

9 November 2009

Mutual Cooperation on Development of Islamic Capital Market and Islamic Collective Investment Schemes by the Securities and Futures Commission (“SFC”) and Securities Commission of Malaysia (“SC”)

The SFC signed a Declaration on Mutual Cooperation on Development of Islamic Capital Market and Islamic Collective Investment Schemes (the “Declaration”) with the SC on 9 November 2009. The Declaration provides the framework for the mutual recognition by the SFC and the SC of Islamic collective investment schemes (“Islamic CIS”) offered to the public, and is a significant milestone towards strengthening regulatory ties and co-operation between the SFC and the SC.

SFC’s recognition of Islamic collective investment schemes approved by SC

To enable the Hong Kong public offering of certain Islamic CIS approved by the SC, and the Malaysian public offering of certain Islamic CIS authorized by the SFC, the SFC and the SC have agreed on a mutual recognition framework as set out in the Declaration. Pursuant to the Declaration, the SFC will process an application for authorization of an Malaysian Islamic CIS on the basis that it has substantially complied with the requirements of the SFC Code on Unit Trusts and Mutual Funds (“UT Code”) if the Malaysian Islamic CIS:

- (a) is primarily regulated by the SC and managed by SC licensees;
- (b) is approved by the SC; and
- (c) meets the requirements referred to in paragraphs 2 and 3 below.

Hedge funds, wholesale funds (as defined under the Guidelines on Wholesale Funds issued by the SC) and real estate investment trusts (as defined under the Guidelines on Real Estate Investment Trusts issued by the SC) are not covered under the Declaration.

SC’s recognition of Hong Kong Islamic collective investment schemes approved by the SFC

SFC-authorized Islamic collective investment schemes (excluding hedge funds, leveraged funds and real estate investment trusts) primarily regulated by SFC, managed by SFC licensees and are domiciled in either (i) Hong Kong or (ii) jurisdictions which are signatories of the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding and have broadly implemented IOSCO Principles 17 to 20¹, will enjoy streamlined authorization by the SC and be made available to the public in Malaysia.

¹ As at this date, the following signatory countries are considered by the SC to be compliant with IOSCO Principles 17 to 20: Australia, Canada, France, Italy, Kuwait, Mexico, New Zealand, Philippines, Portugal, Spain, UK and Thailand. Meanwhile, management companies from other signatory countries must demonstrate to the SC that the respective jurisdictions satisfy the requisite IOSCO Principles.



Streamlined application of the UT Code to Malaysian Islamic CIS seeking the SFC authorization pursuant to the Declaration

1. Malaysian Islamic CIS are generally not required to observe requirements in the UT Code, except for the specific areas set out in paragraphs 2 and 3 below.
2. To ensure proper investor protection and consistency with existing Hong Kong authorized schemes, Malaysian Islamic CIS are required to comply with the relevant provisions in the UT Code as set out in Annex A which include, but are not limited to, the following:
 - (a) requirements on management companies;
 - (b) investment restrictions;
 - (c) disclosure in offering documents;
 - (d) appointment of a Hong Kong representative and an approved person; and
 - (e) post-authorization requirements including that on pricing errors, suspension and notification to holders.

Where a Malaysian Islamic CIS is to be listed in Hong Kong, it has to comply with the rules stipulated by the Hong Kong Stock Exchange, in addition to the relevant provisions in the UT Code.

3. To facilitate our processing of the authorization application, all applications are expected to provide evidence or confirmation to demonstrate the eligibility of the Malaysian Islamic CIS under the Declaration. This includes requiring the manager of the Malaysian Islamic CIS to provide to the SFC an undertaking (which is irrevocable except with the prior written consent of the SFC) that it will comply with the requirements set out in paragraph 2 including the specific provisions in the UT Code, as set out in Annex A, and that it will notify the SFC of any material information, significant changes or breaches pertaining to either the Malaysian Islamic CIS or the manager of the Malaysian Islamic CIS.
4. In general, the SFC will deem a Malaysian Islamic CIS to have complied substantially with the requirements of the UT Code. There are, however, a few minimum requirements that the SFC would expect a Malaysian MIS to comply with. Please refer to Annex A for details.
5. Distribution of a Malaysian Islamic CIS in Hong Kong must be conducted by intermediaries properly licensed with the SFC. Applicants are also reminded to refer to the relevant provisions in the UT Code, the Advertising Guidelines² and the Securities and Futures Ordinance regarding the marketing and advertising of a collective

² Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Products Codes, July 2008



investment scheme in Hong Kong in light of the specific circumstances of the Malaysian Islamic CIS.

6. It is under Hong Kong laws that the offering document of a fund should seek the SFC's authorization prior to issuance to the Hong Kong public. Thus the manager of the Malaysian Islamic CIS is reminded to ensure that the offering document of the Malaysian Islamic CIS and its significant changes must be submitted to the SFC for authorization prior to distribution in Hong Kong. Such authorization of the offering document of the Malaysian Islamic CIS recognized by the SFC under the Declaration will be conducted in a streamlined manner.
7. The SFC understands that the Declaration marks the first time for Malaysian Islamic CIS to seek authorization from the SFC. The SFC therefore encourages applicants to consult the Investment Products Department early for any clarification or guidance on how the relevant requirements may be pragmatically complied with or adopted in light of their specific circumstances and taking into account the best practices or the relevant professional standards in Malaysia.
8. The SFC may issue other circulars from time to time to provide practical guidance to the industry. Please refer to the SFC's website or contact the Investment Products Department.

**Investment Products Department
Securities and Futures Commission**



Annex A

Requirements in the UT Code to be complied with by Malaysian Islamic CIS

Authorization procedures	Chapter 1
Management company	Chapter 5.2, 5.5 (a) – (d), 5.10(c)
Scheme documentation	Chapter 6.2, 6.5
Investment plans	Chapter 6.9
Meetings	Chapter 6.15(g)
Fees	Chapter 6.17
Core investment requirements	Chapter 7.4 to 7.6, 7.10, 7.20, 7.22 to 7.24
Specialized schemes	Chapter 8.1-8.6
Additional requirements for non-Hong Kong based schemes	Chapter 9
Pricing errors	Chapter 10.2
Changes in dealing	Chapter 10.3-10.5
Suspension and deferral of dealings	Chapter 10.7-10.8
Transactions with connected persons	Chapter 10.10
Documentation and reporting	Chapter 11.1 to 11.5 (in relation to merger), 11.7 to 11.14
Information to be disclosed in the offering document	Appendix C* (paragraphs 5, 6, 8, 10, 11, 12, 14(c), 16, 17, 20, 23)
Contents of the constitutive documents	To provide confirmations to the SFC regarding paragraphs D4(b), D4(c) and D12 of Appendix D
Contents of Financial Reports	Disclosure relating to connected persons and soft commission arrangements (Notes to Accounts (2) and (3) of Appendix E)
Guidelines for regulating index tracking exchange traded funds	Appendix I (paragraphs 5-22)

* Such disclosure requirements can be satisfied by way of disclosure in a simple Hong Kong wrapper complementing the Malaysian offering document.