

Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds

This FAQ is prepared by the Investment Products Division and aims to provide basic information to market practitioners concerning the Code on Unit Trusts and Mutual Funds effective on 1 January 2019 (“UT Code”). Applicants are encouraged to contact the relevant case team in the Investment Products Division of the Securities and Futures Commission (the “SFC”) if in doubt on any specific issues arising from the application/interpretation of the UT Code. Please note that each application for authorization is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Notes: (1) For ease of reference, collective investment schemes that are generally known as unit trusts or mutual funds are referred to as “funds” in the following FAQ.

(2) Unless otherwise specified, the term “ETF” used in this FAQ shall cover SFC-authorized passive ETF, active ETF and listed unit/share class of unlisted fund.

| | Question | Answer |
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| Basic Requirements for Fund Authorization | | |
| 1. | Why should a fund require SFC authorization? | It is the SFC’s policy intention that funds that are offered to the public in Hong Kong are subject to the prior authorization of the SFC, unless one of the exemptions under section 103 of the Securities and Futures Ordinance (“SFO”) applies. For example, funds that exclusively target “professional investors” ¹ do not require SFC |

¹ The term “professional investors” is defined in section 1 of Part 1 of Schedule 1 to the SFO and in the Securities and Futures (Professional Investor) Rules.

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| | | <p>authorization. The SFC derives its fund authorization powers from section 104 of the SFO.</p> <p>The UT Code sets out the basic requirements that an SFC-authorized fund must comply with. The UT Code is available at the SFC website.</p> |
| 2. | What does SFC authorization involve? | <p>In order to authorize a fund which intends to offer its products to the public, we first consider the acceptability of:</p> <ul style="list-style-type: none"> ▪ the fund's legal form and structure ▪ the fund's key operating parties, including the fund manager and the trustee/custodian ▪ the fund's operational features, e.g. dealing frequency, valuation, etc. ▪ the fund's investment nature and compliance with the relevant requirements of the UT Code ▪ the disclosure quality of the fund's offering document ▪ the fund's compliance with the UT Code's post-authorization obligations, e.g. notice period for fee increases, pricing errors, etc. <p>Depending on the structure of the fund and the level of compliance with the UT Code, we may also consider other factors that are relevant to a specific fund application.</p> |
| 3. | What types of funds would be considered for authorization? | <p>There are two broad categories of funds in the UT Code:</p> <ul style="list-style-type: none"> ▪ <u>Chapter 7 Funds</u>: generally referred to as plain vanilla funds primarily investing in equities, bonds and/or other funds ▪ <u>Chapter 8</u>: Specialized Schemes, including: |

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| | | <ul style="list-style-type: none"> i. Money Market Funds ii. Unlisted Index Funds iii. Hedge Funds iv. Index Tracking Exchange Traded Funds (“Passive ETF”) v. Structured Funds vi. Funds that invest extensively in financial derivative instruments vii. Listed open-ended funds (also known as active ETFs) viii. Closed-ended funds |
| Fund’s Structure and Domicile | | |
| 4. | What should I look out for when setting up umbrella fund structures? | <p>An umbrella fund structure is allowed under the UT Code. However, you should be careful about the types of sub-funds established under the umbrella fund.</p> <p>In general, we expect sub-funds in the same umbrella should share similar investment objectives and risk profiles. For example, a hedge fund or a fund with guaranteed features should not be established as a sub-fund under an existing umbrella that contains plain-vanilla funds primarily investing in equities, bonds and/or other funds.</p> |
| 5. | Can I domicile my fund in an overseas jurisdiction? | <p>Yes. The SFC, in general, adopts an open architecture towards admitting and authorizing overseas funds that wish to offer their products to the retail public in Hong Kong, bearing in mind investors’ interests.</p> <p>The guiding principle is that the legal and regulatory framework for these funds and the enforcement of investors’ rights in a particular overseas jurisdiction should provide a level of investor protection comparable to that offered in Hong Kong.</p> |

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| | | <p>For funds that are domiciled in one of the “Recognized Jurisdictions” as set out in the http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html page at the SFC website, the authorization process can be streamlined in certain areas. Please also read Q.6 below.</p> |
| 6. | <p>How does the “Recognized Jurisdiction Schemes” (“RJS”) concept work?</p> | <p>The RJS concept only applies to Chapter 7 Funds (see Q.3 for details). It does not apply to Specialized Schemes under Chapter 8.</p> <p>Funds that are established in one of the RJS jurisdictions and are in compliance with similar regulatory requirements as those contemplated in Chapter 7 of the UT Code are generally deemed to have complied in substance with the core investment restrictions, operational and structural requirements (e.g. meeting procedures for investors) imposed under the UT Code. That said, the funds must still satisfy the SFC as to the eligibility of the fund manager, trustee/custodian, and that the disclosure and post-authorization obligations under the UT Code have been fulfilled. Funds with guaranteed features will be required to comply with the applicable requirements (including requirements on guarantor(s)) under Chapter 7 of the UT Code.</p> <p>A list of the overseas jurisdictions for RJS is set out at the SFC website (see Q.5 above).</p> |
| 7. | <p>If my fund is a Specialized Scheme but domiciled in one of the RJS, presumably this fund will have to fully comply with the UT Code requirements. Is this correct?</p> | <p>Yes. If there are any legal or regulatory difficulties that would make it unduly burdensome for your fund structure to comply with the UT Code in full, you should consult us as soon as practicable before proceeding any further with your application.</p> |

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| Fund Manager's Eligibility – Some Practical Issues | | |
| 8. | As a fund manager, how would I know if I am eligible to manage an SFC-authorized fund? | <p>The key requirements of a fund manager for an SFC-authorized fund are:</p> <ul style="list-style-type: none"> ▪ Having sufficient financial, technical, and human resources ▪ Experience ▪ Integrity and honesty ▪ Proper internal controls ▪ Proper regulatory oversight of the fund's activities by a securities regulator <p>One of the key criteria for a fund manager is that the fund manager must be licensed or registered with and properly supervised by the SFC or a securities regulator in an Acceptable Inspection Regime ("AIR"). The list of AIR is available in the http://www.sfc.hk/webEN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html page at the SFC website.</p> <p>For Hedge Funds which fall under Chapter 8.7 of the UT Code, there are specific requirements on the eligibility of a hedge fund manager. You should therefore ensure that you comply fully with the general requirements as well as other specific obligations under the UT Code.</p> <p>Funds that are self-managed should look closely at the requirements set out in Chapter 5.7 to 5.9 including, among other things, the requirement that the fund's investment management function should be delegated at all times to a qualified investment delegate in compliance with Chapter 5. You should consult the SFC in case of doubt.</p> |
| 8A. | What are the factors that the SFC may take into account when assessing the acceptability of the | Relevant requirements are set out in Chapter 5 of the UT Code. |

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| | management company of futures and options funds? | |
| 8B. | Can an individual act as the key personnel for one or more management companies and/or investment delegates? | <p>Yes, an individual can be designated as the key personnel for one or more management companies and/or investment delegates, provided that these entities are within the same fund management group and the individual is able to dedicate sufficient time and attention in the management of the relevant SFC-authorized funds for these entities.</p> <p>For management companies and investment delegates within a well-established fund management group, an individual who possesses at least five years investment experience (which may not be in the management of public funds) may be designated as the key personnel for these entities, provided that the management companies and investment delegates on a group-wide basis is able to demonstrate that it possesses the requisite oversight, monitoring and supervision systems to administer public funds. A well-established fund management group means a fund management group of at least five years of establishment in managing public funds with good regulatory records. See Note(1) to 5.5(a) of the UT Code which sets out the factors for assessment of a well-established fund management group.</p> <p>In any event, all management companies and investment delegates of SFC-authorized funds should maintain proper and up-to-date records regarding their key personnel.</p> |
| 9. | How does the concept of “Acceptable Inspection Regime” (“AIR”) work? | <p>AIR is a concept that helps the SFC maintain regulatory oversight over overseas fund managers. In general, there should be a Memorandum of Understanding entered into by the SFC with the securities regulator in each of the AIR jurisdictions to co-operate and provide mutual assistance and exchange of information regarding the activities of fund managers licensed/registered in the relevant overseas jurisdiction. In determining whether an overseas jurisdiction could be an AIR, the</p> |

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| | | <p>SFC expects the relevant overseas regulatory authority to share common and comparable supervisory principles over activities of investment managers with the SFC and to carry out inspections of the investment managers within its jurisdiction in a manner generally consistent with the inspections conducted by the SFC.</p> <p>Fund managers of an SFC-authorized fund are required to be regulated by the relevant securities regulator in an AIR. In general, this requirement applies to the investment management operations of the fund management company and/or those of its delegates who carry out investment management functions.</p> <p>Upon receipt of an application by an overseas fund manager for SFC authorization to manage an SFC-authorized fund, we normally conduct a regulatory check on the fund manager with the relevant overseas securities regulator(s).</p> <p>The SFC regularly reviews the list of AIR jurisdictions. If and when we consider it appropriate, the list may be expanded to include new jurisdictions.</p> |
| 10. | As a fund manager, can I delegate my investment management functions to a third party? | <p>Yes, the UT Code allows a fund manager to delegate its investment management functions. However, the fund manager is not allowed to delegate its responsibilities. Please see Chapter 5.5(e) of the UT Code.</p> <p>Both the principal and the delegate are expected to meet the eligibility criteria for a fund manager as mentioned in Q.8, Q.8B and Q.9 above. Investment delegates are not subject to the minimum capital requirements of HK\$10 million (or its equivalent in foreign currency) under 5.2(b) of the UT Code.</p> |
| 11. | Could I, a fund manager, be able to delegate my management functions to someone licensed/registered in a non-AIR? | <p>In general, an SFC-authorized fund should adhere to the requirement under Chapter 5.1 of the UT Code that its fund manager and investment delegate(s) for the investment management functions are regulated by the SFC or the relevant regulator in an AIR, save as permitted below.</p> |

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| | | <p>Fund managers of SFC-authorized funds which are licensed by the SFC or subject to regulatory supervision in an AIR and who wish to delegate their investment management functions to their affiliates in a non-AIR jurisdiction (“Non-AIR Delegation”) should refer to the Guide on Practices and Procedures for Application for Authorization of Unit Trusts and Mutual Funds which sets out guidance for accepting Non-AIR Delegation.</p> <p>We have already authorized various funds with Non-AIR Delegation in jurisdictions such as Belgium, Canada, Japan, Korea, Netherlands and Singapore.</p> <p>Non-AIR Delegation will be considered on a case-by-case basis. Fund managers should discuss any plan of new Non-AIR Delegation arrangement with the SFC in case of doubt.</p> |
| General obligations of trustee/custodian and Appendix G to the UT Code | | |
| 11A. | What are the standards expected of a trustee/custodian for the purpose of Chapter 4.5(a)(iii) of the UT Code? | Relevant requirements have been codified in Chapter 4.5(i) of the UT Code. |
| 11B. | What should custodians of SFC-authorized funds structured in corporate form note in complying with 4.5(b) of the UT Code? | <p>SFC-authorized funds constituted in the form of a mutual fund corporation may be subject to an authorized share capital. Allotment of shares in excess of the corporation’s authorized share capital is generally invalid.</p> <p>Trustees/custodians of all SFC-authorized funds are expected to perform an important independent function and have specific duties on the matters set out in 4.5 of the UT Code. As such, in complying with 4.5(b) of the UT Code, custodians of SFC-authorized mutual fund corporations are particularly reminded that they should have in place adequate internal controls and systems to ensure, among other things,</p> |

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| | | <p>that no shares will be issued in excess of the number of authorized shares and that all issuance of shares will comply the applicable legal and regulatory requirements. For the avoidance of doubt, as a custodian of an SFC-authorized fund, the custodian of any such SFC-authorized mutual fund corporation is expected to duly discharge this obligation under the UT Code notwithstanding the board of directors of the mutual fund corporation may be legally responsible for issuance of shares under the constitutive documents or the laws of the place of incorporation of the mutual fund corporation.</p> |
| 11C. | <p>What are the standards expected of a trustee/custodian for the purposes of 4.5(b), (c), (e), (g) and (h) of the UT Code?</p> | <p>Trustee/custodian is required to take reasonable care in discharging its obligations under 4.5(b), (c), (e), (g) and (h) of the UT Code. Trustees/custodians should ensure their obligations are duly discharged and their accountability to the funds and investors are not affected even though third parties (“Third Parties”) may be engaged to carry out functions or operations in relation to the funds.</p> <p>With respect to Appendix G of the UT Code, the trustee/custodian should exercise reasonable care to establish in its internal controls and systems a framework to ensure that the internal controls and systems of the Third Parties are properly designed and operate effectively in a manner to achieve the corresponding key control attributes as set out in paragraph 8A (9), (10), (11), (12) and (13) of Appendix G of the UT Code. This may include procedures such as:</p> <ul style="list-style-type: none"> (i) initial assessment of the Third Parties engaged; (ii) regular review of the Third Parties’ internal control policies and procedures; and (iii) ongoing reporting and exceptions reporting by the Third Parties. <p>The above procedures (i) to (iii) are not meant to be exhaustive and trustees/custodians shall put in place proper internal controls and systems that are adequate and sufficient for achieving the key control attributes in Appendix G of the UT Code.</p> |

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| | | <p>Sole reliance on confirmations/representations from the Third Parties (or the fund/management company) in meeting the relevant key control attributes would not satisfy the requirements on trustee/custodian for the purpose of Appendix G of the UT Code.</p> |
| Waiver from the UT Code Requirements | | |
| 12. | <p>If I wish to obtain a waiver from the UT Code requirements, what should I do?</p> | <p>If you wish to apply for a waiver from any of the UT Code requirements, you should prepare a submission that addresses, at the minimum, the following key aspects:</p> <ul style="list-style-type: none"> ▪ clear and distinctive reasons in support of the waiver ▪ the impact on the fund, its investors or any other parties if the waiver is granted <p>You should note that the issue of costs alone is not sufficient justification for any waiver from compliance with the UT Code.</p> <p>Please note that authorization conditions may be imposed in certain circumstances.</p> |
| Authorization of Index Funds | | |
| 13. | <p>Will the SFC consider an index on commodities futures as an acceptable index for the purpose of Chapter 8.6(a) of the UT Code?</p> | <p>The SFC is prepared to accept a commodities futures index provided that it satisfies the index acceptability requirements in Chapter 8.6(e) of the UT Code. In view of the specific nature and risk profile of indices on commodities futures, an index fund that tracks a commodities futures index is required to make additional risk warnings and disclosures (e.g. in relation to the risks inherent in commodities and futures contracts) in its offering documents. Where an index fund seeks to track, replicate, or correspond to a commodities futures index by direct investment in constituent futures contracts, the relevant requirements in Chapter 8.8 of the UT Code will then be applicable.</p> |

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| Authorization of unlisted leveraged funds (Leveraged Funds) | | |
| 13A. | What are Leveraged Funds? | <p>“Leveraged Funds” refer to unlisted leveraged funds or unlisted share/unit classes for listed Leveraged Products (as defined in the Circular on Leveraged and Inverse Products (“L&I Circular”)), which typically aim to deliver a daily return equivalent to a multiple of the underlying index return that they track.</p> <p>Unlike Leveraged Products that are traded on the exchange at the market price on an intraday basis, Leveraged Funds are sold through intermediaries based on the dealing day-end net asset value (NAV) and are dealt at a single valuation point with no access to intraday liquidity in an open market.</p> <p>Save for the difference in the trading and dealing arrangements, Leveraged Funds generally share the same product features and present primarily the same regulatory issues as with L&I Products (as defined in the L&I Circular). As such, we expect that requirements on L&I Products, including those in the L&I Circular, are applicable to Leveraged Funds to the extent possible as amended in the FAQs below.</p> |
| 13B. | Are there any specific requirements on the product structure of Leveraged Funds? | <p>Leveraged Funds shall be subject to a maximum leverage factor of two-time (2X) and a requirement for minimum daily dealing frequency. We generally expect swap-based and futures-based Leveraged Funds to comply with 8.8 of the UT Code. Please refer to FAQ 1A on Leveraged and Inverse Products for details.</p> <p>We will only accept applications for Leveraged Funds subject to the full implementation of the investor protection measures set out in the L&I Circular and as amended by the FAQs in this section.</p> |
| 13C. | Are we accepting applications for unlisted | We do not, at this stage, intend to accept applications for Inverse Funds which |

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| | inverse funds or unlisted share/unit classes for listed Inverse Products (as defined in the L&I Circular) (together, “Inverse Funds”)? | typically aim to deliver the opposite of the daily return of the underlying index that they track. This is due to the fact that the effect of path dependency is generally more pronounced for Inverse Funds than Leveraged Funds. In addition, investors will not be able to sell their investments in Inverse Funds in a timely manner when there is significant intraday market volatility given that Inverse Funds can only be dealt at a single valuation point with no access to intraday liquidity in an open market. |
| 13D. | Are there any specific naming convention for Leveraged Funds? | Leveraged Funds should follow similar naming convention for Leveraged Products. For example, a two-time Leveraged Fund should be called “[Issuer][Index] Daily (2x) Leveraged Fund”. The Chinese name of the Leveraged Fund is expected to be [發行人][指數]每日槓桿(2x) 基金. |
| 13E. | What are the offering documents disclosure requirements for Leveraged Funds? | Please refer to paragraphs 12 and 13 of the L&I Circular and FAQ 4 on Leveraged and Inverse Products for details. There should be additional risk warnings highlighting that investors can only redeem at day-end NAV and are unable to exit intraday in the event of significant volatility. |
| 13F. | Is the manager of a Leveraged Fund required to make available a “performance simulator”? If so, what information is required to be displayed? | Yes, the manager of a Leveraged Fund is required to make available a “performance simulator”. Please refer to paragraph 18 of the L&I Circular and FAQ 5 on Leveraged and Inverse Products for details. |
| 13G. | Are the FAQs on Leveraged and Inverse Products applicable to Leveraged Funds? | FAQs 1, 1A, 2, 4-11, 13-17 on Leveraged and Inverse Products are equally applicable to Leveraged Funds. |

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| Authorization of ETFs/Listed Funds | | |
| 14. to 16. | These FAQs have been removed. | Please refer to the Frequently Asked Questions on Exchange Traded Funds and Listed Funds for details. |
| Authorization of structured funds | | |
| 16A. | Can a structured fund receive unlisted collective investment schemes as collateral? | <p>We generally do not expect an SFC-authorized fund to accept unlisted collective investment schemes as collateral or, in the case of an unfunded swap arrangement, invested assets.</p> <p>However, we are prepared to accept, on a case by case basis, an SFC-authorized structured fund to invest in unlisted collective investment scheme(s) as invested assets under an unfunded swap structure provided that (i) the performance of the structured fund directly relates to that of the unlisted collective investment scheme(s); and (ii) the unlisted collective investment scheme(s) is/are SFC-authorized scheme(s).</p> <p>Please also refer to Q.16C below in respect of the collateral requirements applicable to SFC-authorized funds (including structured funds).</p> |
| Authorization of structured funds/funds that invest in financial derivative instruments | | |
| 16B. | Structured funds and funds that invest extensively in financial derivative instruments are subject to, among other things, the requirements in Chapter 8.9(f)(ii) of the UT Code that the counterparties to over-the-counter derivative transactions or their guarantors shall be “substantial financial institutions”. What kind of institution would be considered as a “substantial financial institution” for the purpose | Relevant requirements are set out in Chapter 3.13 and 7.28(b) of the UT Code. |

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| | of Chapter 8.9(f)(ii) of the UT Code? | |
| Collateral requirements | | |
| 16C. | What are the collateral requirements applicable to SFC-authorized funds? | <p>The collateral requirements for SFC-authorized funds are set out in Chapter 7.36 to 7.38 of the UT Code. Collateral received by SFC-authorized funds is generally envisaged to be bonds, listed stocks, cash or cash equivalent.</p> <p>In line with the requirement in 7.36(l) of the UT Code, we do not expect an SFC-authorized fund to accept synthetic ETFs as collateral.</p> <p>Despite the technical difference between a funded swap and an unfunded swap, the invested assets under an unfunded swap structure essentially serve the same purpose as that of the collateral under a funded swap structure, i.e. to limit a fund's risk exposure to an individual counterparty. Accordingly, invested assets should also comply with the collateral requirements applicable to SFC-authorized funds.</p> |
| Investment in real estate investment trusts (“REITs”) by SFC-authorized funds | | |
| 17. | Are SFC-authorized funds allowed to invest in the initial public offering of a REIT seeking to list on a stock exchange? | SFC-authorized funds are currently allowed to subscribe for securities offered in initial public offerings seeking to list on a stock exchange. These subscriptions are normally conditional on the securities being successfully listed on a stock exchange. This flexibility applies equally to REITs seeking a stock exchange listing. |
| 18. | Does Chapter 7.11 of the UT Code still apply to REITs? Should REITs be considered as “collective investment schemes” or “securities” for the purpose of complying with Chapter 7 requirements? | Relevant requirements have been codified under 7.14 of the UT Code. |
| 19. | Are SFC-authorized schemes required to obtain approval from their shareholders/unitholders | The offering document of SFC-authorized schemes should clearly state their investment objectives, policies and investment restrictions. Therefore, where fund |

| | Question | Answer |
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| | and serve them advance notices if they now commence investments in listed REITs? | managers make use of the flexibility to invest in listed REITs, they should determine and, where appropriate, seek legal advice, as to whether they have to seek approval from investors or provide them with prior notice, in accordance with the terms of the constitutive documents and offering documents of their funds. |
| Investment in ETFs by SFC-authorized funds | | |
| 20. | Does the SFC consider ETFs as listed securities or Collective Investment Schemes (CIS) for the purpose of Chapter 7 of the UT Code? | Relevant requirements have been codified in the preamble under “Investment in other schemes” in Chapter 7 of the UT Code. |
| Securities financing transactions | | |
| 21. | What information is required to be disclosed to the investors regarding securities financing transactions (as defined in 7.32 of the UT Code) of a fund? | Relevant requirements are set out in 7.32 to 7.35 of the UT Code. C2 of Appendix C of the UT Code sets out the disclosure requirements in the funds’ offering document regarding securities financing transactions. |
| 21A. | This FAQ has been removed. | Please refer to the Frequently Asked Questions on Exchange Traded Funds and Listed Funds for details. |
| Waivers from compliance with certain provisions of the UT Code granted since 1 April 2005 | | |
| 22. | This FAQ has been removed. | Please refer to the Frequently Asked Questions on Exchange Traded Funds and Listed Funds for details. |
| 23. | Pursuant to Chapter 8.6(a) of the UT Code, the principal objective of an index fund is to track, replicate or correspond to an index on equities, debts or other securities, with an aim of providing or achieving investment results or returns that closely match or correspond to the | Relevant requirements have been codified in 8.6(a) of the UT Code. |

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| | performance of the index. Is a SFC-authorized index fund allowed to track or replicate a commodity futures index? | |
| 24. | Chapter 10.8 of the UT Code provides that where redemption requests on any one dealing day exceed 10% of the total net asset value or total number of units/shares in issue, redemption requests in excess of 10% may be deferred to the next dealing day. Can a SFC-authorized fund impose another threshold for deferral of redemptions? | The SFC will consider a higher or lower threshold for deferral of redemptions on a case-by-case basis, taking into account specific circumstances of the fund and having regard to the overall measures that the fund will put in place to safeguard investors' interests. The deferral mechanism (including the threshold) should be clearly disclosed in the offering documents. |
| Appendix C | | |
| 25. | This FAQ is obsolete and has been removed. | |
| 26. | This FAQ is obsolete and has been removed. | |
| 27. | If a fund has a master offering document prepared overseas, may I submit a Hong Kong Offering Document instead of the full version of the master offering document? | <p>The basic disclosure requirements for a fund's offering document are set out in Appendix C of the UT Code. The Hong Kong Offering Document must satisfy the UT Code requirements. If the Hong Kong Offering Document relies on references or information in the master offering document to form a complete disclosure document, the SFC may require that the master offering document also be authorized.</p> <p>An overseas fund should not circulate its master offering document to the Hong Kong public if the document has not been authorized by the SFC.</p> |

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| 27A. | C2 of Appendix C of the UT Code has been revised. Are there any changes to the requirement to disclose, where appropriate, the risk management (“RMP”) in place? | No, there is no change to the existing requirements that funds (including UCITS funds) which may invest extensively in derivatives for investment purposes or with a net derivative exposure (as defined under the UT Code) of more than 50% of the funds’ net asset value (as the case may be) are required to disclose, among other things, the RMP in place in their offering documents. |
| 27B. | Does a fund manager need to approach the SFC before it offers a new share class which is denominated in a restricted currency (such as Renminbi) or with some special features in respect of an SFC-authorized fund? | <p>Pursuant to C5 of Appendix C of the UT Code, the offering document of an SFC-authorized fund should contain a description of the different types of units/shares, including their currency of denomination. As such, the types of share classes that are offered to the public in Hong Kong for subscription should be clearly disclosed in the offering document.</p> <p>If a fund manager would like to offer a new share class in relation to an SFC-authorized fund:</p> <ul style="list-style-type: none"> (a) which is denominated in a restricted currency (such as Renminbi (“RMB”)); (b) which is an unlisted unit/share class of an ETF; (c) which is a listed unit/share class of an unlisted fund; or (d) with some special features that may be prejudicial to the interests of investors, it should consult the SFC in advance before adding the disclosure of such share class in the offering document and offering it to the public in Hong Kong, as this may affect the basis of the SFC’s authorization of the fund. <p>With regard to (a) above, where a manager of an SFC-authorized UCITS fund would like to offer RMB share class(es) to the public in Hong Kong, we would expect substantive management of the RMB related operations (e.g. RMB foreign exchange transactions and related currency hedging) to be carried out by an SFC-licensed manager in Hong Kong in order to provide the SFC with an appropriate regulatory handle. In this connection, managers are expected to make such offering either through:</p> |

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| | | <p>(i) an SFC-authorized Hong Kong domiciled feeder fund (managed by an SFC-licensed manager) investing into the SFC-authorized UCITS fund as its underlying scheme; or</p> <p>(ii) an SFC-authorized UCITS fund provided that it has appointed an SFC-licensed manager as its investment manager with discretionary investment management power to manage the RMB foreign exchange transactions and the related currency hedging (where applicable).</p> <p>In addition to consulting the SFC in advance, with regard to (b) and (c) above, offering these new share class(es) in relation to an SFC-authorized fund will require SFC's prior approval pursuant to 11.1 of the UT Code. The fund manager should refer to 8.6(a)(c) and 8.10(c) of the UT Code for the relevant requirements.</p> <p>An example which falls within (d) above is where a new share class of a fund to be offered pursues a specific investment strategy which is not generally applicable to the fund as a whole, this may be prejudicial to investors in other existing share classes of the fund. This is because the investment strategy of the new share class will offer new investment features which are not available to investors of existing share classes and this may affect the investment returns and risk profile of the fund as a whole. Fund managers are reminded that the SFC has, and reserves, the right to amend or impose new conditions on, or withdraw its authorization of SFC-authorized funds as it considers appropriate pursuant to sections 104 and 106 of the SFO.</p> <p>In any event, if a fund manager would like to offer a new share class in relation to an SFC-authorized fund which does not fall within (a) to (d) above, the fund manager must update the offering document and file it with the SFC within one week from the date of issuance pursuant to Chapter 11.1B of the UT Code.</p> |

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| Miscellaneous | | |
| 28. | Do I have to include the Enhanced Disclosure Box in advertisements? | Please refer to Question 6A of the Frequently Asked Questions on Advertising Materials of Collective Investment Schemes Authorized under the Product Codes . |
| 29. | Can I use gifts in promoting my fund? | In order to help protect investors from being distracted by the gifts without paying sufficient attention to the features and risks of the specific investment product, all marketing materials of investment products authorized by the SFC should not contain an offer of gift, other than a discount of fees and charges, in promoting a specific investment product. |
| 30. | This FAQ is obsolete and has been removed. | |
| 31. | This FAQ is obsolete and has been removed. | |
| 32. | This FAQ has been removed. | |
| 33. | When can the time frame for payment of redemption money exceed the one-calendar month requirement under Chapter 6.14 of the UT Code? | <p>Redemption is a fundamental right of holders of a scheme. It is therefore important that the requirement of the payment of redemption money to the holder within one calendar month from the receipt of the redemption request under Chapter 6.14 of the UT Code is strictly adhered to and redemption money is paid to holders on a timely basis.</p> <p>It is only in exceptional circumstances where the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus making the payment of the redemption money within one calendar month not practicable, the scheme could have a longer redemption payment period exceeding one calendar month. In such a case, proper records must be kept by the management company to demonstrate and justify this (e.g. the scheme is directly subject to or adversely affected by the restrictions which</p> |

| | Question | Answer |
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| | | <p>are beyond the reasonable control of the management company) and holders and the SFC must be properly and promptly informed. In any event, the redemption money must be paid to holders as soon as possible after the receipt of the proceeds by the scheme.</p> |
| <p align="center">Disclosure of information to investors regarding the fund's distribution policy</p> | | |
| <p>34.</p> | <p>What information is required to be disclosed to the investors if a fund may pay dividend out of its capital?</p> | <p>The offering documents of SFC-authorized funds should clearly state their distribution policy.</p> <p>For an SFC-authorized fund which may pay dividend out of capital, its offering documents should include a prominent risk warning that the fund may pay dividend out of capital and disclose the associated risks and impact on investors.</p> <p>Where an SFC-authorized fund pays dividends out of gross income <u>and</u> charges / pays all or part of the fund's fees and expenses to / out of capital, resulting in an increase in distributable income for the payment of dividends, its offering document should also include a prominent risk warning that the fund charges all or part of its fees and expenses to capital which means that the fund may effectively pay dividend out of capital and disclose the associated risks and impact on investors.</p> <p>For the avoidance of doubt, the disclosure and other requirements mentioned in FAQs 34, 34A, 34B and 34C shall not be applicable to a fund or a share class of a fund which does not pay dividend or make any distribution at all according to its distribution policy (for example, any accumulation share class of a fund.)</p> <p>Subject to the transitional period for existing SFC-authorized funds set out in FAQ 34C in respect of the Dividend Composition Information (as defined in (d) below), at a minimum, prominent disclosure to the following effect should be made in the fund's offering documents (including KFS):</p> |

| | Question | Answer |
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| | | <p>a. (i) the fund / the investment manager may at its discretion pay dividend out of the capital of the fund; or</p> <p>(ii) the fund / the investment manager may at its discretion pay dividend out of gross income while charging/ paying all or part of the fund's fees and expenses to/ out of the capital of the fund, resulting in an increase in distributable income for the payment of dividends by the fund and therefore, the fund may effectively pay dividend out of capital.</p> <p>b. Payment of dividends out of capital amounts to a return or withdrawal of part of an investor's original investment or from any capital gains attributable to that original investment.</p> <p>c. Any distributions involving payment of dividends out of the fund's capital or payment of dividends effectively out of the fund's capital (as the case may be) may result in an immediate reduction of the net asset value per share/unit;</p> <p>d. the compositions of the dividends (i.e. the relative amounts paid out of (i) net distributable income and (ii) capital) for the last 12 months ("Dividend Composition Information") are available by the investment manager / Hong Kong representative on request and also on the fund's website (if any); and</p> <p>e. the fund / the investment manager may amend the policy with respect to the matters mentioned in (a)(i) and/or (a)(ii) above subject to the SFC's prior approval and by giving not less than one month's prior notice to investors.</p> <p>The information referred to in (a), (b) and (c) should also be disclosed in all marketing materials of the fund in a prominent and upfront manner (e.g. in the risk disclosure box of the relevant marketing materials).</p> |

| | Question | Answer | | | | | | | | | | | | | | | | |
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| 34A. | Does the SFC require the Dividend Composition Information to be disclosed in a particular manner? | <p>Subject to the transitional period for existing SFC-authorized funds set out in FAQ 34C in respect of the Dividend Composition Information, Dividend Composition Information should be clearly presented with the minimum information below in respect of each of the relevant distributing share class of the fund and made available by the investment manager / Hong Kong representative on request and on the fund’s website (if any).</p> <p>An illustrative example showing the minimum information (inclusive of the warning statement in italic below) expected to be disclosed is set out below.</p> <p>.....</p> <p>[Fund name – share class [Y]]: Composition of the dividend payments:</p> <table border="1" data-bbox="969 823 2018 1155"> <thead> <tr> <th>For the month of</th> <th>Dividend per share</th> <th>Dividend paid out of net distributable income for the month</th> <th>Dividend paid out of capital</th> </tr> </thead> <tbody> <tr> <td>Jan 201[X]</td> <td>HK\$10</td> <td>100%</td> <td>0%</td> </tr> <tr> <td>Feb 201[X]</td> <td>HK\$10</td> <td>90%</td> <td>10%</td> </tr> <tr> <td>Mar 201[X]</td> <td>HK\$10</td> <td>80%</td> <td>20%</td> </tr> </tbody> </table> <p><i>Warning: Please note that a positive distribution yield does not imply a positive return. Investors should not make any investment decision solely based on information contained in the table above. You should read the relevant offering document (including the key facts statement) of the fund for further details including the risk factors.</i></p> | For the month of | Dividend per share | Dividend paid out of net distributable income for the month | Dividend paid out of capital | Jan 201[X] | HK\$10 | 100% | 0% | Feb 201[X] | HK\$10 | 90% | 10% | Mar 201[X] | HK\$10 | 80% | 20% |
| For the month of | Dividend per share | Dividend paid out of net distributable income for the month | Dividend paid out of capital | | | | | | | | | | | | | | | |
| Jan 201[X] | HK\$10 | 100% | 0% | | | | | | | | | | | | | | | |
| Feb 201[X] | HK\$10 | 90% | 10% | | | | | | | | | | | | | | | |
| Mar 201[X] | HK\$10 | 80% | 20% | | | | | | | | | | | | | | | |

| | Question | Answer |
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| | | <p>.....</p> <p>For the avoidance of doubt, the fund / the investment manager should take note of the following in preparing and presenting the composition of the dividend payments:</p> <ol style="list-style-type: none"> a. Compositions of dividends payments shall be disclosed in respect of the relevant share class for each distribution (i.e. dividends for monthly distribution share class should disclose the compositions of dividend for each month; dividends for quarterly distribution share class should disclose the composition of dividends for each quarter, etc.) b. The compositions of dividend payments may be presented by way of dollar amount and/or in percentage terms. c. For the purpose of calculating the composition of dividend to be presented in the Dividend Composition Information, the accounts must be prepared using the same accounting principles / methodologies adopted in preparing the fund's annual financial statements on a consistent basis, save for the following: <ol style="list-style-type: none"> i. "Net distributable income" means the net investment income (i.e. dividend income and interest income net of fees and expenses) attributable to the relevant share class and may also include net realised gains (if any) based on unaudited management accounts. However, "net distributable income" cannot include net unrealised gains. ii. "Net distributable income" which is not declared and paid as dividends in a period of a financial year can be carried forward as net distributable income for the next period(s) within the same financial year. "Net distributable income" that has been accrued as at the end of a financial year and is declared and paid as dividends at the next distribution date immediately |

| | Question | Answer |
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| | | <p>after that financial year end could be treated as “net distributable income” in respect of that financial year. However, “net distributable income” which has been accrued as at the end of a financial year but is not declared and paid as dividends at the next distribution date immediately after that financial year end should be included as “capital” for the next financial year.</p> <p>iii. Where the fund may pay dividend out of gross income while charging/ paying all or part of the fund’s fees and expenses to / out of capital, the amount of fees and expenses that has been paid out of capital has to be deducted from the gross investment income in order to come up with the “net distributable income”.</p> <p>d. The basis of calculating “net distributable income” shall be clearly disclosed with the composition table.</p> <p>e. The warning statement referred to in the illustrative example above should be made as part of the disclosure for the Dividend Composition Information.</p> <p>f. Should the fund / the investment manager wishes to disclose information in addition to the minimum information as required in the illustrative example above (e.g. NAV, dividend yields, total return, other additional ways of presentation of dividend composition by way of annualized, cumulative or 12-month rolling basis based on unaudited management accounts, etc), please ensure that the additional information provided is fair, accurate and not misleading.</p> <p>g. Dividend Composition Information should be disclosed and/or presented in a manner which is fair, accurate and not misleading. Income equalisation adjustments are sometimes made by fund managers to, among other things, smooth out the impact of large subscriptions/redemptions and/or cater for individual investor’s tax reporting purposes in overseas jurisdiction(s). We understand that not all SFC-authorized funds adopt income equalisation</p> |

| | Question | Answer | | | | | | |
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| | | <p>adjustments. Hence, in order to provide for a common basis of comparison by investors, income equalisation adjustments should not be adopted for the purposes of disclosure of Dividend Composition Information as required by this FAQ. Thus, “net distributable income” at the fund level for the purpose of the Dividend Composition Information should be calculated in accordance with the requirements stated in (c) above <u>without</u> making any income equalisation adjustments. In case of doubt, early consultation with the SFC is encouraged.</p> <p>For the avoidance of doubt, fund managers may continue to adopt income equalisation adjustments in the financial reports of their authorized funds provided that the disclosure is true, accurate and not misleading.</p> | | | | | | |
| 34B. | <p>As stated in FAQ 34 above, the compositions of the dividends for the last 12 months (“12-month Period”) shall be made available by the investment manager / Hong Kong representative on request and also on the fund’s website (if any). Does it mean the fund have to prepare the compositions of dividends made by the fund in the past 12 months preceding the publication date of this FAQ i.e. 8 November 2012 (the “Effective Date”)</p> <p>Also, do I need to make available to investors all of the historical information on compositions of dividends that has been previously disclosed?</p> | <p>The 12-month Period is intended to be a rolling 12-month period starting from the date on which payment of dividends is being made by an SFC-authorized fund out of or effectively out of capital after the Effective Date.</p> <p>As an illustration, if a fund pays dividends pursuant to (a)(i) and/or (a)(ii) in FAQ 34 above, in respect of one of its distributing share class on a quarterly basis (i.e. March, June, September and December in each calendar year), it is expected to make available / disclose, at minimum, the Dividend Composition Information in respect of the following distributions during the following periods once distribution is made:</p> <table border="1" data-bbox="958 1102 2051 1385"> <thead> <tr> <th data-bbox="958 1102 1503 1219">Illustrated Period</th> <th data-bbox="1503 1102 2051 1219">Information on composition of dividends in respect of the following distributions is to be made available / disclosed</th> </tr> </thead> <tbody> <tr> <td data-bbox="958 1219 1503 1299">After the Effective Date and until and after the Dec 2012 distribution</td> <td data-bbox="1503 1219 2051 1299">Dec 2012</td> </tr> <tr> <td data-bbox="958 1299 1503 1385">After the Mar 2013 distribution and prior to the Jun 2013 distribution</td> <td data-bbox="1503 1299 2051 1385">Dec 2012, Mar 2013</td> </tr> </tbody> </table> | Illustrated Period | Information on composition of dividends in respect of the following distributions is to be made available / disclosed | After the Effective Date and until and after the Dec 2012 distribution | Dec 2012 | After the Mar 2013 distribution and prior to the Jun 2013 distribution | Dec 2012, Mar 2013 |
| Illustrated Period | Information on composition of dividends in respect of the following distributions is to be made available / disclosed | | | | | | | |
| After the Effective Date and until and after the Dec 2012 distribution | Dec 2012 | | | | | | | |
| After the Mar 2013 distribution and prior to the Jun 2013 distribution | Dec 2012, Mar 2013 | | | | | | | |

| Question | | Answer | |
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| | | After the Jun 2013 distribution and prior to the Sept 2013 distribution, | Dec 2012, Mar 2013, Jun 2013 |
| | | After the Sept 2013 distribution and prior to Dec 2013 distribution | Dec 2012, Mar 2013, Jun 2013, Sept 2013 |
| | | After the Dec 2013 distribution and prior to Mar 2014 distribution | Mar 2013, Jun 2013, Sept 2013, Dec 2013 |
| | | <p>The disclosure mentioned above only represents the minimum requirement. As such, the fund manager may continue to make available to investors any historical information regarding the compositions of dividends that had been previously disclosed from time to time in such manner as the fund manager considers necessary and/or appropriate to enhance the transparency of the fund's distribution policy.</p> | |
| 34C. | This FAQ is obsolete and has been removed. | | |
| Disclosure of information to investors regarding US Foreign Account Tax Compliance Act ("FATCA") | | | |
| 35. | What information should be disclosed to the investors regarding FATCA? | <p>Reference is made to the circular of the SFC to issuers of SFC-authorized investment products concerning FATCA dated 21 March 2014.</p> <p>Issuers of SFC-authorized funds should keep investors informed of information concerning their SFC-authorized funds which is necessary to enable investors to appraise the position of the SFC-authorized funds from time to time. In this connection, it is the issuers' duty to ensure that the offering documents (including the Product KFS) of their SFC-authorized funds are up-to-date and contain the information necessary for investors to make an informed judgement about the SFC-authorized funds. At a minimum, the following information is generally expected to be provided to investors in the offering documents:-</p> | |

| | Question | Answer |
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| | | <ol style="list-style-type: none"> 1. a general description of the FATCA regime; 2. details of any intergovernmental agreement to implement FATCA between the US and the country in which the SFC-authorized fund is established; 3. disclosure relating to the FATCA status of the SFC-authorized funds (such as its registered status as a participating foreign financial institution/reporting foreign financial institution or its status as a deemed compliant foreign financial institution); 4. a warning that all prospective investors should consult with their own tax advisors regarding the possible implications of FATCA on them and the SFC-authorized funds; 5. relevant FATCA risk disclosure (including the consequences of any withholding tax on the SFC-authorized funds and the consequential impact on the investors); and 6. where there is disclosure on compulsory redemption and/or the manager has a right to withhold, set-off or deduct reasonable amounts from the redemption proceeds, it should also be disclosed that: (i) such withholding, set-off or deduction is permitted by applicable laws and regulations and (ii) the manager is acting in good faith and on reasonable grounds. <p>The revised offering document should be filed with the SFC within one week from the date of issuance pursuant to 11.1B of the UT Code together with a properly completed “Filing Form for Revised Offering Documents that Incorporate Changes Falling within 11.1B of the Code on Unit Trusts and Mutual Funds (UT Code) and Do Not Require SFC’s Prior Approval” http://www.sfc.hk/web/EN/forms/products/forms.html, in which certain FATCA-related confirmation will be made.</p> <p>Issuers are also reminded to pay close attention to the updates and announcement which may be made by the Government of the Hong Kong Special Administration</p> |

| | Question | Answer |
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| | | Region from time to time in relation to the Hong Kong intergovernmental agreement designated to facilitate compliance with FATCA. |
| | Disclosure of the ongoing charges figure | |
| 36. | For the purposes of disclosure of the ongoing charges figure in Product Key Facts Statements, where an SFC-authorized fund invests in listed REITs or ETFs, would such investments be treated as investment in other funds as referred in paragraph 22 of the <i>Guidelines for the disclosure and calculation of the ongoing charges figure</i> dated 3 March 2017, as amended from time to time (“Guidelines”)? | <p>Being a closed-ended fund whose assets are typically not fungible, a listed REIT is more akin to a listed company than a traditional fund. As such, listed REITs may generally be treated as listed securities and not subject to paragraph 22 of the Guidelines for the purposes of calculating the ongoing charges figure.</p> <p>On the other hand, passive ETFs are passively managed open-ended funds that invest in a portfolio of fungible securities and/or financial instruments to replicate the performance of a financial index or benchmark and active ETFs are actively managed and do not track the performance of an index or a benchmark. Both passive ETFs and active ETFs are more akin to traditional funds in nature. Hence, where an SFC-authorized fund invests in ETFs, it is generally expected to take into account the ongoing charges figures of such ETFs in the calculation of its ongoing charges figure in accordance with the requirements set out in paragraph 22 of the Guidelines.</p> |
| 37. | Where an SFC-authorized fund is subject to a fixed rate of ongoing charges, can the maximum rate of the ongoing charges applicable to the SFC-authorized fund be disclosed in the KFS pursuant to the Guidelines? | If an SFC-authorized fund is subject to a fixed rate of ongoing charges and any excessive level of expenses / charges will not be borne by the fund, the fund manager may disclose the maximum level of the ongoing charges figure calculated in accordance with the Guidelines if this maximum figure is higher than the actual figure. Otherwise, the ongoing charges figure shall be calculated based on the latest annual or interim financial statements in accordance with the Guidelines. |
| 38. | This FAQ has been removed. | Please refer to the Frequently Asked Questions on Exchange Traded Funds and Listed Funds for details. |

| | Question | Answer |
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| | <p>Cross-border offering of Hong Kong CIS in Australia pursuant to the Australia–Hong Kong Mutual Recognition of Funds (Australia-HK MRF)</p> | |
| 39. | <p>Australian Securities and Investments Commission (“ASIC”) issued a class order [CO 08/506] Hong Kong collective investment schemes (“Class Order”) in 2008 as a means of giving effect to the Declaration on Mutual Recognition of Cross-border Offering of Collective Investment Schemes (“Declaration”) signed between ASIC and the SFC on 7 July 2008. The Class Order was repealed on 1 October 2018. Does the repeal of the Class Order affect the Declaration?</p> | <p>Notwithstanding the repeal of the Class Order, ASIC has confirmed that it remains committed to the aim of the Declaration and that the repeal of the Class Order is an operational change rather than a policy change. ASIC has further confirmed that, following the expiry of the Class Order, it will continue to give effect to the Declaration by providing a streamlined process (“Streamlined Process”) for Hong Kong CIS to obtain individual relief from registration in Australia under Regulatory Guide 178 <i>Foreign collective investment schemes</i> (“RG 178”) and from certain licensing, product disclosure and fund-raising requirements in line with the eligibility requirements and arrangements as set out in the Class Order. It is the intention of ASIC that there will be no substantive difference between the requirements and arrangements of the application under the Class Order and those under the Streamlined Process.</p> |
| 39A. | <p>What are the eligibility requirements on Hong Kong CIS for application for regulatory relief from ASIC under the Streamlined Process?</p> | <p>ASIC will process an application of a Hong Kong CIS (“Eligible Hong Kong CIS”) for the relief from registration as an Australian managed investment scheme and from certain licensing, product disclosure and fund-raising requirements, provided that:</p> <ul style="list-style-type: none"> (a) the Hong Kong CIS is authorized by the SFC; (b) the manager of the Hong Kong CIS is licensed by the SFC; (c) none of the Hong Kong CIS, its manager or its trustee/custodian is exempted from any Hong Kong regulatory requirements because the Hong Kong CIS, its manager or its trustee/custodian is also regulated elsewhere; and (d) the Hong Kong CIS is not principally marketed to investors in Australia. <p>A Hong Kong CIS is currently not considered as principally marketed to investors in</p> |

| | Question | Answer |
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| | | <p>Australia if Australian investors account for no more than 30% of the value of the Hong Kong CIS. It is expected that the manager of the Hong Kong CIS will monitor and ensure compliance with this threshold limit.</p> |
| 39B. | <p>What are the arrangements under the Streamlined Process?</p> | <p>ASIC recognises that the Hong Kong regulatory regime for public funds is sufficiently equivalent to Australia.</p> <p>Starting from 1 October 2018, despite the expiry of the Class Order, Eligible Hong Kong CIS may make an individual application for relief from ASIC under the Streamlined Process. The information which ASIC requires as part of the application and the criteria to be assessed by ASIC in granting the relief under the Streamlined Approach are identical to what ASIC previously set out under the Class Order. That is, the applicant is only required to provide certain documents about itself (as currently set out in section RG 178.73 of the RG 178 and previously set out in the Schedule B of the Class Order) and is not required to provide additional documentation (in particular, the information as currently set out under sections RG 178.75 and RG 178.76 of the RG 178) to demonstrate sufficient equivalence of the Hong Kong regulatory regime. An application fee is payable for making an application. The fees that currently apply to applications for relief under RG 178 are set out in item 80 of Schedule 1 to the Corporations (Fees) Regulations 2001, which may change over time. Please contact ASIC for information about current fees applicable for the particular application.</p> <p>ASIC is in the process of updating the RG 178 to clarify the information it will require for the application of relief from foreign CIS operators from jurisdictions which ASIC has assessed as sufficiently equivalent, including Hong Kong.</p> |
| 39C. | <p>What are the documents and information required to be provided for the application of relief under the Streamlined Process?</p> | <p>The following documents and written information in relation to an Eligible Hong Kong CIS (as applicable) are required to be provided to ASIC for the application of relief under the Streamlined Process:</p> |

| | Question | Answer |
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| | | <p>(a) evidence that the Hong Kong CIS is authorized under subsection 104(1) of the SFO;</p> <p>(b) a deed from the company for the benefit of and enforceable by ASIC, the other persons referred to in subsection 659B(1) of the Corporations Act 2001 and any member or former member of the Eligible Hong Kong CIS in Australia at the time they were offered interests/shares in the Eligible Hong Kong CIS, which applies notwithstanding that the company may have ceased to rely, or never have relied, on the relief, and which provides that:</p> <ul style="list-style-type: none"> (i) the deed is irrevocable except with the prior written consent of ASIC; and (ii) the company covenants to comply with the Hong Kong regulatory requirements in respect of its conduct in Australia as if the conduct occurred in Hong Kong in like circumstances; and (iii) the company covenants to: <ul style="list-style-type: none"> (1) ensure that each of its agents and representatives that engages in conduct in Australia will comply with the Hong Kong regulatory requirements in respect of their conduct in Australia as if the conduct occurred in Hong Kong in like circumstances; and (2) ensure that each of its agents and representatives that engages in conduct in Australia has entered into a deed as required by this paragraph as if references to the company were references to the agent or representative; and this paragraph (iii) were omitted; and (iv) the company submits to the non-exclusive jurisdiction of the |

| | Question | Answer |
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| | | <p>Australian courts in legal proceedings conducted by any of the following:</p> <ul style="list-style-type: none"> (1) ASIC (including under section 50 of the ASIC Act); and (2) any member (or former member) of the Eligible Hong Kong CIS who was in Australia when they were offered interests/shares in the Eligible Hong Kong CIS; and (3) in relation to proceedings relating to a financial services law – any person referred to in subsection 659B(1) of the Corporations Act 2001; <p>and in the case of proceedings brought by a person covered by subparagraph (1) or (3), whether brought in their name, on behalf of the Crown or otherwise;</p> <ul style="list-style-type: none"> (v) the company covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services in relation to the Eligible Hong Kong CIS or the operation of the Eligible Hong Kong CIS; and (vi) the company covenants that, on written request of either the SFC or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the SFC to disclose to ASIC and ASIC to disclose to the SFC any information or document that the SFC or ASIC has that relates to the company or the eligible Hong Kong CIS; <p>(c) written consents to the disclosure by SFC to ASIC and ASIC to SFC of any information or document that SFC or ASIC has that relates to the company or Eligible Hong Kong CIS;</p> <p>(d) the most recent financial statements of the eligible Hong Kong CIS, any audit report, and any subsequent public disclosures by that eligible Hong Kong CIS about its financial position or compliance with the Hong Kong regulatory</p> |

| | Question | Answer |
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| | | <p>requirements and if the documents are not in English, and English translation;</p> <p>(e) a copy of the most recent Hong Kong offering document relating to an offer of interests/shares in the Eligible Hong Kong CIS;</p> <p>(f) a copy of the constitution or other governing rules (however described) of the eligible Hong Kong CIS;</p> <p>(g) a description of how the company will plan for, monitor and assess its compliance with the requirements and conditions of the relief and any Australian regulatory requirements to which it will be subject;</p> <p>(h) a description of the financial services relating to the Eligible Hong Kong CIS that the company intends to provide in Australia; and</p> <p>(i) where the company is an exempt manager – information about the interests/shares in the Eligible Hong Kong CIS that the company intends to offer or issue to persons in Australia and how it plans to seek members in Australia.</p> |

Last updated: 14 March 2019