Netherlands and Hong Kong

1. The Securities and Futures Commission (SFC) and the Autoriteit Financiële Markten (AFM) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Management Companies and related cooperation (Memorandum) on 15 May 2019. The Memorandum provides a recognition of asset managers as well as a framework for mutual recognition of recognised funds to be offered to the public in both markets.
2. In this circular, the Dutch funds that are eligible for SFC authorization and/or have received SFC authorization under the MRF are denoted as “Recognised Dutch Funds”.

General principles

3. MRF operates on the principles that, in respect of a Recognised Dutch Fund that has been approved by the AFM and is seeking approval or has received approval for offering to the public in Hong Kong:
 - a. the Recognised Dutch Fund shall meet the eligibility requirements in accordance with this Circular and comply with all of the applicable requirements set out in this Circular (see below);
 - b. the Recognised Dutch Fund shall remain approved by the AFM in the Netherlands and is allowed for public offering within the Netherlands;
 - c. the Recognised Dutch Fund shall operate and be managed in accordance with the relevant laws and regulations in the Netherlands and its constitutive documents;
 - d. the sale and distribution of units or shares of the Recognised Dutch Fund in Hong Kong shall comply with the applicable laws and regulations in Hong Kong;
 - e. the Recognised Dutch Fund and the management company of a Recognised Dutch Fund (Dutch Management Company) shall comply with the additional rules released by the SFC in Hong Kong governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of the Recognised Dutch Fund in Hong Kong;
 - f. the Dutch Management Company of the Recognised Dutch Fund shall ensure holders in both the Netherlands and Hong Kong receive fair

treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and there must be no arrangements which provide an advantage for investors in Hong Kong and/or the Netherlands that would result in prejudice to investors in the other jurisdiction, and vice versa; and

- g. the ongoing disclosure of information on the Recognised Dutch Fund shall be made available to the investors in the Netherlands and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

4. In general, the Recognised Dutch Funds that are seeking SFC authorization or have received SFC authorization for offering units or shares to the public in Hong Kong pursuant to Section 104 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (SFO) have to comply with the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (SFC Handbook) and the circulars, guidelines and other requirements as may be issued by the SFC from time to time (together with the SFO, the Hong Kong Laws and Regulations).

On the basis of the principles set out above, if an eligible Recognised Dutch Fund complies with the relevant Dutch laws and regulations and the conditions as set out in this Circular, it is generally deemed to have complied in substance with the relevant SFC requirements and will enjoy a streamlined process of authorization for offering units or shares to the public in Hong Kong.

5. In view of the differences between the Hong Kong and the Dutch regulatory regimes, and to ensure adequate investor protection and consistency with the existing Hong Kong regime for authorized retail funds, this Circular sets out the additional requirements with which an eligible Recognised Dutch Fund has to comply when applying for SFC authorization pursuant to Section 104 of the SFO for offering units or shares to the public in Hong Kong under the MRF, as well as other requirements which a Recognised Dutch Fund and a Dutch Management Company have to observe after obtaining SFC authorization. The AFM will issue separate rules regarding the approval of eligible Hong Kong funds for public offering in the Netherlands.

Eligibility requirements and types of eligible funds

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this Circular.



7. Recognised Dutch Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types¹:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds)

The SFC and the AFM may consider extending the MRF to include other types of funds in the future in accordance with the MoU.

8. The Dutch Management Company of a Recognised Dutch Fund that is seeking SFC authorization must indicate to the SFC the fund type within which the Recognised Dutch Fund belongs pursuant to paragraph 7 above. All Recognised Dutch Funds must comply with the requirements set out under the “Requirements applicable to all Recognised Dutch Funds” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Recognised Dutch Funds” section below.

Requirements applicable to all Recognised Dutch Funds

9. To ensure adequate investor protection and consistency with the existing Hong Kong regime for authorized retail funds, Recognised Dutch Funds are required to comply with the requirements set out in paragraphs 10 - 37 below, as well as the relevant requirements as set out in Annex A to this Circular.

Representatives in Hong Kong

10. Each Recognised Dutch Fund must appoint a firm in Hong Kong as its representative, in compliance with Chapter 9 and 11.1(b) of the UT Code.

Operational and ongoing requirements

AFM supervision

11. The Recognised Dutch Fund must, on an ongoing basis, remain approved by AFM for offering to the public in the Netherlands. The Dutch Management Company must also remain authorized by AFM to manage UCITS pursuant to Dutch laws and regulations and in accordance with paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*). Both the Recognised Dutch Fund and the Dutch Management Company must be subject to ongoing regulation and supervision by the AFM.

Jurisdiction

12. The Dutch Management Company shall ensure and procure its distributors to ensure that Hong Kong investors are able to bring actions concerning the

¹ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Dutch Funds shall need confirmation by the AFM that they fall within one or more than one of the eligible fund types during the application process.

Recognised Dutch Fund and the Dutch Management Company in the courts of Hong Kong.

Changes to Recognised Dutch Funds

13. Changes to a Recognised Dutch Fund shall be made in accordance with the applicable Dutch and Hong Kong laws and regulations; the provisions of its constitutive documents and the requirements set out in this Circular.
14. Any proposed changes to a Recognised Dutch Fund that fall within 11.1 of the UT Code and revisions made to its offering documents relating to such changes shall be submitted for approval to the SFC by the relevant Recognised Dutch Fund (or its Management Company) in accordance with the relevant requirements set out in Annex A. These changes may only take effect upon approval by the SFC and compliance with any relevant notice requirement.
15. Any proposed changes to a Recognised Dutch Fund that do not require SFC's prior approval pursuant to 11.1 of the UT Code and revisions made to its offering documents relating to such changes must be filed with the SFC and comply with the relevant requirements set out in Annex A.
16. Investors in the Netherlands and Hong Kong must be notified at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) about any changes to the Recognised Dutch Fund by the Dutch Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes².
17. For the avoidance of doubt, changes that render the Recognised Dutch Fund ineligible to be considered as a Recognised Dutch Fund under this Circular (for example – the fund changes strategy and this fund no longer meets the eligible recognised fund type definition) and revisions made to its offering documents relating to such changes must require SFC's prior approval.

Breach

18. In the event of a breach of Dutch laws and regulations or the requirements set out or referred to in this Circular, the Dutch Management Company shall endeavour to notify AFM and the SFC at the same time and rectify the breach promptly. The Dutch Management Company shall also notify the SFC once the breach has been rectified.
19. Following SFC authorization of a Recognised Dutch Fund under section 104 of the SFO, if a Recognised Dutch Fund ceases to meet the requirements as set out in this Circular, its Dutch Management Company shall notify the SFC as soon as reasonably practicable. In case of such breach, units or shares of the Recognised Dutch Fund shall not continue to be offered to the public in Hong Kong and shall not accept subscriptions from investors in Hong Kong, without

² To the extent there are requirements on minimum notice period and content of or template for the notice to Hong Kong investors under the relevant Hong Kong Laws and Regulations, the Recognised Dutch Fund shall comply with these requirements and ensure that investors in the Netherlands and Hong Kong receive equal treatment in terms of the notice period and information disclosure.

SFC's prior approval.

Withdrawal of authorization

20. Following SFC authorization of a Recognised Dutch Fund, if its Dutch Management Company does not wish to maintain such authorization, it should apply for withdrawal of authorization from the SFC and provide notice to Hong Kong investors of its intention not to maintain such authorization in accordance with the relevant Hong Kong Laws and Regulations.
21. The SFC may at any time review its authorization and may modify, add to or withdraw any of the conditions of such authorization, or withdraw the authorization, as it considers appropriate.

Termination

22. Termination of a Recognised Dutch Fund shall require the approval of the AFM with immediate notice from the AFM to the SFC. A termination notice should be submitted to the SFC for approval.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

23. The sale and distribution of a Recognised Dutch Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC (which may include the Management Company so properly licensed) and shall comply with the relevant Hong Kong Laws and Regulations relating to the sale and distribution of funds.

Offering documents

24. The disclosure of information relating to a Recognised Dutch Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.
25. The offering documents of a Recognised Dutch Fund must be up-to-date and contain information necessary for investors to be able to make an informed judgement of the investment proposed to them.
26. A Recognised Dutch Fund may use the prospectus registered by AFM. Unless otherwise provided for in this Circular, matters such as the type of documents, content, format, frequency of update and the updating procedures shall comply with the applicable Dutch laws and regulations and the provisions of its constitutive documents. In addition, the AFM-registered prospectus must be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A³ and to disclose any other information which may have a material impact on the investors in Hong Kong. The offering documents and the Hong Kong covering document shall not contain any information that would be inconsistent with the offering documents authorized by

³ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus registered by AFM. The Recognised Dutch Fund does not need to duplicate the disclosure in the Hong Kong covering document.

the AFM and/or inaccurate/misleading regarding the Recognised Dutch Fund.

27. The Dutch Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Dutch Fund and their changes are made available to the investors in the Netherlands and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

Ongoing disclosure

28. The Dutch Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Dutch Fund (including periodic financial reports, notices and announcements) is dispatched and made available to the investors in the Netherlands and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) and, in the case of suspension of dealings, immediately notify the SFC. A Recognised Dutch Fund shall comply with the requirements set out in Annex A and, on an ongoing basis, disclose any other information which may have a material impact on the investors in Hong Kong.
29. Subject to paragraph 30, a Recognised Dutch Fund may use its Dutch financial reports as the basis for distribution in Hong Kong, provided that the reports are supplemented by the additional information and meet the other requirements set out in Annex A.

Language

30. The offering documents and notices to investors in Hong Kong of a Recognised Dutch Fund must be provided in both English and Chinese.
31. The constitutive documents and financial reports of a Recognised Dutch Fund must be made available to investors in Hong Kong in either English or Chinese. The language in which these documents are made available to investors in Hong Kong should be clearly disclosed in the offering documents.

Advertisement

32. All advertisements in relation to the Recognised Dutch Fund issued in Hong Kong shall comply with the relevant Hong Kong Laws and Regulations, in particular, the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

Fees

33. For offering to the public in Hong Kong, the Recognised Dutch Fund/Dutch Management Company will be subject to the applicable (i) application, (ii) authorization and (iii) annual fees. The Recognised Dutch Fund/Dutch Management Company must ensure that any SFC invoiced fees in respect of the Recognised Dutch Fund are paid.



Requirements applicable to each specific type of Recognised Dutch Funds

34. In general, the SFC will deem a Recognised Dutch Fund to have complied substantially with the requirements of the UT Code. There are, however, requirements with which each specific type of Recognised Dutch Funds must comply. Please refer to Annex A for details.

Application process

35. The SFC understands that this marks the first time Recognised Dutch Funds may seek authorization from the SFC. The SFC therefore encourages applicants to consult the Investment Products Division early for any clarification or guidance as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
36. The SFC may issue other circulars, frequently asked questions and other documents from time to time to provide practical guidance to the industry. Please refer to the SFC's website or contact the Investment Products Division.
37. Applicants shall request the AFM to provide directly to the SFC a certificate confirming that the Eligibility Requirements listed in Annex B to this Circular are met. The SFC will not be able to take up an application if no such certificate is received from the AFM. Further details of the MRF application process for a Recognised Dutch Fund seeking authorization from the SFC are set out in the Information Checklist, which is available at the SFC's website <http://www.sfc.hk/web/EN/forms/products/forms.html> starting from today.

Investment Products Division Securities and Futures Commission

Annex A

Requirements in the Overarching Principles Section of the SFC Handbook (Overarching Principles Section) and UT Code to be complied with by all Recognised Dutch Funds⁴

	Relevant provisions in the Overarching Principles Section and UT Code (Transitional period to end on 31 December 2019⁵)	Relevant provisions in the Overarching Principles Section and UT Code (Effective on 1 January 2019⁵) (Revised UT Code)
1. General requirements		
Mention of SFC authorization	1.10 of the Overarching Principles Section	1.10 of the Overarching Principles Section
Naming of a Recognised Dutch Fund	5.1 and 5.2 of the Overarching Principles Section	5.1 and 5.2 of the Overarching Principles Section
Availability of constitutive documents	5.10(c) of the UT Code	5.10(c) of the Revised UT Code
Investment in other funds	7.11D of the UT Code	7.11D of the Revised UT Code
Jurisdiction	9.10 of the UT Code	9.10 of the Revised UT Code
Self-managed schemes	A self-managed scheme must appoint a Dutch management company that is authorized by the AFM to manage UCITS in accordance with article 4:58 of the Dutch Act on Financial Supervision (Wet op het financieel toezicht) as investment manager.	A self-managed scheme must appoint a Dutch management company that is authorized by the AFM to manage UCITS in accordance with article 4:58 of the Dutch Act on Financial Supervision (Wet op het financieel toezicht) as investment manager.
2. Operational requirements		
Scheme documentation, pricing, issue and redemption of units/shares, fees	Chapter 6 of the UT Code, except for 6.6 – 6.8, and 6.15	Chapter 6 of the Revised UT Code, except for 6.6 – 6.8, and 6.15
Valuation and pricing, pricing errors, suspension and deferral of dealings,	Chapter 10 of the UT Code	Chapter 10 of the Revised UT Code

⁴ For the avoidance of doubt, Recognised Dutch Funds and their management companies should also comply with the FAQs on the Netherlands-Hong Kong Mutual Recognition of Funds and other relevant Frequently Asked Questions (FAQs) issued by the SFC from time to time, including, FAQs on Advertising Materials of Collective Investment Schemes Authorized under the Product Codes, FAQs on the Code on Unit Trusts and Mutual Funds, FAQs on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds, FAQs on SFC Authorization of UCITS Funds.

⁵ The New Schemes with New Operators (as defined in the Revised UT Code) will be subject to the Revised UT Code with immediate effect. The Existing Operators (as defined in the Revised UT Code) will generally be subject to a 12-month transition period from 1 January 2019 to comply with the Revised UT Code. Please refer to the implementation schedule as set out in the Revised UT Code for further details on the implementation and transition arrangements.

transactions with connected persons		
3. Disclosure requirements in relation to offering documents		
Language	5.6 of the Overarching Principles Section	5.6 of the Overarching Principles Section
Product key facts statement	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the UT Code	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the Revised UT Code
Use of disclaimers	6.12 of the Overarching Principles Section	6.12 of the Overarching Principles Section
Enquiries and complaints handling	7.4 of the Overarching Principles Section	7.4 of the Overarching Principles Section
Multimanager schemes	Note to 5.5(b) of the UT Code	Note (2) to 5.5(b) of the Revised UT Code
Use of financial derivative instruments for investment purpose	8.9(j) of the UT Code	8.9(j) of the Revised UT Code
Information to be disclosed in the offering document	Appendix C to the UT Code, except for C2A	Appendix C to the Revised UT Code, except for C2 (regarding Securities Financing Transactions) and C2A
4. Disclosure and reporting requirements		
General obligation of trustee/custodian	4.5(f) of the UT Code	4.5(f) of the Revised UT Code ⁵
Scheme changes, notifications, ongoing disclosures, reporting, withdrawal of authorization, merger or termination	Chapter 11 of the Revised UT Code, except for 11.1(a) and 11.6A	
Other documents to be made available to Hong Kong investors as specified in the offering documents	Upon request by investors, specific information regarding these documents should be made available to Hong Kong investors in English or Chinese. Information regarding how investors can make such information requests should also be clearly disclosed in the Hong Kong offering documents	Upon request by investors, specific information regarding these documents should be made available to Hong Kong investors in English or Chinese. Information regarding how investors can make such information requests should also be clearly disclosed in the Hong Kong offering documents

5. Disclosure requirements in relation to financial reports		
Notes to the accounts	Items 2 and 3 of the “Notes to the accounts” Section of Appendix E to the UT Code	Items 2 and 3(a) of the “Notes to the Financial Reports” Section of Appendix E to the Revised UT Code

Requirements in the UT Code to be complied with by each specific type of Recognised Dutch Funds

	Relevant provisions in the UT Code (Transitional period to end on 31 December 2019⁵)	Relevant provisions in the Revised UT Code⁵
Index funds	8.6, except for 8.6(a) to (c) and 8.6(g) to (i)	8.6, except for 8.6(a) to (a)(b), 8.6(b) to (c), 8.6(g) to (i) and 8.6(n) to (y)

Annex B Eligibility Requirements

Recognised Dutch Fund

1. The Recognised Dutch Fund must be established, domiciled and managed in accordance with Dutch laws and regulations and its constitutive documents. It must be an undertaking for collective investment in transferable securities (UCITS) authorized in accordance with Article 5 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities which is approved by the AFM for public offering in the Netherlands under paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*).
2. Recognised Dutch Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types⁶:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds).
3. The Recognised Dutch Fund must not use leverage (arising from derivatives) exceeding 100% of the fund's net asset value as calculated under the commitment approach or as calculated under a calculation method deemed equivalent by both the AFM and the SFC as provided under article 42 of Directive 2010/43/EU.⁷
4. The Recognised Dutch Fund must not invest (i) in physical commodities including precious metals or commodity based investment or real estate, (ii) crypto-assets or crypto-currencies, or (iii) certificates representing the assets referred to under (i) or (ii).
5. The Recognised Dutch Fund must not have share classes with hedging arrangements other than currency hedging.
6. Should the Recognised Dutch Fund charge a performance fee, the fee must be clearly disclosed in the offering documents.

Dutch Management Company

7. The Recognised Dutch Fund must be managed by a Dutch Management Company that is approved by the AFM to manage UCITS pursuant to Dutch laws and regulations in accordance with paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*).

⁶ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Dutch Funds shall need confirmation by the AFM that they fall within one or more than one of the eligible fund types during the application process.

⁷ European Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

8. The Dutch Management Company of a Recognised Dutch Fund must not have been the subject of any major regulatory or enforcement actions by the AFM in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
9. The Dutch Management Company may delegate the investment management functions to any person, provided that such delegation is accepted under Dutch laws and regulations for Dutch-domiciled UCITS approved for public offering, the Dutch Management Company remains responsible for any action of its delegate(s) and such delegate operates in one of the acceptable inspection regimes recognized under 5.1 of the UT Code.

Recognised Dutch Fund's depositaries

10. The Recognised Dutch Fund must have a depositary that is qualified to act as a depositary of Dutch-domiciled UCITS.