

Revised as of 28 February 2020

Mutual Recognition of Funds (MRF) between Luxembourg and Hong Kong

1. The Securities and Futures Commission (SFC) and the Commission de Surveillance du Secteur Financier (CSSF) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 15 January 2019 (as amended from time to time).
2. In this circular, Luxembourg funds that are eligible for SFC authorisation or have received SFC authorisation under the MRF are denoted as “Luxembourg Covered Funds” while Luxembourg management companies that are eligible to manage Luxembourg Covered Funds are denoted as “Luxembourg Covered Management Companies”.

Amended

General principles

3. MRF operates on the principles that, in respect of a Luxembourg Covered Fund that has been authorised by the CSSF and is seeking or has received authorisation for offering to the public in Hong Kong:
 - a. the Luxembourg Covered 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 Luxembourg Covered Fund shall remain authorised by the CSSF and be allowed to be offered, marketed and distributed to the retail investors in Luxembourg;
 - c. the Luxembourg Covered Fund shall operate and be managed in accordance with the relevant laws and regulations in Luxembourg and its constitutive documents;
 - d. the sale and distribution of the Luxembourg Covered Fund in Hong Kong shall comply with the applicable laws and regulations in Hong Kong;
 - e. where relevant, the Luxembourg Covered Fund and the Luxembourg Covered Management Company shall comply with the additional rules released by the SFC governing the authorisation, post-authorisation and ongoing compliance in the context of the offering, marketing and distribution of the Luxembourg Covered Fund to the public in Hong Kong;
 - f. the Luxembourg Covered Management Company of the Luxembourg Covered Fund shall ensure investors in both Luxembourg and Hong Kong receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and
 - g. ongoing disclosure of information on the Luxembourg Covered Fund shall be made available to investors in Luxembourg and Hong Kong at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).

4. In general, funds that are seeking SFC authorisation or have received SFC authorisation for offering 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) must 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 relevant Hong Kong laws and regulations). On the basis of the principles set out above, if a Luxembourg Covered Fund complies with the relevant Luxembourg laws and regulations and the conditions as set out in this circular, it is generally deemed to have complied in substance with the relevant Hong Kong laws and regulations and will enjoy a streamlined process of authorisation for offering to the public in Hong Kong.
5. In view of the differences between Hong Kong's and Luxembourg's regulatory regimes, to ensure proper investor protection and consistency with the existing Hong Kong regime for authorised retail funds, this circular sets out the additional requirements with which a Luxembourg Covered Fund must comply when applying for SFC authorisation pursuant to Section 104 of the SFO for offering to the public in Hong Kong under the Memorandum, as well as other requirements which a Luxembourg Covered Management Company and a Luxembourg Covered Fund must observe after obtaining SFC authorisation. The CSSF will issue a separate circular regarding the authorisation of eligible Hong Kong funds for public offering in Luxembourg.
6. The existing Acceptable Inspection Regimes on managers and Recognised Jurisdiction Schemes on funds, and the streamlined measures currently adopted by the SFC in processing the authorization of undertakings for collective investment in transferable securities (UCITS)¹ funds as set out in the "Application of the Code on Unit Trusts and Mutual Funds on UCITS funds" dated 17 December 2018 (as may be amended from time to time) will continue to apply in respect of Luxembourg UCITS that are not eligible under the MRF.

Eligibility requirements and types of eligible funds

7. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this circular.
8. The SFC and CSSF may consider extending the MRF to include other types of funds in future in accordance with the Memorandum.
9. All Luxembourg Covered Funds must comply with the requirements set out under the "Requirements applicable to all Luxembourg Covered Funds" section below.

¹ "UCITS" means a collective investment scheme which is authorised in accordance with the laws of Luxembourg or any other state which is contracting party to the Agreement on the European Economic Area implementing 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.

Requirements applicable to all Luxembourg Covered Funds

10. To ensure proper investor protection and consistency with the existing Hong Kong regime for authorised retail funds, all Luxembourg Covered Funds are required to comply with requirements set out in paragraphs 11 – 32 below, as well as the relevant requirements as set out in Annex A.

Representatives in Hong Kong

11. Each Luxembourg Covered Fund must appoint a firm in Hong Kong as its representative in compliance with Chapter 9 and 11.1(b) of the Code on Unit Trusts and Mutual Funds (UT Code).

Operational and ongoing requirements

Home jurisdiction supervision

12. The Luxembourg Covered Fund must, on an ongoing basis, remain authorised by the CSSF for offering to the public in Luxembourg. The Luxembourg Covered Management Company of the Luxembourg Covered Fund must also remain authorised by the CSSF to manage UCITS in accordance with the law of 17 December 2010 relating to undertakings for collective investment (as amended) (Law of 2010). Both the Luxembourg Covered Fund and its Luxembourg Covered Management Company must be subject to ongoing regulation and supervision by the CSSF.

Changes to Luxembourg Covered Funds

13. Changes to a Luxembourg Covered Fund must be made in accordance with the applicable Luxembourg and Hong Kong laws and regulations and the provisions of its constitutive documents.
14. Any proposed changes to a Luxembourg Covered Fund that fall within 11.1 of the UT Code and revisions made to its offering documents relating to such changes must be submitted by its Luxembourg Covered Management Company for approval by the SFC 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 Luxembourg Covered 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 Luxembourg and Hong Kong must be notified at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions) about any changes to the Luxembourg Covered Fund by the Luxembourg Covered Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes².

² To the extent there are requirements on minimum notice period and content of or template for notice to Hong Kong investors under relevant Hong Kong laws and regulations, the Luxembourg Covered Funds should comply with these requirements and ensure that investors in Luxembourg and Hong Kong receive equal treatment in terms of the notice period and information disclosed.

17. For avoidance of doubt, changes that render the Luxembourg Covered Fund ineligible under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible fund type definition) and revisions made to its offering documents relating to such changes must require SFC's prior approval. The Luxembourg Covered Management Company must notify such change to the CSSF and to the SFC as soon as possible.

Breach

18. In the event of a breach of Luxembourg domestic laws or the requirements set out or referred to in this circular, which is notifiable to the CSSF and which could affect Hong Kong investors in a Luxembourg Covered Fund, the Luxembourg Covered Management Company must endeavour to notify the CSSF and the SFC at the same time and rectify the breach promptly. The Luxembourg Covered Management Company will notify the SFC once the breach has been rectified.
19. Following SFC authorisation of a Luxembourg Covered Fund under Section 104 of the SFO, if a Luxembourg Covered Fund ceases to meet the requirements as set out in this circular, its Luxembourg Covered Management Company must notify the SFC immediately. The Luxembourg Covered Fund must not continue to be offered to the public in Hong Kong and must not accept subscriptions from new investors in Hong Kong, without SFC's prior approval.

Withdrawal of authorisation

20. Following SFC authorisation of a Luxembourg Covered Fund, if its Luxembourg Covered Management Company no longer wishes to maintain the authorisation of the fund, it should apply for withdrawal of authorisation of the fund from the SFC and provide notice to Hong Kong investors of its intention not to maintain such authorisation in accordance with the relevant Hong Kong laws and regulations.
21. The SFC may at any time review a Luxembourg Covered Fund's authorisation and may modify, add to or withdraw any of the conditions of such authorisation, or withdraw the authorisation, as it considers appropriate.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

22. The sale and distribution of a Luxembourg Covered Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC and must comply with the relevant Hong Kong laws and regulations relating to the sale and distribution of funds.

Offering documents

23. The disclosure of information relating to a Luxembourg Covered Fund must be complete, accurate, fair, clear, and effective. It must be capable of being easily understood by investors.
24. The offering documents of a Luxembourg Covered 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.

25. A Luxembourg Covered Fund may use the prospectus approved by the CSSF. Unless otherwise provided for in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable Luxembourg laws and regulations and the provisions of its constitutive documents. The CSSF-approved prospectus may be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A³. The prospectus should also disclose any other information which may have a material impact on investors in Hong Kong.
26. The Luxembourg Covered Management Company of a Luxembourg Covered Fund must take reasonable steps and measures to ensure that any updated offering documents are made available to investors in Luxembourg and Hong Kong at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).

Ongoing disclosure

27. The Luxembourg Covered Management Company of a Luxembourg Covered Fund must take reasonable steps and measures to ensure that the ongoing disclosure of information of the Luxembourg Covered Fund (including periodic financial reports, notices and announcements) is despatched and made available to investors in Luxembourg and Hong Kong at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions) and, in the case of suspension of dealings, immediately notify the SFC. A Luxembourg Covered Fund must 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 investors in Hong Kong.
28. Subject to paragraph 30, a Luxembourg Covered Fund may use its Luxembourg 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

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

Advertising

31. All advertisements in relation to a Luxembourg Covered Fund offered in Hong Kong must comply with the relevant Hong Kong laws and regulations, in particular, the Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes⁴.

³ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus approved by the CSSF. The Luxembourg Covered Fund does not need to duplicate the disclosure in the Hong Kong covering document.

⁴ <https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/>

Fees

32. The Luxembourg Covered Management Company must ensure that any SFC invoiced periodic fees in respect of the Luxembourg Covered Fund are paid.

Application process

33. Applications of Luxembourg Covered Funds seeking authorisation under the MRF received by the SFC will be processed under the revamped fund authorisation process (Revamped Process) as set out in SFC's circular entitled "Circular to management companies of SFC-authorized unit trusts and mutual funds – Formal adoption of revamped fund authorization process" dated 22 April 2016 (as amended on 2 December 2016).
34. To start an application, the following documents (Application Documents) shall be submitted to the SFC:
- a. a duly signed and completed Application Form;
 - b. a duly signed and completed Information Checklist⁵;
 - c. advanced draft of the Luxembourg Covered Fund's offering document in English (including the product key facts statement(s)) and where applicable, marked up against the latest version filed with the SFC;
 - d. constitutive documents of the Luxembourg Covered Fund(s) in either English or Chinese;
 - e. documents (including any confirmations and/or undertakings) required to be submitted under or pursuant to the Information Checklist; and
 - f. a cheque made payable to "Securities and Futures Commission" in the amount of the applicable application fee (see Q.3 of the FAQs on Application Procedures for Authorization of Unit Trusts and Mutual Funds under the Revamped Process⁶).
35. Upon receipt of the Application Documents, the SFC will have five business days to assess that all Application Documents have been duly and properly submitted.
36. Applicants shall request the CSSF 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 take up the application if no such certificate is received from the CSSF.

⁵ <https://www.sfc.hk/web/EN/forms/products/forms.html>

⁶ [https://www.sfc.hk/web/EN/faqs/publicly-offered-investment-product/application-procedures-for-authorization-of-unit-trusts-and-mutual-funds-under-the-revamped-process-\(for-new-fund-applications-received-on-or-after-9-november-2015\).html](https://www.sfc.hk/web/EN/faqs/publicly-offered-investment-product/application-procedures-for-authorization-of-unit-trusts-and-mutual-funds-under-the-revamped-process-(for-new-fund-applications-received-on-or-after-9-november-2015).html)

37. Under the Revamped Process, applications of the Luxembourg Covered Funds will be classified into “Standard Applications” stream and “Non-standard Applications” stream in accordance with the criteria as set out in Q.5A of the FAQs on Application Procedures for Authorization of Unit Trusts and Mutual Funds under the Revamped Process⁷.
38. Standard Applications will be fast tracked with an aim that SFC’s authorisation (if granted) will be given on average between 1 to 2 months from the take-up date of the applications. Non-standard Applications will be processed under an enhanced process with an aim that SFC’s authorisation (if granted) will be given on average within 2 to 3 months from the take-up date of the applications.
39. If, for any reason, 6 months have elapsed from the take-up date of the applications and no authorisation has been granted by the SFC, the applications (whether it is a Standard Application or a Non-standard Application) will lapse subject to the SFC’s right to grant an extension at its sole discretion.
40. Once the SFC authorizes the application, it will notify the CSSF.
41. The SFC encourages applicants to consult the Investment Products Division early for any clarification as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
42. 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.

**Investment Products Division
Securities and Futures Commission**

⁷ Notwithstanding paragraph 37 above, applications of Luxembourg Covered Funds with new key operators (e.g. new management company, delegate and/or depository which are not currently acting in such capacity in respect of any existing SFC-authorized funds) will be processed as “Standard Applications”, provided that the Luxembourg Covered Funds’ net derivative exposure does not exceed 50%.

Amended

For clarity, applications of Luxembourg Covered Funds with net derivative exposure exceeding 50% will be processed as “Non-standard Applications”.

Requirements in the Overarching Principles Section of the SFC Handbook (Overarching Principles Section) and UT Code to be complied with by all Luxembourg Covered Funds⁸

	Relevant provisions in the Overarching Principles Section and UT Code
1. General requirements	
Mention of SFC authorisation	1.10 of the Overarching Principles Section
Naming of a Luxembourg Covered Fund	5.1 and 5.2 of the Overarching Principles Section
Availability of constitutive documents	5.10(c) of the UT Code
Investment in other funds	7.11D and 7.12 of the UT Code
Jurisdiction	9.10 of the UT Code
Self-managed schemes	A self-managed scheme must appoint a Luxembourg management company that is authorised by the CSSF to manage UCITS in accordance with Law of 2010 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
Valuation and pricing, pricing errors, suspension and deferral of dealings, transactions with connected persons	Chapter 10 of the UT Code
3. Disclosure requirements in relation to offering documents	
Language	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
Use of disclaimers	6.12 of the Overarching Principles Section
Enquiries and complaints handling	7.4 of the Overarching Principles Section
Multimanagers schemes	Note (2) to 5.5(b) of the UT Code
Use of financial derivative instruments for investment purpose	8.9(j) of the UT Code

⁸ For the avoidance of doubt, Luxembourg Covered Funds and the Luxembourg Covered Management Companies should also comply with the Frequently Asked Questions (FAQs) on Luxembourg-Hong Kong Mutual Recognition of Funds and other relevant 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 and FAQs on SFC Authorization of UCITS Funds.

Information to be disclosed in the offering document	Appendix C to the 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 ⁹
Scheme changes, notifications, ongoing disclosures, reporting, withdrawal of authorisation, merger or termination	Chapter 11 of the 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
5. Disclosure requirements in relation to financial reports	
Notes to the accounts	Items 2 and 3(a) of the “Notes to the Financial Reports” Section of Appendix E to the UT Code

⁹ For the purposes of 4.5(f), Luxembourg Covered Funds shall comply with additional audit review procedures for authorisation of the fund in Hong Kong. The additional audit review procedures essentially involve a review of additional matters concerning practices not already carried out by the auditor in its annual review for the CSSF (including, for example, window dressing, rebates, soft commissions, price calculation, choice of investment / borrowing limit, price allocation, best execution, underwriting / sub-underwriting agreements, connected party transactions, fees and expenses, portfolio turnover, unusual losses). The Luxembourg Covered Management Company must ensure that the relevant report to be issued by its auditor should conform with such other requirements (if any) by CSSF.

Annex B

Eligibility Requirements

Luxembourg Covered Fund

1. The Luxembourg Covered Fund must be established, domiciled and managed in accordance with Luxembourg laws and regulations and its constitutive documents. It must be a UCITS which is formally authorised by the CSSF in accordance with the Law of 2010.
2. The Luxembourg Covered Fund must be one of the following fund types under the UT Code:
 - a. a general equity fund, bond fund or mixed fund; or
 - b. a feeder fund, where the underlying fund falls within one of the fund types in paragraph 2(a) of this Annex and complies with the requirements in this circular.
3. The Luxembourg Covered Fund must not use leverage (arising from derivatives) exceeding 100% of the fund's net asset value as calculated under the commitment approach provided by Article 47 of the CSSF Regulation No. 10-4.
4. The Luxembourg Covered Fund must not invest in (i) physical commodities including precious metals or commodity based investments or real estate, (ii) crypto-assets or crypto-currencies, or (iii) certificates representing the assets referred to under (i) or (ii).
5. The Luxembourg Covered Fund must not have share classes with hedging arrangements other than currency hedging.
6. The Luxembourg Covered Fund must have at least one dealing day for redemption every two weeks.

Luxembourg Covered Management Company

7. The Luxembourg Covered Fund must be managed by a Luxembourg Covered Management Company that is authorised / regulated by the CSSF to manage UCITS in accordance with the Law of 2010.
8. The Luxembourg Covered Management Company of a Luxembourg Covered Fund must have minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in Euro.

9. The Luxembourg Covered Management Company of a Luxembourg Covered Fund, the members of the management body¹⁰ and its conducting officers¹¹ must not have been the subject of any of the following disciplinary actions taken by CSSF in the past three years or, if it has been established for less than three years, since the date of its establishment:
- a. with respect to the Luxembourg Covered Management Company:
 - a withdrawal of its license by the CSSF in accordance with Article 148, paragraph (4) c) of the Law of 2010;
 - a temporary ban on providing some or all of the services previously provided in accordance with Article 147, paragraph (2) g) of the Law of 2010; or
 - b. with respect to the members of the management body and the conducting officer(s) of the Luxembourg Covered Management Company, a temporary or permanent ban on conducting some or all of their business activities in accordance with Article 148, paragraph (4) d) of the Law of 2010.
10. The Luxembourg Covered Management Company of a Luxembourg Covered Fund may only delegate the investment management functions to any entity, provided that such delegation is accepted under the Luxembourg laws¹² and regulations¹³ for Luxembourg UCITS authorised for public offering, the Luxembourg Covered 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 (AIR Delegate)¹⁴.

Luxembourg Covered Fund's depositary

11. The Luxembourg Covered Fund must have a depositary that qualifies to act as a depositary for Luxembourg UCITS.

¹⁰ Pursuant to Article 1, paragraph (26a) of the Law of 2010, "management body" refers to:

- a. as regards public limited companies, the board of directors or the management board, as the case may be;
- b. as regards other types of companies, the body that represents, pursuant to the law and the instruments of incorporation, the management company.

¹¹ Pursuant to Article 102, paragraph (1) c) of the Law of 2010, "conducting officers" refer to the persons who effectively conduct the business of the management company.

¹² The legal framework regarding the delegation of functions by a Luxembourg management company is laid down in Article 110 of the Law of 2010 which is based on the provisions of Article 13 of the UCITS Directive.

¹³ As regards delegation of the investment management function, specific conditions are applicable as per section 6.3.2. of Circular CSSF 18/698 concerning the authorisation and organisation of investment fund managers incorporated under Luxembourg law.

http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf18_698.pdf

¹⁴ For the purpose of providing confirmation on Eligibility Requirements pursuant to paragraph 36 of this circular, in addition to confirming the matters listed in Annex B to this circular, where applicable, the CSSF will also confirm to the SFC that it has conducted regulatory check with the authority primarily responsible for regulating the AIR Delegate and is not aware of any regulatory concerns.