

16 September 2019

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

1. The Securities and Futures Commission (SFC) and the Swiss Financial Market Supervisory Authority (FINMA) signed a Memorandum of Understanding on Switzerland-Hong Kong Mutual Recognition of Funds and Asset Managers (Memorandum) on 2 December 2016. The Memorandum provides a recognition of asset managers as well as a framework for mutual recognition of publicly offered funds in both markets. “Public Offering” or “publicly offered” means
 - a. in Switzerland any marketing, offering, sale and distribution of CIS to investors who are not qualified as defined in Article 10 paras. 3, 3^{bis} or 3^{ter} Swiss Federal Act on Collective Investment Schemes (CISA) and/or
 - b. in Hong Kong any offer (including marketing, sales and distribution) of CIS to the public which requires authorization under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (SFO).

General principles

2. MRF operates on the principles that, in respect of a fund that has been authorized or approved by the relevant authority in one jurisdiction (Home Jurisdiction) and is seeking or has received authorization or approval for Public Offering in the other jurisdiction (Host Jurisdiction):
 - a. the fund should meet the eligibility requirements in accordance with this Circular;
 - b. the fund should remain authorized or approved by the relevant authority in the Home Jurisdiction and is allowed for Public Offering within the Home Jurisdiction;
 - c. the fund should generally operate and be managed in accordance with the relevant laws and regulations in the Home Jurisdiction and its constitutive documents;
 - d. the sale and distribution of the fund in the Host Jurisdiction shall comply with the applicable laws and regulations in the Host Jurisdiction;
 - e. the fund will comply with the additional rules released by the relevant authority in the Host Jurisdiction governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of the fund in the Host Jurisdiction;
 - f. the management company of the fund shall ensure holders of both the Home Jurisdiction and Host Jurisdiction receive fair and the same treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and

- g. ongoing disclosure of information on the fund shall be made available to the investors in the Home Jurisdiction and the Host Jurisdiction at the same time.
3. All direct information sharing by FINMA supervised entities including Swiss Asset Managers¹ with SFC is subject to Article 42c of the Swiss Financial Market Supervision Act (FINMASA). It is the responsibility of each entity concerned to analyse on a case-by-case basis whether the requirements for such direct information sharing with SFC are met. In some instances, supervised entities in Switzerland may be obliged to transmit the relevant information (indirectly) through FINMA to SFC by means of administrative assistance.
 4. In general, funds that are seeking SFC authorization or have received SFC authorization for Public Offering in Hong Kong pursuant to Section 104 of the 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 Swiss fund complies with the relevant Swiss laws and regulations, it is generally deemed to have complied in substance with the relevant SFC requirements and will enjoy a streamlined process of authorization for Public Offering in Hong Kong.
 5. In view of the differences between the Hong Kong and the Swiss regulatory regimes, to ensure proper investor protection and consistency with existing Hong Kong SFC-authorized funds, this Circular sets out the additional requirements with which an eligible Swiss fund has to comply when applying for SFC authorization for Public Offering in Hong Kong under the MRF, as well as other requirements which a Recognised Swiss Fund (see definition in paragraph 6 below) has to observe after obtaining SFC authorization. FINMA will issue separate rules regarding the approval of eligible Hong Kong funds for Public Offering in Switzerland.
 6. Hereafter, Swiss funds that are eligible for SFC authorization or have received SFC authorization under the MRF are denoted as Recognised Swiss Funds.

Eligibility requirements and types of eligible funds

7. Recognised Swiss Funds applying for SFC authorization must be established, domiciled and managed in accordance with Swiss laws and regulations and its constitutive documents. They must be Swiss funds defined and approved by FINMA as securities funds (Swiss Securities Funds) in accordance with Articles 25 and 53 of CISA for Public Offering.
8. Recognised Swiss Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types:

Amended

¹ "Swiss Asset Managers", meaning (i) asset managers of collective investment schemes in accordance with Art. 13 para. 2 let f. and Art. 18 ff. CISA; (ii) fund management companies in accordance with Art. 13 para. 2 let. a and Art. 28 ff. CISA (herein after also referred to as Swiss Fund Management Companies); (iii) banks pursuant to the Federal Act on Banks and Savings Institutions; (iv) securities traders pursuant to the Stock Exchange Act; and (v) insurance institutions pursuant to the Federal Act on the Supervision of Insurance Companies.

- a. general equity funds, bond funds, mixed funds and funds that invest in other schemes (see below), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 7 of the SFC Code on Unit Trusts and Mutual Funds (UT Code), and include funds applying Commitment Approach I² in accordance with Article 34 of the Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes (CISO-FINMA) but excluding funds with guaranteed features;
- b. feeder funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 7.12 of the UT Code, provided that the corresponding master funds meet all the eligibility requirements on a Recognised Swiss Fund as set out in this Circular;
- c. money market funds (MMFs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.2 of the UT Code. In addition, eligible Swiss MMFs must be MMFs with variable net asset values;
- d. unlisted index funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.6 of the UT Code;
- e. structured funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.8 of the UT Code;
- f. funds that invest extensively in financial derivative instruments (FDIs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.9 of the UT Code, and include funds applying Commitment Approach II³ in accordance with Articles 35 and 36 CISO-FINMA; or
- g. index tracking exchange traded funds (ETFs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.6 of the UT Code, with the exception of listed open-ended funds (active ETFs) set out in Chapter 8.10 of the UT Code, closed-ended funds set out in Chapter 8.11 of the UT Code, and leveraged or inverse products.

In case of investments in other funds, the target fund(s) must be eligible fund(s) according to paragraphs 7 and 8 above or other fund(s) that are subject to provisions broadly equivalent to those pertaining to eligible funds according to paragraphs 7 and 8 above. The SFC will consider authorizing other types of Swiss Securities Funds on a case-by-case basis.

² For a Swiss fund applying Commitment Approach I, only basic derivative types are permitted. The use of derivatives shall not result in a leverage effect on the fund's assets, and shall not involve short-selling.

³ For a Swiss fund applying Commitment Approach II, the overall exposure of the fund associated with derivatives may not exceed 100% of its net assets, and the overall exposure may not exceed a total of 200% of its net assets.



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

Requirements applicable to all Recognised Swiss Funds

10. To ensure proper investor protection and consistency with existing Hong Kong authorized schemes, Recognised Swiss Funds are required to comply with the requirements set out in paragraphs 11 – 32 below, as well as the relevant provisions in the Overarching Principles Section (OPS) of the SFC Handbook and the UT Code as set out in Annex A.

Requirements on management companies

11. The Recognised Swiss Fund must be managed by a Swiss Fund Management Company that is authorised by FINMA to manage publicly offered securities funds pursuant to Swiss laws and regulations and in accordance with Article 28 CISA.
12. The Swiss Fund Management Company of a Recognised Swiss Fund must not have been the subject of any major regulatory or supervisory actions by FINMA in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
13. The Swiss Fund Management Company of a Recognised Swiss Fund may, provided that the provisions of Article 31 CISA are met, delegate the investment management decisions to Swiss Asset Managers or any person authorized to manage collective investment schemes operating in one of the acceptable inspection regimes recognized under 5.1 of the UT Code.

Requirements on custodians

14. The Recognised Swiss Fund must have a custodian that qualifies to act as custodian for Swiss Securities Funds.

Representatives in Hong Kong

15. Each Recognised Swiss Fund must appoint a firm in Hong Kong which is licensed or registered under the SFO to be its representative, in compliance with Chapter 9 and 11.1(b) of the UT Code.

Operational and ongoing requirements

Home Jurisdiction supervision

16. The Recognised Swiss Fund must, on an ongoing basis, remain approved by FINMA for Public Offering in Switzerland, and be subject to the ongoing regulation and supervision of FINMA.

Changes to Recognised Swiss Funds

17. Changes to a Recognised Swiss Fund shall be made in accordance with the applicable Swiss laws and regulations and the provisions of its constitutive documents, subject to paragraph 19 below. These changes shall be effective upon approval by FINMA or compliance with the appropriate procedures. Thereafter, the Swiss Fund Management Company shall submit such changes to the SFC for filing.
18. Changes to a Recognised Swiss Fund shall not contravene the applicable Swiss laws and regulations and the requirements set out in this Circular. Holders in Hong Kong shall be notified about the changes to the Recognised Swiss Fund by the Swiss Fund Management Company of the relevant Recognised Swiss Fund.
19. Changes that concern the eligibility of a Recognised Swiss Fund under the MRF and revisions made to its offering documents relating to such changes shall require SFC's written approval. In addition, changes that affect Hong Kong investors only and revisions made to the offering documents of a Recognised Swiss Fund relating to such changes should be made in accordance with the requirements under the relevant Hong Kong Laws and Regulations.

Breach

20. In the event of a breach of Swiss laws and regulations or the requirements set out or referred to in this Circular, the Swiss Fund Management Company shall endeavour to notify FINMA and the SFC at the same time and rectify the breach promptly.
21. Following SFC authorization, if a Recognised Swiss Fund ceases to meet the requirements as set out in this Circular, its Swiss Fund Management Company shall notify the SFC immediately. The Recognised Swiss Fund shall not continue to be offered to the public in Hong Kong and shall not accept subscriptions from new investors in Hong Kong.

Withdrawal of authorization

22. Following the authorization of a Recognised Swiss Fund, if its Swiss Fund Management Company does not wish to maintain such authorization, it shall apply for withdrawal of authorization from the SFC in accordance with the applicable Hong Kong Laws and Regulations.
23. The SFC may at any time pursuant to the SFO 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.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

24. The sale and distribution of a Recognised Swiss Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC. The sale and distribution of a Recognised Swiss Fund in Hong Kong shall comply with the applicable Hong Kong Laws and Regulations relating to distribution of funds.

Offering documents

25. The disclosure of information relating to a Recognised Swiss Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.
26. The offering documents of a Recognised Swiss 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.
27. A Recognised Swiss Fund may utilize the prospectus approved by FINMA. Unless otherwise provided in this Circular, matters such as the type of documents, content, format, frequency of update and the update procedures shall comply with the applicable Swiss laws and regulations and the provisions of its constitutive documents. In addition, the FINMA-approved prospectus must be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A⁴ and to disclose any other information which may have a material impact on the investors in Hong Kong.
28. The Swiss Fund Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Swiss Fund and their changes are made available to the investors in Switzerland and Hong Kong at the same time. Subject to paragraph 19 above, the revised offering documents of a Recognised Swiss Fund shall be filed with SFC as soon as possible after the revised offering documents have received FINMA's approval or are filed with FINMA.

Ongoing disclosure

29. The Swiss Fund Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Swiss Fund (including periodic financial reports, notices and announcements) is despatched and made available to the investors in Switzerland and Hong Kong at the same time. The ongoing disclosure should be filed with the SFC as soon as possible after it has received FINMA's approval or is filed with FINMA and in the case of suspension of dealings, immediately notify the SFC. Unless otherwise provided in this Circular, matters such as the type of ongoing disclosure documents, format, content, timing and frequency of disclosure, matters to be disclosed shall comply with the applicable Swiss laws and regulations and the provisions of its constitutive documents. In addition, a Recognised Swiss 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.
30. A Recognised Swiss Fund may use its Swiss financial reports as the basis for distribution in Hong Kong, provided that it is supplemented by the additional information and meet the other requirements set out in Annex A.

Amended

⁴ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus approved by FINMA. The Recognised Swiss Fund does not need to duplicate the disclosure in the Hong Kong covering document.



Advertisement

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

Requirements applicable to each specific type of Recognised Swiss Funds

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

Application process

33. The SFC understands that this marks the first time Recognised Swiss 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.
34. 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.
35. Further details of the MRF application process for a Recognised Swiss 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

Requirements in the OPS of the SFC Handbook and UT Code to be complied with by all Recognised Swiss Funds

1. General requirements	
Mention of SFC authorization	1.10 of OPS of the SFC Handbook
Naming of a Recognised Swiss Fund	5.1 and 5.2 of the OPS of the SFC Handbook
Availability of constitutive documents	5.10(c) of the UT Code
Accompaniment to offering documents	6.3 and 6.4 of the UT Code
Dealing	6.14 of the UT Code
Performance fee	6.17 of the UT Code
Jurisdiction	9.10 of the UT Code
2. Disclosure requirements in relation to offering documents	
Language	5.6 of the OPS of the SFC Handbook
Product key facts statement	6.5 – 6.8 of the OPS of the SFC Handbook and 6.2A of the UT Code
Enquiries and complaints handling	7.4 of the OPS of the SFC Handbook
Information to be disclosed in the offering document	Appendix C of the UT Code (paragraphs 2, 2A, 2C, 3(c), 3(d), 3(e), 3(g), 8, 10, 11, 12, 16, 18, 18A, 19, 19A, 20, 23 and 25)
Disclosure on securities financing transactions	FAQ 21 in the Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds (in respect of unlisted funds) and FAQ 7 in the Frequently Asked Questions on the Exchange Traded Funds and Listed Funds (in respect of physical index-tracking ETFs)
Disclosure on information to investors regarding US Foreign Account Tax Compliance Act	FAQ 35 in the Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds and the Circular to issuers of SFC-authorized investment products concerning the US Foreign Account Tax Compliance Act
3. Disclosure requirements in relation to ongoing disclosure	
Notices to holders	11.2 (bilingual notice and notice period for unitholder meetings), 11.2A and 11.2B of the UT Code
Disclosure of withdrawal of authorization	11.4 of the UT Code
Disclosure on merger or termination	11.5 of the UT Code

Reporting to holders	11.6 of the UT Code (notification of availability of financial reports)
Disclosure on securities financing transactions	FAQ 7 in the Frequently Asked Questions on the Exchange Traded Funds and Listed Funds (in respect of physical index-tracking ETFs)
Constitutive documents	All constitutive documents of a Recognised Swiss Fund shall be made available to Hong Kong investors in either English or Chinese
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
4. Disclosure requirements in relation to financial reports	
Language	Financial reports of a Recognised Swiss Fund shall be made available to Hong Kong investors in either English or Chinese
Revenue statement	Items 4(d) and 4(k) of the “Revenue statement” Section of the Appendix E of the UT Code
Notes to the accounts	Items 1(b), 1(f), 2, 6, 7 and 10 of the “Notes to the accounts” Section of the Appendix E of the UT Code and any changes to the principal accounting policies
Investment portfolio	Items 2, 4 and 7 of the “Investment portfolio” Section of the Appendix E of the UT Code
Holdings of collateral	Items 1(b) and 1(d) of the “Holdings of collateral” Section of the Appendix E of the UT Code
Performance table	Item 2 of the “Performance table” Section of the Appendix E of the UT Code
Inclusion of the investment portfolio of the underlying fund for feeder fund	7.12(b)(iii) of the UT Code
Mention of any unauthorized schemes in the financial reports must be indicated as “Not authorized in Hong Kong and not available to Hong Kong Residents”	Appendix E of the UT Code

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

Feeder funds	7.12(a) – 7.12(d) of the UT Code
MMFs	8.2 of the UT Code
Unlisted index funds	8.6(c)(a), 8.6(e), 8.6(j) and 8.6(m) of the UT Code
Structured funds	8.8(a), 8.8(b), 8.8(d) and 8.8(h) of the UT Code
Funds that invest extensively in FDIs	8.9(a) of the UT Code
Index tracking ETFs	Requirements applicable to unlisted index funds as set out above 8.6(p), 8.6(q), 8.6(r), 8.6(s)(i), 8.6(u), 8.6(v), 8.6(w), 8.6(x) of the UT Code