

**Code on
Immigration-Linked Investment Schemes**

**First Edition pursuant to
Securities and Futures Ordinance (Cap. 571)**

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CODE ON IMMIGRATION-LINKED INVESTMENT SCHEMES

Explanatory Notes:

- (a) This Code does not have the force of law, but sets out the criteria which will be applied by the Securities and Futures Commission:**
 - (i) in relation to the authorization, under sections 104(1) and 105(1) of the Securities and Futures Ordinance, of collective investment schemes that are immigration-linked investment schemes and documentation thereof respectively; and**
 - (ii) in relation to the authorization for registration, under sections 38D and 342C of the Companies Ordinance, of a prospectus relating to the shares or debentures of a company, the acquisition of which would confer upon a person acquiring such shares or debentures, similar immigration benefits to those which would be acquired by a person investing in an immigration-linked investment scheme.**
- (b) In granting any such authorization, the Commission may impose conditions, and the issue or possession for issue of any documentation or prospectus which does not comply with such conditions may constitute a breach of the Securities and Futures Ordinance or the Companies Ordinance. The Commission reserves the right to withdraw any authorization granted by it under section 104(1) or 105(1) of the Securities and Futures Ordinance, and to waive or modify any conditions imposed by it in granting any such authorization.**
- (c) Issuers of prospectuses of the type referred to in paragraph (a)(ii) are reminded that the authorization of a prospectus for registration does not constitute registration for the purposes of the Companies Ordinance. Following authorization, it remains the responsibility of the issuer to ensure that a prospectus is registered with the Registrar of Companies. Ensuring that at all times a prospectus complies with the provisions of the Companies Ordinance and the requirements of the Code remains the responsibility of the issuer and neither authorization nor registration should be relied upon as evidence of such compliance.**
- (d) Promoters of immigration-linked investment schemes still in doubt after reading this Code as to which statutory or other provisions are applicable to their schemes should seek professional advice.**

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PART I: GENERAL MATTERS

1. Introduction

- 1.1 The philosophy underlying the authorization process by the Commission is heavily influenced by the nature of the Schemes and the situation of Hong Kong investors vis-à-vis the promoters and managers of the Schemes. To the extent that it is possible to generalize, the Commission has taken account of these special aspects -
- (a) the primary objective of Hong Kong investors interested in these schemes may not be investment but emigration from Hong Kong to overseas territories where the Commission has no jurisdiction;
 - (b) the primary objective of the promoters and managers is to raise capital for investment in various projects. Immigration by investors is of secondary concern to them;
 - (c) moneys subscribed by investors will be transferred offshore, beyond any later control by the laws which the Commission administers;
 - (d) the investment projects are off-shore and not subject to scrutiny by the Commission;
 - (e) such investment projects are varied, being property-based, start-up, research and development projects and the like, with the risks which generally attach to venture capital investment;
 - (f) documentation of the Schemes is likely to be exempted from or not subject to "prospectus requirements" or comparable scrutiny offshore;
 - (g) it will not be practicable for overseas authorities to evaluate the merits or soundness of proposed investment projects, and they are unlikely to do so when approving the Schemes;
 - (h) those authorities may impose reporting requirements on the Schemes but they may not have the resources to maintain a close and current check on the conduct and progress of the Schemes once implemented in their territories;
 - (i) those authorities may therefore not be in a position to give any guarantee or other assurance as to the manner in which Schemes will be conducted once investment is made in their territories; and
 - (j) a function of the Commission is to take reasonable steps to safeguard the interests of investors. Hong Kong investors are entitled to that protection for so long as it is feasible for the Commission to secure it when the Schemes are brought within its jurisdiction.
- 1.2 Given these aspects, and given that it is not possible to perform any monitoring role once the Schemes, the promoters, and the investors have gone off-shore, the

Commission exercises its function of safeguarding the interests of Hong Kong investors by requiring checks and balances to be built into the Schemes before granting them authorization to be advertised or otherwise offered to the public in Hong Kong. This is not intended to safeguard investors against normal commercial risks. Rather, it is to seek safeguards against malpractice through sole and unfettered control by individuals over assets, bank accounts, allocation of investments and contracts, deductions from the Scheme's subscribed moneys of excessive fees, salaries, expenses, and so on. These checks and balances may increase the costs of formulating and managing a Scheme but this is unavoidable if protection for investors is to be improved.

- 1.3 In implementing its policy, the Commission will focus on full disclosure by the promoters to potential investors of all material facts and of the risks inherent in the Schemes.

2. General Advice

- 2.1 Promoters and managers seeking authorization are advised to prepare their documentation as carefully as possible for submission to the Commission, so as to minimize the number of queries and modifications likely to be raised or required by the Commission.
- 2.2 If major differences in the structure of a Scheme from that contemplated by this Code are found in this scrutiny, the Commission may require the promoters and managers or their legal advisers to change the documentation of the Scheme before granting authorization. This may cause difficulties with the overseas territory's authorization process. It follows that promoters, managers and their legal advisers contemplating seeking authorization in Hong Kong would be well advised to adhere as closely as possible to this Code when formulating their Schemes.
- 2.3 It may be advantageous for intending promoters and managers to seek advice from legal practitioners in Hong Kong at an early stage of their planning. Such practitioners will be familiar with the regulation of investment arrangements and securities in Hong Kong and hence may facilitate timely authorization in Hong Kong. This could be of particular benefit where time is a crucial element of a Scheme's investment plan.
- 2.4 If legal advice is not sought at an early stage, promoters and managers may still wish to consider having the covering letter, the checklist, and the Hong Kong Offering Document, drawn up by a legal practitioner in Hong Kong to assist the submission of documents to the Commission.
- 2.5 Applications which involve numerous questions and modifications when submitted to the Commission will take longer to process than other Schemes which are carefully and precisely documented.
- 2.6 A Scheme could have four stages in its evolution to the point where it is submitted to the Commission, i.e.

- (a) formulation of the proposals by the promoter and/or managers;
 - (b) submission to the overseas provincial, state or local government authority ("provincial authority") for approval;
 - (c) referral by the provincial authority to its Federal authority for approval; and
 - (d) submission to the Commission for authorization of the documentation of the Scheme to be offered to the public in Hong Kong.
- 2.7 Securing approval under stages (b) and (c) does not necessarily mean authorization will be secured from the Commission. Any attempt to advertise or otherwise market to the public in Hong Kong the documentation of a Scheme which requires authorization but which has not received authorization is illegal and could result in prosecution for an offence against the Securities and Futures Ordinance.
- 2.8 Enquiries about the Code may be directed to the Investment Products Department of the Commission by letter (address: 12th Floor, Edinburgh Tower, The Landmark, Hong Kong), by telephone (no. 2840-9222) or by fax (no. 2877-0318) as necessary.

3. Legal Aspects

- 3.1 The Securities and Futures Ordinance (section 103(l)) prohibits any person in Hong Kong issuing, or having in his possession for the purposes of issue, any advertisement or, invitation (or document containing same), which to his knowledge is or contains an invitation to the public -
- (a) to enter into or offer to enter into -
 - (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) a regulated investment agreement; or
 - (b) to acquire an interest in or participate in, or offer to acquire and interest in or participate in, a collective investment scheme.

The prohibitions contained in section 103(l) do not apply in certain circumstances. Such circumstances include, for example, those in which documentation has been authorized under section 105(1) or those in which a form of application for shares or debentures of a company is accompanied by a prospectus complying with Parts II or XII of the Companies Ordinance.

- 3.2 Schemes must therefore not be offered (or marketed) *to the public* in Hong Kong, whether through advertising, distribution of documentation of the Schemes, or any other method such as seminars or exhibitions, without authorization of their documentation. Anyone doing so risks prosecution under the Securities and Futures Ordinance.

- 3.3 The issue to the public of documentation of Schemes offering securities is governed by the provisions of the Securities and Futures Ordinance and the Companies Ordinance. Promoters and managers should familiarize themselves with the relevant provisions of these Ordinances.

4. Authorization Procedures

Submission of Documents to the Commission

- 4.1 The documents to be submitted to the Commission are specified in Appendix A. The documentation submitted to the Commission for approval in final form, or final proof form, is to be in one complete set. Draft documents, prepared to an advanced stage, may be accepted.
- 4.2 Any authorization given will be subject to the final proof documents later being signed and executed in the form submitted, and the executed documents being filed with the Commission within a reasonable time of the authorization being given. Unless otherwise approved by the Commission, this should be *before* any investors' subscriptions are accepted for the Scheme. Any subsequent changes by the promoters and managers to the submitted final proof documents, without the consent of the Commission, will invalidate the authorization.
- 4.3 The documentation is to be submitted with a covering letter and checklist certifying that the Scheme complies with the Code, or - where it does not comply - making application for waivers in accordance with paragraph 4.8 herein. The checklist should be in the form provided by the Commission and is available on request.
- 4.4 The covering letter should also disclose to the Commission the extent to which the Scheme has been marketed, or is proposed to be marketed, in another jurisdiction, and the extent to which such marketing has been authorized or refused authorization by any overseas regulatory authority.
- 4.5 Where authorization has been refused by an overseas regulatory authority, the covering letter should disclose to the Commission any reasons given by that authority for the refusal.
- 4.6 The covering letter should be signed by a senior executive of the promoters and the managers (two signatures will be required if the promoters and managers are separate entities), or by a person specifically authorized by them, such as a legal practitioner.

Additional Requirements for Schemes Already in Existence

- 4.7 The requirement for these documents to be submitted to the Commission assumes that the Scheme is a new one which has not commenced operation. Where a Scheme is in existence, with investors' moneys subscribed elsewhere already invested in the underlying Scheme project or projects before application is made, it will be necessary at the time application for authorization is made to the Commission to summarize the history of the Scheme to the point where the application is made, and to provide the most recent financial accounts of the Scheme, accompanied by an auditor's report.

Applications for Waivers

- 4.8 Applications for authorization which seek waivers of any provisions of the Code must give detailed reasons why waivers are sought. When considering such applications the Commission will have regard to alternative protective elements. Promoters and managers should understand that any application which departs from what the Commission envisages in this Code risks being refused authorization.
- 4.9 The Commission will give reasons for any refusal of authorization for the documentation of a particular Scheme to be advertised or offered in Hong Kong. Where authorization is granted, it will be a condition that any material changes to the Scheme while it remains on offer to the public in Hong Kong will be reflected in the documentation of that Scheme. The changed documentation is to be submitted to the Commission for authorization before being issued to the public.

Period of Authorization

- 4.10 Regardless of the length of period for which subscriptions may remain open for the Scheme generally i.e. the period approved by the authorities of the overseas territory, authorization of the documentation for the Scheme to be marketed in Hong Kong will permit the subscription period to be open initially for a maximum period of 4 months, unless otherwise authorized by the Commission.
- 4.11 Any subsequent application for an extension of this initial period will be dealt with on a case-by-case basis and must be submitted before the initial period expires. Promoters/managers will be required to update material information in the documentation authorized on extension or more frequently as appropriate. At the end of the 4 month period, or of any additional period which may be authorized by the Commission, no further advertising or offering to the public of the Scheme will be permitted in Hong Kong.

Payment of Fees

- 4.12 According to the Securities and Futures (Fees) Rules, a fee is payable on application for authorization, authorization and extension of authorization of the scheme's documentation.
- 4.13 Authorization of a scheme's documentation will not take effect until the authorization fee is paid.

Nomination of an Individual as Approved Person

- 4.14 According to sections 104(2) and 105(2) of the Securities and Futures Ordinance, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the Scheme and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.

4.15 An approved person should:

- (a) have his/her ordinary residence in Hong Kong;
- (b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;
- (c) be capable of being contacted by the Commission by post, telephone, facsimile and electronic mail during business hours;
- (d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and
- (e) comply with any other requirements as the Commission considers appropriate.

4.16 An individual approved by the Commission as an approved person for a Scheme shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that Scheme.

PART II: AUTHORIZATION REQUIREMENTS

5. Immigration and Investment

- 5.1 A Scheme must provide for an investor who invests in good faith, and otherwise meets the criteria set by the overseas territory's immigration authorities, to be able to secure and retain his immigrant status regardless of the success or otherwise of the investment into which the subscribed moneys will be placed i.e. immigration must not be conditional on the success of the Scheme's underlying investment project.
- 5.2 Although the Commission will not, as a general rule, endeavour to assess the merits of the underlying investment projects into which the subscribed moneys are to be invested, the Commission may decide *not* to authorize the documentation of a Scheme in circumstances where the underlying investment projects appear to it to be not in the best interests of investors. Examples are where there appears to be a preponderance of "blue sky" promises, (i.e. an absence of essential financial or other facts and details which will enable an investor to assess an offer properly) or where it is intended to make use of moneys subscribed to Schemes to pay off debts of the promoters and managers.

6. Promoters and Managers

- 6.1 Each Scheme must have a promoter who is to:
 - (a) constitute the Scheme and prepare its offering documentation; and
 - (b) secure authorization from the respective governments of the territories in which the Scheme is to operate, as applicable.
- 6.2 Each Scheme must have a manager to manage the Scheme in accordance with its constitutive documents in the interest of the participants until maturity of the Scheme.
- 6.3 The Promoter and Manager's roles may be combined but individuals will not normally be acceptable for the combined role.
- 6.4 The Promoters and Managers must be acceptable to the Commission. The Commission expects to see biographical detail and an account of the business and professional activities of the promoters and managers where these are individuals, and, if a company, of the directors of that company, covering the five years prior to the formulation of the Scheme.
- 6.5 A banker's reference is required by the Commission for each of the key individuals or firms or corporate entities constituting the promoters and managers.
- 6.6 The Commission will also require a statutory declaration from each of the key individuals confirming either that he or she has no criminal record, in Hong Kong or elsewhere, or - if such person has a criminal record - the details of that criminal record.

The declarant must also include details of any criminal charges or indictments against him or her. Similarly, the declarant must state whether he or she has been involved in any personal bankruptcy or corporate insolvency proceedings, and - if there has been such involvement - give the details of that involvement. Disclosure is also required of whether there has been any involvement by him or her in disciplinary proceedings regarding securities or futures trading or other investments, whether such proceedings were before a self-regulatory organization or otherwise. Such statutory declaration may be made either in Hong Kong, or in the overseas territory, but in either case must be made in accordance with legal procedures.

- 6.7 Any corporate entity in these roles should have at least two directors actively engaged, or intending to be engaged, in promoting or managing the Scheme.
- 6.8 The promoters must ensure that the following provisions appear in the offering or constitutive documents of the Scheme:
 - (a) all subscription moneys will be paid directly to the escrow agent, and that disbursements charged to the subscribed funds will only be for purposes relating to the conduct of the Scheme as set out in the documentation;
 - (b) investors will be given quarterly progress reports while subscription moneys are wholly in escrow, and six-monthly reports once any funds have been released from escrow for investment in the underlying project or projects, continuing to maturity of the Scheme;
 - (c) a copy of the audited annual accounts, with a copy of the auditor's report will be sent to each participant in the Scheme;
 - (d) a responsibility statement signed by the promoters and managers warranting the accuracy and completeness of the information given about the Scheme, and their acceptance of being jointly and severally liable therefor.
- 6.9 The promoters must also undertake to the Commission that they will accept responsibility for the accuracy and completeness of all information supplied by themselves to the Commission or to investors, or supplied by any other person or persons acting on their behalf. Where it is impracticable to accept such responsibility, for example, in cases where forecasts or projections of future performance are given, the promoters and the managers should include restrictive wording in the constitutive documents to the effect that care has been taken by them in the making or utilizing of such forecasts and projections. A warning should also be included as to the degree of reliance which investors may therefore place on such forecasts and projections.
- 6.10 The managers must ensure that the following provisions appear in the offering or constitutive documents of the Scheme -
 - (a) that they will exert their best endeavour so that the underlying investment project or projects is commenced promptly once requisite subscription moneys are available, and that the project(s) will be conducted efficiently;

- (b) that the manager will submit to such reasonable directions as may be given from time to time by the trustee or custodian or, where no trustee or custodian has been appointed to the Scheme, from any other person accepted by the Commission as providing alternative safeguarding arrangements, relating to the custody or safekeeping of assets, funds, and related matters;
- (c) that the moneys subscribed by investors will be utilized only in accordance with the Scheme documentation as submitted to the Commission for authorization, or as subsequently modified with the consent of the participating investor/immigrants and approval of the overseas authority; and
- (d) that proper books of account will be kept and that the accounts will be audited and certified each year by a qualified auditor.

7. Trustees/Custodians

- 7.1 A trustee/custodian, who may combine his role with that of escrow agent, should be appointed. The trustee or custodian may be based in Hong Kong or the overseas territory of the Scheme.
- 7.2 The trustee/custodian should be independent of, and not a connected person with, the promoters and managers.

Note: The Commission may accept a trustee/custodian with the same ultimate holding company as the promoter/manager, provided it is satisfied that there is sufficient functional separation and independence within the corporate structure.

- 7.3 The trustee/custodian must be -
 - (a) a bank licensed under section 16 of the Banking Ordinance;
 - (b) a trustee company registered under Part VIII of the Trustee Ordinance or which is a subsidiary of a licensed bank;
 - (c) a banking institution or trust company incorporated outside Hong Kong which is acceptable to the Commission; or
 - (d) a firm of lawyers or professional accountants which the Commission accepts as possessing the necessary expertise and capacity to perform the functions of a trustee/custodian.
- 7.4 The trustee or the custodian should be appointed for the full duration of the approved investment period, to the point where any increased or remaining capital, with profits, is distributed to investors in the Scheme,

Trustee/Custodian Agreement

- 7.5 The terms of the trust deed or the custodian agreement, including the appointment of the trustee or custodian, the duties of the trustee or the custodian, the removal or resignation and the appointment of any new trustee or custodian, all have to be acceptable to the Commission.
- 7.6 The trust deed or custodian agreement must include the following terms -
- (a) the trustee/custodian shall exercise due diligence in carrying out his duties pursuant to the terms of the trust deed or custodian agreement and use his best endeavours in safeguarding the interests of investors in the Scheme, normal commercial risks excepted, during the whole period of his appointment in that capacity.
 - (b) the trustee/custodian shall perform those functions and duties as stipulated in paragraph 7.7 of this Code.
 - (c) the trustee/custodian may only retire as stipulated in paragraph 7.8 of this Code.

Responsibilities of Trustee/Custodian

- 7.7 The trustee/custodian must -
- (a) hold title to real estate and other property of the Scheme; and ensure that cash and registrable assets are registered in its name;
 - (b) take reasonable care to ensure that criteria and restrictions in respect of acquisition and disposal of investments, lending and borrowing as set out in the constitutive documents and the conditions under which the Scheme was authorized are complied with;
 - (c) take reasonable care to ensure that the methods adopted by the promoter/manager in calculating the income/profits entitlements of the investors are in accordance with the provisions of the constitutive documents; and
 - (d) take reasonable care to ensure that redemption of investors' interests are carried out in accordance with the provisions of the constitutive documents.

Retirement of Trustee/Custodian

- 7.8 The trustee/custodian may not retire except upon the appointment of a new trustee/custodian and subject to the prior approval of the investors in the Scheme. The retirement of the trustee/custodian should take effect at the same time as the new trustee/custodian takes up office.

Alternative Safeguarding Arrangements

- 7.9 The Commission may accept that because of the nature of a Scheme, it is impracticable to appoint a trustee or custodian, provided that it is satisfied that

alternative arrangements are made to safeguard the interests of investors, normal commercial risks excepted, through to maturity of the Scheme.

- 7.10 Where no trustee or custodian is to be appointed the Scheme documentation must also provide an exact account of who will hold title to the assets of the Scheme, and the terms and conditions under which they will be held, through to maturity of the Scheme.

8. Escrow Agents

- 8.1 An escrow agent, acceptable to the Commission is to be appointed to hold the investors' subscriptions in escrow. The entities described in paragraph 7.3 will normally be acceptable.
- 8.2 The escrow agent is to be independent of, and not a connected person with, the promoters and managers, unless otherwise accepted by the Commission.
- 8.3 The escrow agent may be based in Hong Kong or in the overseas territory of the Scheme.
- 8.4 The terms of the appointment of the escrow agent and of the escrow agent agreement, including those on the duties of the escrow agent, must be acceptable to the Commission.
- 8.5 The escrow agent should not release investors' subscriptions until the minimum subscription amount of the Scheme has been received, the cooling-off period [see paragraph 10.6(b)] has elapsed, all pre-conditions for release of funds have been satisfied, and
- (a) participating investors have been approved for issuance of immigrant visas; or
 - (b) at least 20% of funds subscribed is retained in escrow and invested in short-term, high grade liquid instruments or an equivalent irrevocable arrangement acceptable to the Commission is in place as a contingency for reimbursement of those investors who are ultimately rejected for issue of immigrant visas.
- 8.6 The terms of removal or resignation of the escrow agent and for the appointment of any new escrow agent also have to be acceptable to the Commission.

9. Hong Kong Representatives and Marketing Agents

- 9.1 A Hong Kong Representative ("the HKR"), acceptable to the Commission, is to be appointed by the promoters/managers prior to the date on which authorization from the Commission becomes effective. The HKR should be based in Hong Kong, with a permanent, registered business address.

- 9.2 The Scheme should maintain the HKR until the last investor has been approved for issuance of the immigrant visa. The HKR may, subject to paragraph 9.6(b), retire earlier, if replaced immediately by another HKR acceptable to the Commission.
- 9.3 The terms of the agreement appointing the HKR, of the duties of the HKR, of removal or resignation of the HKR, all have to be acceptable to the Commission.
- 9.4 The HKR is not required to take responsibility for the acts and omissions of the promoter and manager but must be empowered to -
- (a) act on behalf of the promoter/manager in all matters relating to the initial and continued authorization of Scheme documentation pursuant to the relevant legislation and the Code;
 - (b) accept, on behalf of the promoters and managers of the Scheme, service of any summonses or other documents which arise in Hong Kong from litigation or complaints or grievances by investors in the Scheme, and to exert best endeavours in resolving any disputes, and other matters, to the satisfaction of the parties concerned, or in accordance with whatever directions are given by a Hong Kong Court;
 - (c) bind the promoters and managers in any contract or explanation signed or given on their behalf in Hong Kong in relation to the Scheme.
- 9.5 The HKR is to obtain a signed undertaking from the promoters and managers of their willingness to submit to the non-exclusive jurisdiction of the courts of Hong Kong, to the point where the last investor has been approved for issuance of the necessary immigrant visa.
- 9.6 The HKR Agreement shall include the following terms -
- (a) the HKR will ensure that all Hong Kong investors are given the minimum documentation specified in paragraph 10.3 before subscribing or making a commitment to subscribe;
 - (b) the HKR will not step down from being the Hong Kong Representative, except with the prior written consent of the Commission;
 - (c) the HKR will be responsible for the marketing of the scheme in Hong Kong and will ensure that all Hong Kong investors are informed, before they subscribe to the Scheme, or enter into any commitment to subscribe, of the nature of the scheme and the fees or commissions involved;
 - (d) the HKR will ensure that all moneys subscribed to and accepted by the Scheme from investors in Hong Kong are remitted directly to the account of the escrow agent of the Scheme with no intermediate payee;
 - (e) the HKR will permit any Hong Kong investor in the Scheme to inspect all constituent documents of the Scheme and any other documents used to offer

the Scheme in Hong Kong free of charge, and make available copies of such documents upon payment of reasonable costs.

- 9.7 The Commission will have no objection to the HKR acting in a representative capacity for more than one Scheme, provided the HKR has the resources to perform its duties professionally.

Criteria for Appointment of HKR

- 9.8 The HKR should be -
- (a) licensed by or registered with the Commission for carrying on the regulated activity of dealing in securities or advising on securities under the Securities and Futures Ordinance;
 - (b) a licensed bank or other substantial financial institution;
 - (c) a substantial firm of solicitors or professional accountants where the issue of documentation concerning investment arrangements is wholly incidental to the practice of their profession; or
 - (d) another business entity acceptable to the Commission.

Note: Where the Scheme offers securities (shares, debentures etc.) and the distribution function of the HKR amounts to dealing in securities, the HKR must be licensed by or registered with the Commission for carrying on the regulated activity of dealing in securities under the Securities and Futures Ordinance.

Marketing Agents

- 9.9 If marketing agents are appointed to sell the Scheme, the HKR must -
- (a) ensure that such agents are appropriately qualified and acceptable to the Commission;
 - (b) notify the Commission of all such agents and the terms and conditions of their appointment;
 - (c) review all marketing material and advertising by such agents and submit same to the Commission for authorization prior to issue; and
 - (d) exercise all reasonable efforts and due diligence to ensure that the marketing of the Scheme is carried out professionally, honestly and fairly.

10. Operational Requirements

Scheme Documentation

- 10.1 Schemes must issue a Hong Kong Offering Document, which should contain all information necessary for investors to be able to make an informed judgement of the investment proposed to them, and in particular should contain the information listed in Appendix B.

Note: Any prospectus of the type referred to in the Explanatory Notes to this Code, which is submitted for authorization under the Companies Ordinance, shall, to the extent that the provisions of the Companies Ordinance permit, comply with the requirements of this Code regarding the contents of scheme documentation, and, to the extent that the provisions of the Companies Ordinance and this Code permit, the references in this Code to any Hong Kong Offering Document shall be deemed to include references to any such prospectus.

- 10.2 The Hong Kong Offering Document must be provided in the English language and accompanied by a Chinese translation. This translation must be accurate and prepared in a professional manner. It must also be certified to be a fair and accurate translation by a person competent to give that certification.

Minimum Documentation to be Distributed to Potential Investors

- 10.3 In the initial distribution of documentation to potential investors in Hong Kong, the minimum documents to be given to each one must comprise -
- (a) the Hong Kong Offering Document with Chinese translation;
 - (b) the Application Form with Chinese translation for units or other forms of participation in the Scheme;
 - (c) all other documents required to be provided to investors by the overseas authorities and the Commission;
 - (d) a cover sheet listing the above.

- 10.4 The minimum documentation described in paragraph 10.3 should be securely attached to each other when distributed. There must be no loose circulation of the Application Form by itself.

Advertising

- 10.5 Any advertising of the Scheme in Hong Kong requires specific authorization in addition to authorization of the documentation specified in Appendices A and B. No advertising will be permitted by radio, television, or cinema in Hong Kong. Advertisements will only be authorized for insertion in the print media. The Commission will require a "warning" to be inserted in such advertisements in these words "The Securities and Futures Commission has neither assessed the financial soundness or merits of this Scheme nor verified the accuracy or truthfulness of statements made or opinions expressed in this advertisement."

Return of Moneys to Investors

10.6 In the event that -

- (a) a Scheme is cancelled because it fails to meet its minimum subscription target or for any other reason;
- (b) individual investors withdraw from the Scheme voluntarily within 21 days of signing the Subscription Agreement (the Cooling-off Period); or
- (c) individual investors fail to obtain the necessary immigrant visas;

then the Scheme is to provide for the prompt return of subscription moneys to investors.

10.7 All moneys returned in accordance with paragraph 10.6 must include all interest earned over the whole of the period during which moneys have been held by the promoters and managers or their agents. In the event that the refund is in accordance with (c) above, it will be permissible to charge reasonable costs upon such return of moneys provided the prospect of such costs being charged was notified to investors before they subscribed to the Scheme.

Appendix A: Documents to be Submitted to Commission

1. Certified copy of all documentation filed with the authorities in the overseas territory in respect of the Scheme, including its approved Business Plan or Outline and Financial Accounts/Statements.
2. Proof of approval by the overseas authority for participation by the Scheme in an immigrant investor programme, and of the documentation in (1) above.

Note: Where, for adaptation to Hong Kong requirements, substantial alterations have been made to an offering document, after its initial approval by the overseas authority, the promoter/manager will need to provide evidence that these alterations meet the approval of the overseas authority.

3. Bankers' references for the promoters and managers, and (if requested by the Commission) escrow agent, trustee, custodian or other key individuals.
4. Statutory declarations of the key individuals as to no criminal records, etc.
5. The most recent audited annual reports/accounts of any corporation amongst the promoters, managers, escrow agent, guarantor, trustee or custodian.
6. Escrow Agreement.
7. Trust Deed or Custodian Agreement (or alternative document reflecting arrangements to safeguard the interests of investors in the absence of the appointment of a Trustee or Custodian).
8. Management Agreement.
9. Any other Agreements relevant to the Scheme, such as Limited Partnership Agreements, Hong Kong Representative Agreement, Agency Agreements, other contracts, etc.
10. Any Memorandum of Understanding or equivalent document filed by the promoters and managers with the overseas authorities or intended to be signed by investors in the Scheme.
11. The Hong Kong Offering Document (with translation in Chinese).
12. Any brochures, advertisements or marketing material intended for distribution in Hong Kong.
13. Application form (with translation in Chinese).
14. A List of the Document submitted to the Commission.
15. The covering letter, with checklist.

16. An undertaking from the promoters and managers that they will submit to the non-exclusive jurisdiction of the Hong Kong courts in any dispute which may arise with an aggrieved Hong Kong investor until such time as all investors have been approved for issuance of their immigrant visas.
17. The letter nominating an individual to be approved by the Commission as an approved person containing the individual's name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address.

Appendix B: Requirements for the Hong Kong Offering Document

1. A warning, featured prominently at the masthead, in these words -

"This document has been authorized by the Securities and Futures Commission. In giving this authorization, the Commission has made no assessment of, nor does it take responsibility for, the financial soundness or merits of the Scheme nor has it verified the accuracy or truthfulness of statements made or opinions expressed in the documentation."

2. A recommendation to the investor that if, after reading the documentation made available to him, the investor is in any doubt as to whether he should invest in the Scheme he should seek professional advice, and a reminder that he has a 21-day cooling-off period in which he has the right to withdraw from the Scheme without penalty.
3. A summary of the proposed investment(s) and the investment objectives of the Scheme as approved by the overseas authority, together with -
 - (a) the names, addresses, and summary of the biographical details of the promoters and managers of the Scheme, and the directors of any corporate entity amongst the promoters and managers;
 - (b) the names, addresses, and summary of the biographical details of the escrow agent, trustee or custodian (or equivalent) of the Scheme;
 - (c) the names, descriptions and addresses of the Schemes' solicitors, accountants and auditors;
 - (d) a brief summary of any prior business or professional association between the promoters, managers, escrow agent, trustee, custodian, solicitors, accountants and auditors; and
 - (e) disclosure of any existing or contemplated material contracts in the Scheme's investment project in which the promoters, managers, escrow agent, trustee, custodian, solicitors, accountants and auditors have or will have an interest.
 - (f) Details of the arrangements for the appointment of a Hong Kong Representative, including -
 - (i) the date his appointment is effective, and the date it is expected to expire;
 - (ii) name, office address, fax and telephone number;
 - (iii) office hours; and

(iv) the matters which he is authorized to transact on behalf of the promoters and managers.

4. Details of -

- (a) the date marketing of the Scheme first started and in which countries it has already been marketed;
- (b) the total amount raised so far overseas (or in Hong Kong, if previously offered);
- (c) the names of the countries in which it is intended to market the Scheme,
- (d) the minimum and maximum total subscriptions to be raised by a specified date by the Scheme;
- (e) the minimum and maximum subscriptions per investor;
- (f) the application procedures to be followed by Hong Kong investors who wish to invest in the Scheme; and
- (g) the availability for inspection by the Hong Kong investor of constituent documents of the Scheme, including any documents containing expert assessment or opinion on various aspects of the Scheme, annual reports, background reports, etc.

- 5. A consolidated summary of salaries, expenses, commissions, brokerage rates, management fees, or other fees which will be payable, or can reasonably be expected to be payable as a charge upon the moneys subscribed to the Scheme.
- 6. An explanation of the arrangements for holding the moneys in escrow.
- 7. An explanation of what will happen to the moneys subscribed and interest accrued in the event that the total minimum subscriptions required by the Scheme is not reached, the investor is not approved for issuance of the immigrant visa or decides to withdraw during the cooling-off period.
- 8. An explanation of the anticipated completion dates of all projects under construction or planned in the Scheme, and (as appropriate) details of any approvals or conditions that need to be obtained or met for the construction.
- 9. A summary of the risk factors involved in the Scheme with an explanation
 - (a) that while the promoters and managers have submitted to the non-exclusive jurisdiction of the Hong Kong courts, in any grievance which arises with investors, this may only be to the point where investors have been approved for issuance of their visas, whereafter sole jurisdiction may lie with the overseas territory's courts;

- (b) that as immigration rules and regulations in force at the time of application, or at the time of approval, may not be the same as the information given by the promoter in the offering document, investors should obtain the most up-to-date *official* information on the immigration rules and regulations applicable to them;
 - (c) of the period for which the investment will be locked in to the Scheme and not available to the investor;
 - (d) that during the period referred to in (c) above there may be no possibility of redemption of the investment, no market for the resale of units purchased by the investor in the Scheme and that the units are (if applicable) non-negotiable and non-transferable;
 - (e) of whether there is any known future liability or potential call on the investor beyond his initial investment in the Scheme, or whether, in the case of a limited partnership or shareholders' agreement in a Scheme, there is a contemplation of a future cash call upon investors;
 - (f) of the consequences, in the case of an investment involving a deposit and the payment of the balance on deferred terms or instalments, of failing to satisfy such deferred terms or instalments;
 - (g) of whether there are any other special conditions or restrictions to which the Scheme is subject;
 - (h) of all aspects regarding the redemption of the investment, including the method of redemption, in what circumstances the investor may receive less than full return of capital, and the anticipated timing of the distribution/ return of capital; and
 - (i) of any exchange control, statutory or other governmental requirements which may affect the investor's investment in the overseas territory in which the Scheme is located.
10. An account of what immigration benefits can be expected to be secured by the investor as a result of investment in the Scheme, including -
- (a) an explanation of what conditions must be met by the investor to be eligible for immigration to the overseas territory approving the Scheme; and
 - (b) which relationship of family members may be expected to qualify to accompany the investor in that immigration.
11. An explanation of what other arrangements have been incorporated into the Scheme to safeguard the interests of investors through to maturity, and any other protection afforded by the relevant overseas legislation through to maturity if a trustee or custodian has not been appointed.

12. A brief explanation of the liability of the investor to tax in respect of, his investment in the Scheme.
13. A responsibility statement as required by paragraph 6.8(d) of this Code.
14. An acknowledgement that the investor has the right to bring legal action in a Hong Kong court in so far as the court has jurisdiction to entertain an action concerning the Scheme.