



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

## List of Confirmations of Compliance related to Application for Approval of Scheme Change(s) pursuant to 11.1 of the Code on Unit Trusts and Mutual Funds (UT Code)

***This List of Confirmations of Compliance may be used with immediate effect from 30 July 2018 in support of any application for approval of scheme change(s), where applicable.***

- The issuer/applicant should submit the relevant duly completed and properly executed confirmation(s) / undertaking(s) as set out in this List of Confirmations of Compliance related to Application for Approval of Scheme Change(s) pursuant to 11.1 of the UT Code (the “List”) as part of the application for approval of scheme change(s) falling under 11.1 of the UT Code, where appropriate. The Securities and Future Commission (the “Commission” or the “SFC”) reserves the right to request for more information and/or documents in reviewing and considering the application for approval of scheme change(s).
- This is a standard form document. Unless otherwise specified, when completing and executing the confirmation(s) / undertaking(s) contained in this List, please do not make any deletion, addition or amendment to the forms or headings. The issuer/applicant is reminded to tick ALL boxes that are applicable in the relevant confirmation(s) / undertaking(s).
- This List and the confirmation(s) / undertaking(s) contained herein may be updated from time to time with reference to the relevant confirmation(s) / undertaking(s) in the Information Checklist for Application for Authorization of Unit Trusts and Mutual Funds under Revamped Process. The SFC may require additional information where applicable and appropriate.



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The List is not exhaustive. The SFC may require additional information where applicable and appropriate.

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## **Section 1.1: Confirmation from the management company in respect of change of constitutive documents<sup>1</sup>**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, in respect of this application and scheme(s) thereunder, hereby confirm and undertake that:

- (a) nothing in the constitutive documents of the scheme(s) would in any way contradict or result in any breach of the applicable provisions of the UT Code and the applicable provisions in the “Overarching Principles Section” of the Handbook<sup>2</sup>; and
- (b)  *(please tick if applicable) (applicable only to non-UCITS<sup>3</sup>)* the constitutive documents of the scheme(s) contain all the information listed in Appendix D to the UT Code and conform in substance with the provisions set out in Section 5 of Annex 1 to the Guide<sup>4</sup>; and we shall ensure that the constitutive documents of the scheme(s) will at all times contain and conform in substance with these requirements, and we shall act at all times in compliance and in a manner consistent with the UT Code (as may be modified by any applicable waivers or exemptions granted by the SFC).

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<sup>1</sup> “Constitutive documents” means the principal documents governing the formation of the scheme, and includes the trust deed in the case of a unit trust and the articles of association in the case of a mutual fund corporation. In the case of a non-UCITS mutual fund corporation, the information listed in Appendix D to the UT Code and the key provisions set out in Section 5 of Annex 1 to the Guide may also be set out in the custodian agreement and the management agreement instead of the articles of association, as appropriate.

<sup>2</sup> Handbook refers to SFC Handbook for Unit Trusts and Mutual Funds, Investment Linked Assurance Schemes and Unlisted Structured Investment Products.

<sup>3</sup> For funds authorized pursuant to or in accordance with the mutual recognition arrangements and/or such other fund authorization arrangements that have been entered into between the SFC and the related countries or jurisdictions, they should follow the specific requirements on constitutive documents as set out in the relevant circulars and/or guidance issued by the SFC related thereto.

<sup>4</sup> The Guide refers to the Guide on Practices and Procedures for Application for Authorization of Unit Trusts and Mutual Funds published by the SFC, and as the same may be revised/updated from time to time. The Guide may be accessed via <http://www.sfc.hk/web/EN/faqs/publicly-offered-investment-product/guide-on-practices-and-procedures-for-application-for-authorization-of-unit-trusts-and-mutual-funds.html>



Signed for and on behalf of:

- Applicant :  *(For self-managed scheme(s) only)*  
The board of directors of the scheme(s)
- (For scheme(s) which is/are not self-managed scheme(s))*  
*(Please insert below the name of the management company of the scheme(s))*
- 

- Name of authorized signatory :  *(For self-managed scheme(s) only)*
- 
- (Insert name of at least one executive director<sup>5</sup> (or above) of the scheme(s))*

- :  *(For non-self-managed scheme(s) with SFC-licensed management company)*

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*(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the management company)*

- :  *(For non-self-managed scheme(s) with management company which is not SFC-licensed)*

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the management company of the scheme(s))*

Signature :

Title / Position :

Date (date / month / year) :

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<sup>5</sup> Equivalents include, for example, CEO, managing director, etc. Essentially, the signatory is expected to be a senior-ranking executive with overall responsibility over the new fund application.



**Section 2.1: Confirmation from management company in respect of change of management company and/or its delegate(s)<sup>6</sup>**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

Scheme change(s) under application *(please tick where applicable)*:

Change of management company

Name of new management company: \_\_\_\_\_

Name of existing management company: \_\_\_\_\_

Change of delegate(s)

Replacement of existing delegate(s)

Name of new delegate(s): \_\_\_\_\_

Name of existing delegate(s): \_\_\_\_\_

Appointment of new delegate(s)

Name of new delegate(s): \_\_\_\_\_

Removal of existing delegate(s)

Name of existing delegate(s) to be removed: \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, in respect of this application and scheme(s) thereunder, hereby confirm and undertake that:

(a) the management company<sup>7</sup> *(please tick one of the following)*:

is licensed or registered under Part V of the Securities and Futures Ordinance to carry out Type 9 regulated activity;

has submitted application to the Commission in applying for the licensing / registration status required for managing investment funds / collective investment schemes in Hong Kong;

is subject to supervision in an overseas jurisdiction with an inspection regime under the list of acceptable inspection regimes ("AIR") published on the Commission's website; and

(b) *(please tick one of the following)*:

the management company<sup>7</sup> and its delegate(s) (if applicable) has/have fulfilled and will at all times fulfil the requirements under 5.2 to 5.5 of the UT Code;

*(applicable only to scheme(s) with proposed investment management delegation*

<sup>6</sup> This confirmation is not applicable in respect of application for removal of existing delegate(s) provided that (i) the confirmation(s)/undertaking(s) previously provided by the management company remains valid; and (ii) the delegate(s) to be removed was/were not appointed and delegated at all times with the investment management functions subject to the authorization conditions imposed by the SFC.

<sup>7</sup> For self-managed scheme, references to the management company are deemed to be references to the investment manager of the scheme.



*arrangement which is currently adopted by other existing SFC-authorized fund(s) under the management of the management company<sup>7</sup> subject to relevant authorization conditions imposed by the SFC* (i) the management company<sup>7</sup> has fulfilled and will at all times fulfil the requirements under 5.2 to 5.5 of the UT Code except for the requirements on key personnel as set out in 5.5(a) to (c) of the UT Code, (ii) the management company<sup>7</sup> has appointed and delegated the investment management functions to an investment manager under a delegation arrangement currently adopted by other existing SFC-authorized fund(s) under the management of the management company<sup>7</sup>, and will at all times appoint and delegate the investment management functions to an investment manager from an AIR in compliance with the applicable requirements under the UT Code and as set out in the Guide<sup>4</sup>; and (iii) the delegate(s) of the management company<sup>7</sup> has/have fulfilled and will at all times fulfil the requirements under 5.2 to 5.5 of the UT Code;

*(applicable to scheme(s) with proposed investment management delegation arrangement which is not currently adopted by other existing SFC-authorized fund(s) under the management of the management company<sup>7</sup>)* (i) the management company<sup>7</sup> has fulfilled and will at all times fulfil the requirements under 5.2 to 5.5 of the UT Code except for the requirements on key personnel as set out in 5.5(a) to (c) of the UT Code, (ii) the management company<sup>7</sup> has appointed and delegated the investment management functions to an investment manager under a delegation arrangement as last consulted with the SFC on (please specify the date)<sup>8</sup>, and will at all times appoint and delegate the investment management functions to an investment manager from an AIR in compliance with the applicable requirements under the UT Code and as set out in the Guide<sup>4</sup>; and (iii) the delegate(s) of the management company<sup>7</sup> has/have fulfilled and will at all times fulfil the requirements under 5.2 to 5.5 of the UT Code; and

- (c) *(applicable only to self-managed scheme(s))* we, as the board of directors of the scheme(s), (i) are of good repute and possess the necessary experience for the performance of our duties pursuant to 5.4 of the UT Code; (ii) have fulfilled and will at all times fulfil the requirements under 5.5 of the UT Code that we have appointed and delegated and will at all times appoint and delegate the investment management functions to an investment manager from an AIR in compliance with the applicable requirements under the UT Code and as set out in the Guide<sup>4</sup>; and (iii) have adequate internal controls and have put in place written procedures in compliance with Chapter 5.5(d) and 5.5(e) of the UT Code; and
- (d) *(applicable only to (i) UCITS using financial derivative instruments extensively for investment purposes or (ii) non-UCITS falling under 8.9 of the UT Code)* the management company<sup>7</sup> and its delegate(s) (if applicable) has/have put in place suitable and adequate risk management and control systems which are commensurate with the risk profile of the scheme(s) to monitor, measure, and manage all the relevant risks in relation to the scheme(s); *(applicable only to UCITS using financial derivative instruments extensively for investment purposes)* and the home regulator of the management company<sup>7</sup> has either approved the risk management policy ("RMP") or has no comments on the RMP as duly filed; and
- (e) none of the management company<sup>7</sup> and its delegate(s) (if applicable) is the subject of any disciplinary proceeding in respect of its license or registration to conduct any regulated activity, or subject to any action by an exchange, regulated market or self-regulatory organisation for breach of any applicable rules, which may materially affect

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<sup>8</sup> Please note that this does not mean an application will be approved or authorized. The application including the proposed arrangement will be subject to vetting by the SFC after submission of the application.



its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity; and

- (f)  (please tick if applicable) the following delegate(s) is/are licensed or registered under Part V of the Securities and Futures Ordinance to carry out Type 9 regulated activity; or is/are subject to supervision in an overseas jurisdiction with an inspection regime under the list of AIR published on the Commission's website; and

Name(s) of AIR delegate(s)	Name(s) of relevant single fund(s) / sub-fund(s) under application

(For the avoidance of doubt, please list out all the delegate(s) (including sub-delegate(s)) of the management company<sup>7</sup>. Please use separate sheet(s), if necessary)

- (g)  (please tick if applicable) the following delegate(s) that is/are not based in an AIR ("non-AIR delegate(s)") is/are affiliate(s) of the management company<sup>7</sup> or the AIR delegate(s) (if applicable) and is/are subject to a system of internal controls and compliance procedures similar to that of the management company<sup>7</sup> or the AIR delegate(s) (if applicable) and/or the corporate group to whom both the management company<sup>7</sup> or the AIR delegate(s) (if applicable) and the non-AIR delegate(s) belong, the requirements set out in Chapter 4 of the Guide<sup>4</sup> in respect of the appointment of the non-AIR delegate(s) have been and will be fulfilled, and we have submitted the required confirmation(s) and undertaking(s) regarding non-AIR delegation arrangement as set out in Section 2.2; and

Name(s) of non-AIR delegate(s)	Name(s) of relevant single fund(s) / sub-fund(s) under application

(For the avoidance of doubt, please list out all the delegate(s) (including sub-delegate(s)) of the management company<sup>7</sup>. Please use separate sheet(s), if necessary)

- (h)  (please tick if applicable) the requirements set out in Chapter 4 of the Guide<sup>4</sup> in respect of the appointment of the following delegate(s) (whether based in an AIR or non-AIR jurisdiction) which is/are *not* currently managing other existing SFC-authorized fund(s) have been and will be fulfilled, and we have submitted the required confirmation(s) and undertaking(s) from the delegate(s) as set out in Section 2.3 below; and

Name(s) of new delegate(s) (whether based in an AIR or non-AIR jurisdiction)

- (i) we shall act independently of the trustee/custodian of the scheme(s) in our dealings with the scheme(s) and have also submitted the required confirmation(s) from the trustee/custodian as set out in Section 2.4<sup>9</sup>.

<sup>9</sup> Applicant is not required to submit the confirmation from the trustee/custodian if the application does not involve change in management company.



Signed for and on behalf of:

- Applicant :  *(For self-managed scheme(s) only)*  
The board of directors of the scheme(s)
- (For scheme(s) which is/are not self-managed scheme(s))*  
*(Please insert below the name of the management company of the scheme(s))*

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- Name of authorized signatory :  *(For self-managed scheme(s) only)*

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the scheme(s))*

- :  *(For non-self-managed scheme(s) with SFC-licensed management company)*

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*(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the management company)*

- :  *(For non-self-managed scheme(s) with management company which is not SFC-licensed)*

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the management company of the scheme(s))*

Signature :

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Title / Position :

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Date (date / month / year) :

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## **Section 2.2: Confirmation and undertaking regarding non-AIR delegation arrangement**

(Note: Part 1 is only required to be completed and submitted to the SFC if the non-AIR delegate(s) is/are appointed by an AIR delegate of the management company<sup>7</sup>)

### **Part 1: Confirmation/undertaking from the AIR delegate**

Please submit this confirmation for each AIR delegate.

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

(please use separate sheet(s), if necessary)

We (the "AIR delegate") hereby confirm and undertake that:

- (a) we further delegate the investment management functions of the scheme(s) to (*please state the name(s) of the non-AIR delegate(s)*) \_\_\_\_\_ that is/are not based in an AIR ("non-AIR delegate(s)"); and
- (b) the non-AIR delegate(s) is/are affiliate(s) of the AIR delegate and is/are subject to a system of internal controls and compliance procedures similar to that of the AIR delegate and/or the corporate group to whom both the AIR delegate and the non-AIR delegate(s) belong, the requirements set out in Chapter 4 of the Guide<sup>4</sup> in respect of the appointment of the non-AIR delegate(s) have been and will be fulfilled.

Signed for and on behalf of:

Name of the AIR delegate : \_\_\_\_\_

Name of authorized signatory : \_\_\_\_\_

(Insert name of at least one executive director<sup>5</sup>  
(or above) of the AIR delegate of the scheme(s))

Signature : \_\_\_\_\_

Title / Position : \_\_\_\_\_

Date (date / month / year) : \_\_\_\_\_



## **Section 2.2: Confirmation and undertaking regarding non-AIR delegation arrangement**

### **Part 2: Undertaking from the non-AIR delegate**

Please submit this confirmation for each non-AIR delegate.

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We (the “delegate”) hereby undertake that, in respect of the scheme(s) under application mentioned above, we will make the appropriate arrangements to enable the management company and its AIR delegate(s) (if applicable) to carry out their duties as set out below:

- (a) report, or procure the delegate to report, to the SFC immediately upon the happening of any material breach, infringement of or non-compliance with any laws and regulations administered by the home/principal regulator whom the delegate is licensed with, i.e. *(please state the name of the home/principal regulator)* \_\_\_\_\_;
- (b) make appropriate arrangements to make available the transaction records relating to the delegated activities of the scheme(s) in Hong Kong for inspection by the SFC on request within a reasonable time;
- (c) enquiries from the SFC relating to the transaction records relating to the delegated activities of the scheme(s) will be answered and the SFC will have access to the relevant officers, directors and other personnel of the delegate for answer to the enquiries; and
- (d) the SFC may instruct accountants / auditors / any other persons to carry out an inspection of the books and records of the scheme(s) and such cost should be borne by the management company or the delegate but not be charged to the scheme(s).

Signed for and on behalf of:

Name of the delegate : \_\_\_\_\_

Name of authorized signatory : \_\_\_\_\_

*(Insert name of at least one executive director<sup>5</sup> (or above) of the non-AIR delegate of the scheme(s))*

Signature : \_\_\_\_\_

Title / Position : \_\_\_\_\_

Date (date / month / year) : \_\_\_\_\_



**Section 2.3: Confirmation from new management company and/or its delegate(s) which is/are not currently managing any other existing SFC-authorized fund(s)**

**Please submit Section 2.1 and this confirmation for each of the proposed management company and/or delegate(s) which is/are not currently managing any other existing SFC-authorized fund(s).**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We hereby confirm and undertake that, in respect of this application:

(a) *(Please tick one of the following boxes)*

the management company<sup>10</sup> has submitted an application to the Commission in applying for the licensing/registration status required for managing investment funds / collective investment schemes in Hong Kong;

the management company<sup>10</sup> is licensed by or registered with the Commission to carry out Type 9 regulated activity;

the management company<sup>10</sup> is subject to the supervision in an overseas jurisdiction with an inspection regime under the list of acceptable inspection regimes (“AIR”) as published in the Commission’s website;

*(applicable only to delegate not subject to supervision in an AIR jurisdiction)*  
“Confirmation and undertaking regarding non-AIR delegation arrangement” (as set out in Section 2.2) has been submitted;

(b) *(applicable to management company<sup>10</sup> that is licensed/registered for managing investment funds / collective investment schemes)*

(i) the registration status of the management company<sup>10</sup> to manage funds is as follows:

Registration status	Home regulator	Date of registration	Restriction attached to the registration (if any) or state Nil (if applicable)

(ii) under its current registration, the management company<sup>10</sup> is allowed to manage investment funds / collective investment schemes;

<sup>10</sup> For confirmation to be submitted from new delegate, references to the management company are deemed to be references to the new delegate.



(iii) *(Please tick one of the following boxes)*

there is no disciplinary history of the management company<sup>10</sup> in the past five years or since the date of registration if it has been registered for less than five years;

the details of the disciplinary history of the management company<sup>10</sup> in the past five years or since the date of registration if it has been registered for less than five years have been submitted under separate sheet(s); and such disciplinary matter(s) does/do not materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;

(iv) *(Please tick one of the following boxes)*

there is no current or pending investigation/disciplinary matter(s) of the management company<sup>10</sup>;

the details of the current or pending investigation/disciplinary matter(s) of the management company<sup>10</sup> is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;

(v) *(Please tick one of the following boxes)*

there is no current or pending investigation/disciplinary matter(s) of the director(s) of the management company<sup>10</sup>;

the details of the current or pending investigation/disciplinary matter(s) of the director(s) of the management company<sup>10</sup> is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect the director(s)' ability in performing his/her/their roles/duties as director(s) of the management company<sup>10</sup> and the justification is also attached;

(c) the management company<sup>10</sup> at all times fulfils the requirements under 5.2 to 5.5 of the UT Code, in particular,

(i) the management company<sup>10</sup>, based on its latest audited financial report (and if more recent, its latest semi-annual report) (at the entity level) or an audit certificate (at the entity level), complies with the financial resources requirements under 5.2(b) to (d) of the UT Code;

(ii) the management company<sup>10</sup> has adequate internal controls and has put in place written procedures (including, if applicable, procedures for compliance with the Fund Manager Code of Conduct) in compliance of Chapter 5.5(d) of the UT Code and, where applicable, 5.5(e) of the UT Code;

(iii) the two key personnel are our dedicated full-time staff and possess at least five years investment experience managing unit trusts or other public funds with reputable institutions in the same type of investments as those in the scheme(s);



- (d) *(Applicable only to management company / investment delegate licensed with the SFC)* the following two key personnel are properly licensed or regulated in Hong Kong to carry out Type 9 regulated activity under the Securities and Futures Ordinance:

Name of the key personnel	CE No.

- (e) *(Applicable only to management company / investment delegate licensed with an overseas jurisdiction)* the two key personnel are:

- properly licensed or regulated in the overseas jurisdiction to carry out asset management activities.
- not required to be licensed or regulated in the overseas jurisdiction to carry out asset management activities.

- (f) we have submitted the following document(s):

- (i) Copy of valid certificate(s) showing their licensing/registration status
- (ii)  *(please tick if applicable)* (If the new management company and/or new delegate(s) is/are a US SEC-registrant):-
- (1) Latest ADV form
  - (2) A copy of the most recent US SEC inspection report is submitted  
 Yes  
 No, please state the reason(s), e.g. no inspection had been conducted on the new management company and/or new delegate(s) (as the case may be)
  - (3) Supporting document(s) to demonstrate full fulfillments of all requirements, conditions, demands, and/or requisitions (where applicable) as stated in the inspection report (as referred to and submitted under (2) above) (e.g. confirmation(s) issued by the new management company and/or new delegate(s) (as the case may be))



Signed for and on behalf of:

Name of the new management company / new delegate :

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Name of authorized signatory :  (For SFC-licensed management company / delegate)

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*(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the management company)*

(For management company / delegate which is not SFC-licensed)

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the management company / delegate)*

Signature :

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Title / Position :

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Date (date / month / year) :

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**Section 2.4: Confirmation from the trustee/custodian in respect of change of management company<sup>11</sup>**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, as the trustee/custodian of the scheme(s), in respect of this application and scheme(s) thereunder, confirm and undertake that we are independent or deemed to be independent of the management company of the scheme(s) for the purpose of 4.7 or 4.8 of the Code on Unit Trusts and Mutual Funds (the "UT Code").

We shall act independently of the management company of the scheme(s) in our dealings with the scheme(s).

Signed for and on behalf of:

Name of trustee/custodian : \_\_\_\_\_

Name of authorized signatory : \_\_\_\_\_

Signature : \_\_\_\_\_

Title / Position : \_\_\_\_\_

Date (date / month / year) : \_\_\_\_\_

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<sup>11</sup> Applicant is not required to submit the confirmation from the trustee/custodian if the application does not involve change in management company.



### **Section 3.1: Confirmation from the trustee/custodian in respect of change of trustee/custodian**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, as the trustee/custodian of the scheme(s), in respect of this application and scheme(s) thereunder, confirm and undertake that:

- (a) we consent to our appointment as trustee/custodian of the scheme(s) listed above;
- (b) we are independent or deemed to be independent of the management company of the scheme(s) for the purpose of 4.7 or 4.8 of the Code on Unit Trusts and Mutual Funds (the "UT Code");
- (c) we shall act independently of the management company of the scheme(s) in our dealings with the scheme(s);
- (d) we shall at all times comply with 4.2-4.4 of the UT Code, in particular,

*(please tick one of the following boxes)*

- (i)  we, based on the latest audited financial report (and if more recent, the latest semi-annual report) (at the entity level) or an audit certificate (at the entity level), comply with the financial resources requirement under 4.3 of the UT Code;
- (ii)  we have obtained a standing commitment or an undertaking from the holding company (which is attached in separate sheet) in compliance with 4.4 of the UT Code;
- (e) nothing should be drawn to the attention of the SFC which would affect our ability to act or perform as the trustee/custodian of SFC-authorized funds in compliance with Chapter 4 of the UT Code<sup>12</sup>;
- (f) we are not the subject of any disciplinary proceeding or subject to any action for breach of any applicable rules, which may materially affect our financial condition, status as a trustee/custodian, or ability to perform our services.

*(please tick if applicable)* In the case of non-UCITS<sup>3</sup>, we hereby further confirm and undertake that:

- (g) the constitutive documents<sup>1</sup> of the scheme(s) contain all the information listed in and conform in substance with the provisions set out in Section 5 of Annex 1 to the Guide on Practices and Procedures for Application for Authorization of Unit Trusts and Mutual Funds ("Guide"); and

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<sup>12</sup> For the purpose of 4.5(f) of the UT Code, Luxembourg scheme(s) may prepare a long form audit report as required under Luxembourg's rules or regulations which assesses the control environment of the scheme(s) and the service providers (including the custodian).





(h) we shall ensure that the constitutive documents<sup>1</sup> of the scheme(s) will at all times contain and conform in substance with the representation set out in paragraph (g) above, and shall act at all times in compliance and in a manner consistent with the UT Code (as may be modified by any applicable waivers or exemptions granted by the SFC);

(Please tick if applicable) In the case of new trustee/custodian which is not currently acting as trustee/custodian for any other existing SFC-authorized funds, we further confirm and undertake that:

- (i)  (for new trustee/custodian whose functions are (i) mainly carried out in acceptable inspection regimes and with the primary supervisory authority being one of those with whom the SFC has co-operation agreements (including Australia, France, Germany, Malaysia, Taiwan, United Kingdom and United States of America); or (ii) carried out by the head/branch office(s) of a banking institution in an acceptable inspection regime whereby a separate arm/office of the banking institution is currently acting as trustee/custodian for SFC-authorized funds) if the SFC is not satisfied with such ongoing regulatory supervision, an independent auditor would be appointed to periodically review our internal controls and systems on terms of reference agreed with the SFC and such report would be filed with the SFC;
- (j)  (for new trustee/custodian whose functions are mainly carried out in Luxembourg or Ireland) our functions are mainly carried out in [(please delete as appropriate) Luxembourg or Ireland];
- (k)  (for new trustee/custodian whose functions are mainly carried out in Hong Kong and/or in a non-acceptable inspection regime) we have submitted the audit certificate with respect to our internal controls and systems, which is in full compliance with Appendix G of the UT Code and the requirements as set out in Chapter 4 of the Guide;
- (l) (for new trustee/custodian only) the information relating to the trustee/custodian below has been accurately completed:

Name and title of the contact person	
Address	
Telephone number	
Fax number	
Email address	
Principal place of operations of the trustee/custodian for the scheme(s)	
Name of primary supervisory authority	
Financial year-end of the trustee/custodian	



Signed for and on behalf of:

Name of trustee/custodian : \_\_\_\_\_  
Name of authorized signatory : \_\_\_\_\_  
Signature : \_\_\_\_\_  
Title / Position : \_\_\_\_\_  
Date (date / month / year) : \_\_\_\_\_



### **Section 3.2: Confirmation from the management company regarding other documents to be submitted for scheme(s) with new trustee/custodian<sup>13</sup>**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, in respect of this application and scheme(s) thereunder, hereby confirm that we have submitted the following documents:

- (a) (i) Audit certificate<sup>14</sup>; or  
(ii) Duly completed and properly executed undertaking regarding internal controls and systems<sup>15</sup> (see Section 3.1(k))
- (b) Certificate of incorporation/registration of the trustee/custodian
- (c) Evidence to demonstrate compliance with 4.2 of the Code on Unit Trusts and Mutual Funds (“UT Code”) (please tick where applicable) e.g.
  - (for a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of Laws of Hong Kong) or a substantial financial institution in Hong Kong) licence issued by the relevant authority
  - (for a subsidiary of a licensed bank or a substantial financial institution) documentation showing such relationship, such as its group organizational chart, together with the licence of such bank or financial institution issued by the relevant authority
  - (for a banking institution or trust company incorporated outside Hong Kong)
    - a) the appropriate certificate issued by its primary supervisory authority; and
    - b) (where applicable) other evidence to demonstrate compliance with 4.2(d) of the UT Code (e.g. legal opinion to the effect that the new trustee / custodian is in substance subject to the duties (including fiduciary duties) imposed on trust companies under general law of trusts)

<sup>13</sup> New trustee/custodian refers to the new trustee/custodian which is not currently acting as the trustee/custodian of existing SFC-authorized fund(s).

<sup>14</sup> For trustees/custodians whose functions are mainly carried out in Hong Kong, an audit certificate will be required with respect to the trustee/custodian’s internal controls and systems in accordance with Appendix G of the UT Code. For new trustees/ custodians whose functions are mainly carried out in a non-acceptable inspection regime, an audit certificate is generally required and applicants should consult with the SFC in advance.

<sup>15</sup> For new trustee/custodian whose functions are (i) mainly carried out in acceptable inspection regimes and with the primary supervisory authority being one of those with whom the SFC has co-operation agreements (including Australia, France, Germany, Malaysia, Taiwan, United Kingdom and United States of America); or (ii) carried out by the head/branch office(s) of a banking institution in an acceptable inspection regime whereby a separate arm/office of the banking institution is currently acting as trustee/custodian for SFC-authorized funds, an undertaking from the trustee/custodian to the SFC stating that if the SFC is not satisfied with such ongoing regulatory supervision, an independent auditor would be appointed to periodically review its internal controls and systems on terms of reference agreed with the SFC and such report would be filed with the SFC will generally be required. Trustees/custodians whose functions are carried out in Luxembourg or Ireland would not normally be required to provide an audit certificate or an undertaking.



- (d)  (please tick if applicable) Evidence to demonstrate compliance with 4.8(b) of the UT Code (e.g. legal opinion)

Signed for and on behalf of:

- Applicant :  (For self-managed scheme(s) only)  
The board of directors of the scheme(s)
- (For scheme(s) which is/are not self-managed scheme(s))  
(Please insert below the name of the management company of the scheme(s))

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- Name of authorized signatory :  (For self-managed scheme(s) only)
- (Insert name of at least one executive director<sup>5</sup> (or above) of the scheme(s))*

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- :  (For non-self-managed scheme(s) with SFC-licensed management company)

*(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the management company)*

- :  (For non-self-managed scheme(s) with management company which is not SFC-licensed)

*(Insert name of at least one executive director<sup>5</sup> (or above) of the management company of the scheme(s))*

Signature :

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Title / Position :

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Date (date / month / year) :

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**Section 4.1: Confirmation and undertaking in respect of change of Hong Kong Representative**

**Part 1: Confirmation from management company**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, in respect of this application and the scheme(s) thereunder, hereby confirm and undertake that:

- a) we will appoint the following entity as the new Hong Kong representative of the scheme(s) and the requirements set out in Chapter 4 of the Guide<sup>4</sup> in respect of the appointment of the Hong Kong representative [*(please delete as appropriate)*] have been fulfilled / will be fulfilled before the approval of the change of Hong Kong representative (if granted by the SFC) becomes effective]; and

Name of Hong Kong representative:	
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- b) we have submitted the required undertaking from the new Hong Kong representative as set out in Part 2 of this Section 4.1.



Signed for and on behalf of:

Applicant :  *(For self-managed scheme(s) only)*  
The board of directors of the scheme(s)

*(For scheme(s) which is/are not self-managed scheme(s))*  
*(Please insert below the name of the management company of the scheme(s))*

---

Name of authorized signatory :  *(For self-managed scheme(s) only)*

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the scheme(s))*

:  *(For non-self-managed scheme(s) with SFC-licensed management company)*

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*(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the management company)*

:  *(For non-self-managed scheme(s) with management company which is not SFC-licensed)*

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*(Insert name of at least one executive director<sup>5</sup> (or above) of the management company of the scheme(s))*

Signature :

Title / Position :

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Date (date / month / year) :

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## **Section 4.1: Confirmation and undertaking in respect of change of Hong Kong Representative**

### **Part 2: Undertaking from new Hong Kong representative**

Name of scheme(s) under application:

Name of the umbrella/single fund(s) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We hereby confirm and undertake that, in respect of the scheme(s) under application mentioned above,

- (i) we agree to act as the Hong Kong representative;
- (ii) we are [*(please delete as appropriate)* currently /not currently] acting as the Hong Kong representative of other existing SFC-authorized fund(s);
- (iii) we will perform the duties required of a Hong Kong representative under the Code on Unit Trusts and Mutual Funds (“UT Code”) upon the SFC’s approval of the change of Hong Kong representative becoming effective.

We also confirm that:

- (iv) *(applicable only to Hong Kong representative which is a trust company)* we are an affiliate of an authorized financial institution defined under the Securities and Futures Ordinance (“SFO”); and

- (v) *(please tick where applicable)*

- we have obtained the following licensing or registration status required for compliance with 9.4 of the UT Code:
  - licensing or registration status under the SFO;
  - registration status under Part VIII of the Trustee Ordinance (Chapter 29 of the laws of Hong Kong);
- we are in the process of applying for the following licensing or registration status required for compliance with 9.4 of the UT Code:
  - licensing or registration status under the SFO.
  - registration status under Part VIII of the Trustee Ordinance (Chapter 29 of the laws of Hong Kong).

Signed for and on behalf of:

Name of the Hong Kong representative : \_\_\_\_\_

Name of authorized signatory : \_\_\_\_\_

Signature : \_\_\_\_\_

Title / Position : \_\_\_\_\_

Date (date / month / year) : \_\_\_\_\_



Annex

**Confirmation from the custodian in respect of appointment of a custodian of a public OFC<sup>16</sup>**

**Please submit this confirmation together with the “Application Form for Approval of Appointment of Director, Custodian or Investment Manager of an Open-ended Fund Company”, in addition to the confirmation(s) and undertaking(s) in Section 3.**

Name of the public OFC/ relevant sub-fund(s) under application:

Name of the public OFC (“Public OFC”) : \_\_\_\_\_

Name of the relevant sub-fund(s) : \_\_\_\_\_

*(please use separate sheet(s), if necessary)*

We, as the custodian of the Public OFC, confirm and undertake that:

- (a) nothing should be drawn to the attention of the SFC which would affect our ability to act or perform as the custodian of SFC-registered OFC in compliance with Chapter 7 of the OFC Code[; and]
- (b) *[(please delete as appropriate) (applicable to non-Hong Kong custodian<sup>17</sup> as defined in the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”)) for the purpose of rule 115(1) of the OFC Rules, a process agent meeting the requirements in rule 2 of the OFC Rules has been appointed. We undertake to give notice to the Public OFC of any matters relating to the process agent that are required for the record kept by the Public OFC in accordance with rule 115(6) of the OFC Rules].*

Signed for and on behalf of:

Name of custodian : \_\_\_\_\_

Name of authorized signatory : \_\_\_\_\_

Signature : \_\_\_\_\_

Title / Position : \_\_\_\_\_

Date (date / month / year) : \_\_\_\_\_

<sup>16</sup> As defined in the Code on Open-ended Fund Companies (“OFC Code”).

<sup>17</sup> This does not apply to a non-Hong Kong custodian that is a registered non-Hong Kong company (as defined in section 2(1) of the Companies Ordinance (Cap. 622)).