

Paper Gold Schemes

This FAQ is prepared by the Investment Products Division and aims to provide basic information to market practitioners in respect of the application procedures for authorization under Part IV of the Securities and Futures Ordinance (the “SFO”) of paper gold schemes (“PGS”) which are deemed to be collective investment schemes under the Securities and Futures (Collective Investment Schemes) Notice (Cap. 571M). 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 this FAQ. 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.

Section 1: FAQ in respect of application procedures

	Question	Answer
1.	Does a PGS require SFC authorization?	<p>According to the Securities and Futures (Collective Investment Schemes) Notice (Cap 571M), any arrangements for the purchase of gold coins or gold bullion that are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons-</p> <ul style="list-style-type: none"> a. to acquire the ownership of the coins or bullion for valuable consideration; b. to defer taking possession of the coins or bullion; and c. to transfer or retransfer the ownership of the coins or bullion to a person who is a party to, or is referred to in, the arrangements, <p>are to be regarded as "collective investment schemes" for the purposes of Part IV of the SFO. All “collective investment schemes” which are offered to the public in Hong Kong are subject to the prior authorization of the SFC, unless one of the exemptions</p>

	Question	Answer
		under section 103 of the SFO applies.
2.	What are the requirements for applicants in seeking authorization of a PGS?	<p>Applicants should make reference to the general principles and requirements set out in the Overarching Principles Section (“OP Section”) of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“Handbook”) which forms the basis for the processing of PGS applications.</p> <p>As a general policy, a PGS seeking authorization from the SFC shall, at a minimum, meet the following requirements:</p> <ul style="list-style-type: none"> i. The applicant is authorized under the Banking Ordinance (Cap. 155) to carry on banking business as an authorized financial institution as defined therein. ii. The applicant and the PGS shall comply with the principles and requirements set out in the OP Section of the Handbook, including for the avoidance of doubt the set of guidance on internal product approval process as set out in the SFC’s Circular to Product Providers of SFC-authorized unit trusts and mutual funds, SFC-authorized investment-linked assurance schemes and SFC-authorized unlisted structured investment products entitled “Guidance on Internal Product Approval Process”, as may be amended by the SFC from time to time. iii. A principal brochure and a product key facts statement which constitute the offering documents of the PGS shall be prepared in accordance with the principles set out in Chapter 6 of the OP Section. iv. We generally do not expect PGS to involve any use of leverage at the product level.

	Question	Answer
3.	How do I apply for authorization of a PGS?	<p>Applicants are required to submit the following documents upon submission of an application:</p> <ul style="list-style-type: none"> i. a duly signed letter of application setting out the subject application matter for authorization under Part IV of the SFO (“Application Letter”); ii. the draft PGS’s offering documents and constitutive documents; iii. a duly signed and completed undertaking for compliance with the OP Section of the Handbook and the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes (a form of which can be accessed via: https://www.sfc.hk/web/EN/forms/products/forms.html); iv. a duly signed and completed confirmation as required by the Circular to Product Providers of SFC-authorized unit trusts and mutual funds, SFC-authorized investment-linked assurance schemes and SFC-authorized unlisted structured investment products entitled “Guidance on Internal Product Approval Process”, as amended from time to time (a form of which can be accessed via: https://www.sfc.hk/web/EN/forms/products/forms.html); v. any other relevant confirmations, undertakings and certifications, as the case may be, duly signed and completed by the relevant part(ies); vi. a cheque made payable to “Securities and Futures Commission” in the amount of the applicable application fee (please refer to information on fees below); and vii. a letter nominating an individual to be approved by the SFC as an approved person containing the individual’s name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address and the corresponding duly signed and completed confirmation from the nominated approved person (both forms of the letter and confirmation can be accessed via: https://www.sfc.hk/web/EN/forms/products/forms.html). <p>A draft or proof of each document must be submitted in good order and suitable for clearance for the SFC’s prior vetting before the relevant authorization may be</p>

	Question	Answer
		<p>granted. During the application process, all changes to any subsequent draft documentation must be properly and comprehensively marked up to facilitate review by SFC staff.</p> <p>A PGS must issue bilingual offering documents. The Chinese offering documents could be submitted when the English offering documents are in advanced form before final authorization and it should be accompanied by a written confirmation regarding the truth and accuracy of the Chinese translation (please see Q.5 below).</p>
4.	When will the SFC take up an application after I have submitted my application?	<p>Generally, an application will only be taken up by the SFC when an applicant has submitted the documents as mentioned in Q.3 above and paid the applicable application fee as mentioned in Q.6 below. If the SFC is not satisfied with the completeness or sufficiency of the information contained in the first submission package, the package will be returned to the applicant and the application will not be taken up. The SFC also reserves the right not to take up an application if such application is accompanied by documents that do not meet the requirements of the OP Section of the Handbook or the PGS does not meet the other requirements as set out in Q.2 above in any material aspect.</p> <p>The SFC has made performance pledges for the processing of applications for authorization of PGS.</p> <p>As a general guide, the Investment Products Division will issue a take-up letter ("Take-up Letter") within 2 business days upon receipt of the Application Letter, the necessary documents in support of the application and the applicable application fee, to inform the applicant that the SFC will process the application. The date of the Take-up Letter (i.e. the Take-up Date) is the date on which the SFC formally takes up the application. Once an application is taken up, the application fee will not be refunded.</p>
5.	Who can issue the Chinese translation confirmation?	The Chinese translation confirmation may be issued by any of the following parties:

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		<ul style="list-style-type: none"> • a qualified lawyer in Hong Kong; • the board of directors of the applicant; • the head of the legal department or the compliance officer-in-charge of the applicant; or • such other person acceptable to the SFC. <p>The person providing the confirmation must be fully conversant in the Chinese language or must certify that an individual who is fully conversant in the Chinese language and competent to review and ensure the truth and accuracy of the relevant Chinese documents has been appointed to do so.</p> <p>In case where a translator is appointed by one of the above parties, the following should be submitted to us: (i) a confirmation issued by the party appointing the translator to certify that such translator is fully conversant in the Chinese language and competent to review and ensure the truth and accuracy of the relevant Chinese documents; and (ii) the Chinese translation confirmation issued by the translator confirming that the Chinese version of the offering document is a true and accurate translation of the English version of the same.</p> <p>A form of the Chinese translation confirmation to be provided can be accessed via: https://www.sfc.hk/web/EN/forms/products/forms.html.</p>
6.	What are the applicable fees in respect of a PGS application? Is there any fee waiver?	<p>An application fee of HK\$20,000 is payable for each PGS. Upon the granting of authorization, an authorization fee of HK\$10,000 and the first annual fee of HK\$6,000 shall be paid before authorization is effective.</p> <p>The applicable fees payable are as provided in the Securities and Futures (Fees) Rules (Cap. 571AF) (“Fees Rules”) subject to the SFC’s power to grant waiver pursuant to section 11 (waiver of fees) of the Fees Rules. Upon an application for fee waiver supported by valid reasons, if the SFC is of the opinion that the payment of</p>

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		<p>any of the above-mentioned fees would be unduly burdensome or inappropriate, the SFC may waive, in whole or in part, the payment of any fees, or refund, in whole or in part, any fees paid, subject to any applicable minimum amount.</p> <p>Note: The SFC is prepared to consider an application for annual fee waiver if an application for withdrawal of authorization of a scheme has been approved and the annual fee due date falls within the notice period of withdrawal of authorization.</p>
7.	Will my application lapse after a certain period of time? If so, how long? What should I do if my application has lapsed?	<p>Reference is made to the circular of the SFC to applicants of SFC-authorized investment products relating to the revised application lapse policy dated 29 November 2013.</p> <p>If, for any reason, 6 months have elapsed from the Take-up Date (the “6-month Period”) and no authorization has been granted, the application will lapse, subject to the SFC’s right to grant an extension at its sole discretion. The application fee will not be refunded to the applicant. In general, the SFC will only consider granting an extension in limited circumstances (please see answer to Q.10 below).</p> <p>Once an application has lapsed, if the applicant wishes to seek authorization of the scheme, the applicant shall make a new application, whereupon it will need to pay the application fee for the new application and repeat the application procedures.</p> <p>Please see Q.11 below for the factors which the SFC may take into account when considering whether to grant authorization of a collective investment scheme and/or for the issue of its relevant offering document(s).</p>
8.	Will I be given any prior notice by the SFC in respect of the impending lapse of my application?	<p>If, for any reason, 4 months have elapsed from the Take-up Date (“4-month Period”) and no authorization has been granted, the SFC will issue a letter reminding and informing the applicant that the application will in general lapse at the expiry of 6 months from the Take-up Date.</p> <p>In cases of non-compliance with any key requirement(s), the SFC would be minded</p>

	Question	Answer
		to issue a letter of mindedness to refuse an application earlier than 4 months from the Take-up Date where appropriate so that there is efficient use of resources for processing proper applications.
9.	What will happen if I do not respond or do not provide any substantive response within one month of SFC's requisitions?	<p>Applicants shall respond to any enquiries made by the SFC in relation to the relevant product and the associated matters promptly and in an open and co-operative manner.</p> <p>In this connection, the SFC expects the applicant to respond to its requisitions within a reasonable period so as to achieve an efficient and effective authorization process. In general, the applicant is not expected to take more than one month to respond to SFC's requisitions.</p> <p>Therefore, where the applicant has not responded or provided any substantive response within one month of the SFC's requisitions on an application, the SFC may, where appropriate, inform the applicant ("Reminder") that the SFC is minded to issue to the applicant a letter of mindedness (LOM) to refuse the application without further notice unless the applicant properly and satisfactorily addresses all SFC's previous requisitions to the SFC's satisfaction within one month from the date of Reminder. Where the applicant has not submitted any response to the SFC or has not properly and satisfactorily addressed all SFC's requisitions to the SFC's satisfaction by the relevant date, the SFC will issue an LOM to the applicant informing the applicant that the SFC is minded to refuse to authorize the application unless all the outstanding issues are addressed to the SFC's satisfaction within the period as specified in the LOM.</p>
10.	Will the SFC extend the application beyond the 6-month Period?	In general, the answer is no. Any extension of the application period will only be granted by the SFC where there is no substantive outstanding issue at the time that the extension is granted subject to the receipt of the final signed version of the confirmations, undertakings and/or Chinese translation confirmation.
11.	What would the SFC take into account when	Under Part IV of the SFO, on an application to the SFC, the SFC may, where it

	Question	Answer
	considering whether to grant authorization of a collective investment scheme and/or for the issue of its relevant offering document(s)?	<p>considers appropriate, authorize any collective investment scheme, and/or authorize the issue of any offering document or advertisement in respect of a collective investment scheme, subject to any conditions the SFC considers appropriate.</p> <p>The SFC may take any factor into account as it considers appropriate. Without prejudice to the generality of the foregoing, when considering whether to grant authorization, the SFC may take into account, among other things, the following:</p> <ul style="list-style-type: none"> • whether all requisite information and documents have been submitted, in all cases to the SFC's satisfaction; • compliance with the Handbook, including, without limitation, the general principles laid down in the OP Section; • the quality of disclosure in the subject offering document(s); and • any past record of non-compliance with the Handbook on the part of any relevant party to the application, refusal/rejection of application, or involuntary revocation/withdrawal of authorization in respect of a prior application, made in Hong Kong or the home jurisdiction of the product in question relating to a product with materially similar structure or features. <p>Parties to the application are urged to refer to the Handbook and any Frequently Asked Questions published by the SFC from time to time.</p>
12.	Are the applicants required to file a soft copy of the issued offering documents to the SFC?	<p>Yes. To enable the SFC to post the offering documents of the SFC-authorized PGS onto the information repository at the "List of investment products" on the SFC website, a soft copy of the authorized offering documents shall be filed with the SFC within one week after issuance. The authorized offering documents and the document file name shall be saved in the format as set out in the SFC's authorization letter and shall be text-searchable and virus free.</p> <p>Applicants may submit the authorized offering documents by way of e-mail or by</p>

	Question	Answer
		means of a compact disc to their case officer(s) of the Investment Products Division who is responsible for overseeing the relevant PGS issuer.

Section 2: Novel coronavirus (COVID-19)

	Question	Answer
1.	Will the SFC implement any temporary relief measures as regards new PGS applications and post-authorizations due to the operational difficulties relating to the COVID-19 outbreak?	<p>In view of the potential operational difficulties faced by PGS issuers during the COVID-19 outbreak, the SFC is implementing the following temporary relief measures to alleviate the administrative burden in respect of new PGS applications and post-authorization matters.</p> <p><i>A) Accepting documents by soft copy only</i></p> <p>PGS issuers are allowed to submit documents by soft copy only for all applications, including new PGS applications and post-filings.</p> <p>The official receipt date of an application or a post-filing shall be a business day on which the full and complete set of soft copy documents is received by the SFC (in the case of new PGS applications, at or before 6 pm), after which the receipt date will be deemed as the following business date.</p> <p><i>B) Accepting un-signed documents</i></p> <p>We will accept submission of un-signed copies of the applicable forms, confirmations and other relevant documents (the “Relevant Forms”) provided that they are submitted with an email confirmation (from a person who meets the signatory requirements for the Relevant Forms) that such forms and documents in connection with the subject application or filing are in order.</p> <p>PGS issuers are still required to submit original hard copies of the duly executed and</p>

	Question	Answer
		<p>signed Relevant Forms to the SFC as soon as practicable afterwards.</p> <p><i>C) Taking up new PGS application(s) with application fee(s) to follow</i></p> <p>The SFC will take up new PGS applications if they are in good order and the application fee is the only outstanding matter. An applicant is expected to submit the application fee as soon as practicable upon receipt of the Take-up Letter from the SFC, and shall contact its SFC case team to discuss the payment arrangement.</p>

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