



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



Memorandum of Understanding (MoU)
between
the Securities and Futures Commission of Hong Kong
and
the Financial Conduct Authority
Concerning Mutual Recognition of Covered Funds and Covered
Management Companies and related Cooperation

Dated 8 October 2018

This MoU has been concluded between the Securities and Futures Commission of Hong Kong (SFC) and the Financial Conduct Authority (FCA) in light of global financial market growth and increasing cross-border activity in asset management and the offering and distribution of collective investment schemes. Its purpose is to enhance cooperation in relation to (i) collective investment schemes domiciled in either Hong Kong or the United Kingdom (UK) and offered to the public in the UK and/or Hong Kong on a cross-border basis, and (ii) management companies of collective investment schemes, based in either Hong Kong or the UK.

It is acknowledged that UK management companies (with permission to manage investments) and Hong Kong Management Companies are eligible to undertake asset management activities as Delegates for Hong Kong domiciled collective investment schemes authorized by SFC and UK domiciled collective investment schemes authorised by FCA for being offered to the public respectively.

The SFC is the principal regulator of the securities and futures market in Hong Kong and the primary authority for regulating retail funds offered to the public in Hong Kong. The role of the SFC is as follows: licensing and supervision of the activities of intermediaries, including fund managers and distributors; authorising funds and their offering documents to be offered to the public in Hong Kong and the ongoing supervision of SFC authorised funds.

As a statutory body, the SFC's regulatory objectives and functions are defined and governed by the Securities and Futures Ordinance. The SFC's regulatory objectives include:

- to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- to help the public understand the workings of the securities and futures industry;
- to provide protection for the investing public;
- to minimise crime and misconduct in the securities and futures industry;
- to reduce systemic risks in the securities and futures industry; and
- to assist the Financial Secretary in maintaining Hong Kong's financial stability.

The FCA is responsible for making and enforcing rules governing the conduct of the firms which it authorises and regulates, regulating standards of conduct in retail and wholesale markets, and for supervising the trading infrastructures that support those markets in the UK. The FCA is responsible for the prudential supervision of firms that are not regulated by the Prudential Regulation Authority (PRA), and is responsible for the regulation of primary securities markets, including via monitoring market disclosures, reviewing and approving prospectuses, and operating the UK listing regime. The FCA also has the power to recognise collective investment schemes that are managed in countries or territories outside the UK subject to the requirements set out in the Financial Services and Markets Act 2000 (FSMA 2000).

The FCA has a single strategic objective: to ensure that the relevant markets function well (see section 1F of FSMA 2000). Three operational objectives support this strategic objective: securing an appropriate degree of protection for consumers (including wholesale consumers) (section 1C of FSMA 2000); protecting and enhancing the integrity of the financial system (section 1D of FSMA 2000); and promoting effective competition in the interest of consumers in the markets for financial services (section 1E of FSMA 2000).

SFC and FCA express their willingness to cooperate with each other in the interest of fulfilling their respective supervisory and regulatory mandates, particularly with the aim of protecting investors and ensuring that the financial markets function properly.

Article 1 Definitions

In this MoU:

- a) "Authority" or "Authorities" means SFC and/or FCA.
- b) "CIS" means collective investment scheme.
- c) "COLL" means the Collective Investment Schemes sourcebook forming part of the FCA's Handbook of rules and guidance.
- d) "Covered Entity" means a Covered Fund and/or Covered Management Company.
- e) "Covered Fund" means a UK UCITS and/or a Hong Kong CIS which is seeking authorisation (Hong Kong) or recognition (UK) or is authorised (Hong Kong) or recognised (UK) on a cross-border basis in accordance with Article 3 paragraph 1 of this MoU.
- f) "Covered Management Company" means a UK Management Company or a Hong Kong Management Company that is authorised (UK) or licensed/registered (Hong Kong) by the relevant Authority to manage Covered Funds and that meets the applicable conditions set out in Appendix B to this MoU.
- g) "Cross-border On-site Visit" means any visit by one Authority to the premises of a Covered Management Company located in the other Authority's jurisdiction for supervisory purposes.

- h) “Delegate” means an entity to which: (i) a UK Management Company delegates the investment management function of one or more funds under its management in accordance with the Domestic Law in the UK implementing Article 13 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as may be amended, supplemented or otherwise modified from time to time which is currently set out further in COLL 6.6.15R and COLL 6.6.15AR and the guidance in COLL 6.6.16G; or (ii) a Hong Kong Management Company delegates the investment management function of one or more funds under its management in accordance with Chapter 5 of the UT Code.
- i) “Domestic Law” means any applicable laws, ordinances and other regulations or requirements in each Authority’s jurisdiction.
- j) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, the investors of Covered Funds or the proper functioning of the financial markets.
- k) “Enforcement Purposes” means a purpose referred to in Article 6(1) of the IOSCO EMMoU.
- l) “FSMA” means the Financial Services and Markets Act 2000.
- m) “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.
- n) “Hong Kong CIS” means collective investment schemes domiciled in Hong Kong (as defined in Section 1 of Part 1 of Schedule 1 to the SFO) which are authorized by the SFC under Section 104 of the SFO in accordance with the Overarching Principles Section and the UT Code.
- o) “Hong Kong Management Company” means a corporation which is licensed or registered for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
- p) “IOSCO EMMoU” means the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information established by the International Organization of Securities Commissions to which FCA and SFC are both signatories.
- q) “Overarching Principles Section” means the Overarching Principles Section of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products issued by the SFC, as may be amended, supplemented or otherwise modified from time to time.
- r) “Person” means a natural person or legal person, or an unincorporated entity or association, including partnerships, corporations and bodies corporate.
- s) “Relevant State” means the UK or any other state which is contracting party to the Agreement on the European Economic Area.
- t) “Requested Authority” means the Authority to whom a request is made under this MoU.
- u) “Requesting Authority” means the Authority making a request under this MoU.
- v) “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market and industry in Hong Kong, as may be amended, supplemented or otherwise modified from time to time.
- w) “UCITS” means a collective investment scheme which is authorised in accordance with the laws of the Relevant State implementing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.
- x) “UK Management Company” means a firm authorised by the FCA with Part 4A permission to carry on the regulated activity specified in Article 51ZA of the FSMA (Regulated Activities) Order 2001 (as amended).
- y) “UK UCITS” means a UCITS which is authorised as such by the FCA under Part 17 of FSMA or under the Financial Services and Markets Act 2000 (Open Ended Investment Company) Regulations 2001 (SI 2001/1228) (as amended).

- z) “UT Code” means the Code on Unit Trusts and Mutual Funds of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products issued by the SFC, as may be amended, supplemented or otherwise modified from time to time.

Article 2 General provisions

1. This MoU is a statement of intent to cooperate in relation to Covered Entities to the extent possible under Domestic Law.
2. This MoU does not create any legally binding obligations, confer any rights on any person, or modify or supersede any Domestic Law.
3. This MoU complements, but does not alter, the terms and conditions of existing arrangements between the Authorities such as the IOSCO EMMoU and the memorandum of understanding on mutual assistance in the supervision and oversight of regulated entities dated 7 July 2017. To the extent any provision of this MoU conflicts with the IOSCO EMMoU in relation to any enforcement related assistance request or cooperation between the Authorities, the IOSCO EMMoU shall prevail.
4. Within the framework of this MoU, each Authority will remain responsible for regulating and supervising the offering, marketing and distribution of a Covered Fund within its jurisdiction in compliance with the applicable Domestic Law. The offering, marketing and distribution of Covered Funds in the host jurisdiction shall comply with the applicable Domestic Law in the host jurisdiction.
5. Within the framework of this MoU, the Authorities will provide each other with the fullest cooperation in relation to Covered Entities. Following consultation, cooperation may be denied:
 - a) where cooperation would require an Authority to act in a manner that would violate Domestic Law;
 - b) where a request for information is not made in accordance with Article 7 of this MoU;
 - c) where the information is intended to be used for criminal proceedings in the jurisdiction of the Requesting Authority; or
 - d) on the grounds of public interest in the relevant jurisdiction.
6. In accordance with Domestic Law, each Authority has discretion:
 - a) to refuse to authorise or recognise a Covered Fund within its jurisdiction notwithstanding that the Covered Fund falls within the parameters of this MoU;
 - b) to regulate the offering, marketing and distribution of a Covered Fund within its jurisdiction, including by exercising the power to require Persons engaging in the offering, marketing and distribution of the Covered Fund to be authorised, licensed, registered, to have relevant qualifications, and to comply with applicable Domestic Law requirements;
 - c) to suspend or terminate the offering of a Covered Fund within its jurisdiction notwithstanding that the Covered Fund has been authorised or recognised for offering within the parameters of this MoU; and
 - d) to take appropriate enforcement action against a Covered Entity.
7. To facilitate cooperation under this MoU, the Authorities have designated contact points as set out in Appendix A.

Article 3 Scope of mutual recognition

1. Pursuant to this MoU, the Authorities agree to consider applications by Covered Funds for Hong Kong authorization and UK recognition through a streamlined process in accordance with Section 104 of the SFO or section 272 of FSMA (as the case may be), provided that the Covered Funds meet the applicable conditions and requirements as set out in Appendix B.

2. Appendix B may be amended from time to time and each Authority will publish the content of the latest version on its website.
3. In accordance with Domestic Law, each Authority may impose specific requirements on a Covered Fund in light of the specific circumstances of that CIS, whether upon or subsequent to the authorization or recognition of the relevant CIS.

Article 4 Scope of cooperation

1. Cooperation includes, inter alia, consultation, exchange of information, Cross-border On-site Visits and matters of mutual supervisory interest, including regulatory developments.
2. Cooperation will be most useful in, but is not limited to, the following circumstances:
 - a) the initial application of a Covered Entity from one jurisdiction for authorization or recognition in the other jurisdiction; and
 - b) the ongoing supervision of a Covered Entity.
3. Subject to the provisions of Domestic Law, the Authorities may cooperate:
 - a) on an ongoing basis or ad hoc;
 - b) orally or in writing; and
 - c) upon request or on their own initiative (i.e. without a formal request).

Article 5 Notification

1. The Authorities will inform each other to the extent possible and as soon as practicable about:
 - a) any known material event that could impact the proper functioning of the financial markets, or have a significant adverse impact on Covered Entities or investors of Covered Funds; and
 - b) any enforcement action taken by them, including the revocation of, suspension of or modifications to relevant authorisations, licences, or registrations in respect of a Covered Entity which may have, in their reasonable opinion, a material impact on that Covered Entity.
2. With respect to a Covered Fund, each Authority will, to the extent possible, inform the other in a timely manner of:
 - a) any decision or, where appropriate, pending decision to revoke the authorisation for distribution in or from the UK or Hong Kong taken by it;
 - b) relevant issues such as the revocation of, or any significant changes to authorisations, licences or registrations of related Covered Entities; and
 - c) (where applicable and practicable in the relevant jurisdiction) complaints from investors in relation to the Covered Entity which are brought to the Authority's attention and which are material in that Authority's opinion.
3. As necessary from time to time, each Authority will inform the other about any significant amendments to Domestic Law which are likely to have a material impact on the matters covered by, and/or cooperation under, this MoU.
4. Once a year, each Authority will provide the other with a list of the Covered Funds authorised or recognised in the other Authority's jurisdiction under the relevant Domestic Law in accordance with this MoU.

Article 6 Exchange of information

1. Upon request and in accordance with Article 7 below, each Authority will use its reasonable endeavours to provide the other Authority with assistance:
 - a) in obtaining information not otherwise available to the Requesting Authority; and
 - b) to enable the Requesting Authority to interpret and assess a Covered Entity's compliance with Domestic Law that is administered or made by the Requesting Authority.
2. The information exchanged may, subject to any restriction on the disclosure or sharing of information under Domestic Law, include:
 - a) information which would enable the Requesting Authority to verify that a Covered Entity is in compliance with the relevant obligations and requirements of the Domestic Law in the Requesting Authority's jurisdiction that is administered or made by the Requesting Authority;
 - b) information relevant to the financial and operational condition of a Covered Entity, including, for example, reports on capital reserves, liquidity or other prudential measures, and internal control procedures, where this is held and can be easily obtained;
 - c) relevant supervisory information and reports a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements;
 - d) any inspection findings formally communicated to a Covered Entity in writing;
 - e) information relevant for monitoring and responding to the potential implications of the activities of Covered Entities to ensure the proper functioning of the financial markets;
 - f) other information which is relevant to a Covered Fund; and
 - g) enforcement action against any Covered Management Company which has, had or may have significant impact on the operations of such Covered Management Company in the Requesting Authority's jurisdiction.
3. Each Authority intends, upon request of the other Authority, to provide information relating to a Covered Fund, including the status, additional terms and conditions, and any waiver granted, in respect of the authorization or recognition of a Covered Fund.
4. Subject to any restriction on the disclosure or sharing of information under Domestic Law, each Authority may disclose non-public information which it considers is likely to be of assistance to the other Authority on a voluntary basis.

Article 7 Form of requests for information

1. A request for information in accordance with Article 6 above should be made in writing and addressed to the relevant contact point set out in Appendix A.
2. A request should specify the following:
 - a) the information sought by the Requesting Authority, including specific questions to be asked and indications of any sensitivity regarding the request;
 - b) a concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the Domestic Law applicable to the supervisory activity; and
 - c) the desired time period for responding and, where appropriate, the urgency thereof.
3. During Emergency Situations, requests for information may be made in any form, including orally, provided such a request is confirmed in writing as early as possible thereafter.

Article 8 Cross-border On-site Visits

1. Authorities should discuss and reach an understanding on the terms for conducting Cross-border On-Site Visits, taking into full account each other's jurisdiction, legal framework and statutory

obligations, particularly when determining the respective roles and responsibilities of the Authorities.

2. The Authorities will adhere to the following procedure before conducting a Cross-border On-site Visit:
 - a) The Authorities will consult with each other about the intended timeframe for, and scope of, any Cross-border On-site Visit.
 - b) The Authority in whose jurisdiction a Cross-border On-site Visit would be undertaken should decide whether the visiting officials or Persons mandated should be accompanied by its own officials during the visit.
 - c) When establishing the scope of any proposed Cross-border On-site Visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available, or is capable of being made available, by that Authority.
 - d) The Authorities will endeavour to assist each other in interpreting the content of publicly and non-publicly available documents, and obtaining information from directors and senior management of Covered Entities, or any other relevant Person for supervisory purpose.

Article 9 Permissible uses of information

1. The Requesting Authority will use non-public information obtained under this MoU solely for the purpose of supervising the distribution of Covered Funds and the supervision of Covered Entities which includes application procedures and ongoing supervision.
2. However, each Authority recognizes that, while this MoU is not intended to gather information for Enforcement Purposes, the Authority may subsequently want to use the non-public information provided pursuant to this MoU for Enforcement Purposes. In such cases, the Authorities will inform each other of such intended use and proceed along with the principles of the IOSCO EMMoU. With respect to information shared between the SFC and the FCA, use of non-public information for Enforcement Purposes will be in accordance with the terms and conditions of the IOSCO EMMoU.

Article 10 Confidentiality of information and disclosure

1. Subject to paragraphs 2 and 3 of this Article, the Authorities will keep confidential any non-public information communicated between them within the scope of cooperation of this MoU, except:
 - a) the fact that the Authorities have concluded this MoU or that it has been revised after its entry into force;
 - b) Appendix B of this MoU, including a possible revision of Appendix B after its entry into force; and
 - c) the termination of this MoU under Article 11 of this MoU.
2. The Requesting Authority should obtain prior consent from the Requested Authority before disclosing any confidential information received under this MoU to any third party. If consent is not obtained from the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval, and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
3. Where confidential information received under this MoU is subject to a legally enforceable demand for onward disclosure in the Requesting Authority's jurisdiction, the latter will notify the Requested Authority prior to complying with such a demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this MoU.

Article 11 Amendment; termination

1. This MoU may be amended by written agreement.
2. Either Authority may terminate this MoU by giving 30 days' advance written notice to the other Authority. If either Authority gives such notice, cooperation will continue on all requests for cooperation that were made under this MoU until notice was given.
3. In the event of termination of this MoU, information obtained within the scope of cooperation of this MoU will continue to be treated as set out under Articles 9 and 10 above.

Article 12 Entry into force

This MoU enters into force upon signature of the Authorities.

For SFC

For FCA

Ashley ALDER
Chief Executive Officer

Signed in Hong Kong on 8 October 2018

Megan BUTLER
Executive Director of Supervision –
Investment, Wholesale & Specialists Division
Signed in Hong Kong on 8 October 2018

Appendix A

Contact points

Authority	Contact details
SFC (Hong Kong)	Securities and Futures Commission 35/F, Cheung Kong Center 2 Queens Road Central Hong Kong Email address: mrfuk@sfc.hk
FCA (UK)	Financial Conduct Authority 12 Endeavour Square London E20 1JN Email address: recognisedcis@fca.org.uk