

Appendix B – I – FINMA Requirements

Mutual Recognition of Funds (MRF) between Switzerland and Hong Kong

1. The Swiss Financial Market Supervisory Authority FINMA and the Securities and Futures Commission (SFC) signed the Memorandum of Understanding concerning Mutual Recognition of Funds between Switzerland and Hong Kong (MoU). The MoU provides a recognition of asset managers as well as a framework for the mutual recognition of publicly offered funds in both markets. Public Offering” or “publicly offered” means
 - a. in Switzerland any marketing, offering, sale and distribution of CIS to investors who are not qualified as defined in Article 10 paras. 3, 3^{bis} or 3^{ter} CISA and/or
 - b. in Hong Kong any offer (including marketing, sales and distribution) of CIS to the public which requires authorisation under the SFO.

General principles

2. MRF operates on the principles that a fund that has been authorised or approved by the relevant authority in one jurisdiction (Home Jurisdiction) and is seeking or has received authorisation or approval for Public Offering in the other jurisdiction (Host Jurisdiction) where:
 - a. the fund meets the eligibility requirements in accordance with these FINMA Requirements;
 - b. the fund is authorised or approved by the relevant authority in the Home Jurisdiction and is allowed for Public Offering in the Home Jurisdiction;
 - c. the fund operates and is managed in accordance with the relevant laws and regulations in the Home Jurisdiction and its constitutive documents;
 - d. the sale and distribution of the fund in the Host Jurisdiction complies with the laws and regulations applicable in the Host Jurisdiction;
 - e. the fund will comply with the additional rules released by the relevant authority in the Host Jurisdiction governing the authorisation or approval, post-authorisation and ongoing compliance, and the sale and distribution of the fund in the Host Jurisdiction; and
 - f. the management company of the fund shall ensure holders of both the Home Jurisdiction and Host Jurisdiction receive fair and the same treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and
 - g. ongoing disclosure of information on the fund shall be made available to investors in both the Home Jurisdiction and the Host Jurisdiction at the same time.
3. In general, funds seeking FINMA authorisation or which have received FINMA authorisation for Public Offering in Switzerland pursuant to Article 15 and Article 120 ff. of the Collective Investment Schemes Act (CISA) have to comply with the regulatory requirements under Swiss Law and with the additional requirements laid down in these FINMA Requirements. On the basis of the principles set out above, a Hong Kong fund complying with the relevant Hong Kong laws and regulations is generally deemed to have complied in substance with the relevant FINMA requirements and will benefit from a streamlined authorisation process for Public Offering in Switzerland.

4. In view of the differences between the Swiss and the Hong Kong regulatory regimes and to ensure proper investor protection and consistency with existing Swiss FINMA-authorized funds, these FINMA Requirements sets out additional requirements a Hong Kong Fund has to comply with when applying for FINMA authorisation for Public Offering in Switzerland under the MRF, as well as other requirements a Recognised Hong Kong Fund (see definition in paragraph 5 below) has to observe after having obtained FINMA authorisation The SFC will issue separate rules regarding the approval of eligible Swiss funds for Public Offering in Hong Kong.
5. Hong Kong funds that are eligible for FINMA authorisation or that have received FINMA authorisation under the MRF are referred to as Recognised Hong Kong Funds.

Eligibility requirements and types of eligible funds

6. Recognised Hong Kong Funds applying for FINMA authorisation must be established, domiciled and managed in Hong Kong in accordance with Hong Kong laws and regulations and its constitutive documents. Solely SFC-authorized Hong Kong Funds under Chapters 7, 8.1, 8.2, 8.6, 8.8, 8.9 and Appendix I of the SFC's Code on Unit Trusts and Mutual Funds (UT Code) are eligible under the MRF for Public Offering to Swiss investors. FINMA and SFC may consider extending the MRF to include other types of products in the future.
7. In addition, Recognised Hong Kong Funds applying for FINMA authorisation must meet these eligibility requirements:
 - a. The fund should not carry out the following activities, which has to be reflected accordingly in the fund's offering or constitutive documents:
 - i. investments in real estate;
 - ii. investments in precious metals or precious metals certificates, commodities or commodity certificates;
 - iii. short-selling of investments in accordance with Article 70 para. 1 letters a, b, c and d CISO (securities, derivative financial instruments, units in collective investment and money market instruments); and
 - iv. exceeding the maximum borrowing limit of 10% of its total net asset value.
 - b. In case of a fund of fund, the target fund in which the fund of fund invests restricts investments in other funds for their part to a total of 10 percent.
 - c. The designation of the Recognised Hong Kong Fund must not provide grounds for confusion or deception.

Requirements for Hong Kong Asset Managers

8. The asset manager of a Recognised Hong Kong Fund must be licensed or registered for Type 9 regulated activity (asset management) in accordance with Part V of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) that satisfies the requirements in Chapter 5 of the UT Code (Hong Kong Asset Manager).

9. The Hong Kong Asset Manager of a Recognised Hong Kong Fund must not have been the subject of any major regulatory or supervisory actions by the SFC in the past three years or, if it has been established for less than three years, since the date of its establishment.
10. The Hong Kong Asset Manager of a Recognised Hong Kong Fund may delegate its investment management functions to any person operating outside Hong Kong, provided such delegation is accepted under Hong Kong laws for Hong Kong Funds approved for Public Offering, and the Hong Kong Asset Manager remains responsible for any action of its delegate(s).

Requirements for Custodians

11. The Recognised Hong Kong Fund must appoint a Custodian that qualifies to act as trustee or custodian for Recognised Hong Kong Funds, which is a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong), or a subsidiary of such a bank; or a trust company approved by the Mandatory Provident Fund Schemes Authority.

Representatives in Switzerland

12. Each Recognised Hong Kong Fund must appoint a representative in Switzerland authorised by FINMA under Article 13 para. 2 let. h CISA (Swiss Representative) and conclude a representative agreement.
13. The Swiss Representative of a Recognised Hong Kong Fund shall comply with Article 123 ff. CISA.
14. The Swiss Representative represents the Recognised Hong Kong Fund with regard to its investors and FINMA in Switzerland. The Swiss Representative's powers of representation set out under Swiss law may not be restricted.
15. The Swiss Representative observes the statutory obligations to report, publish and inform, as well as the codes of conduct of industry bodies which have been declared a minimum standard by FINMA. The Swiss Representative's identity must be disclosed in every publication.

Paying agent in Switzerland

16. Each Recognised Hong Kong Fund must appoint a paying agent in Switzerland and conclude a paying agent agreement. The paying agent must be a bank pursuant to the Federal Act on Banks and Savings Banks of 8 November 1934.
17. The investors may request the issuance and redemption of the units from the paying agent.

Operational and ongoing requirements

Home Jurisdiction supervision

18. The Recognised Hong Kong Fund must, on an ongoing basis, remain authorised by the SFC for Public Offering in Hong Kong and be subject to SFC's ongoing regulation and supervision.

Constitutive documents

19. The Hong Kong Asset Manager of a Recognised Hong Kong Fund must ensure that the constitutive documents are made available to the public in Switzerland, free of charge at all times during normal office hours at the place of business of its Swiss Representative in Switzerland.

Pricing error and change/suspension/deferral of dealings

20. Any pricing error, change in dealings or suspension or deferral of dealings of the Recognised Hong Kong Fund requiring notification to SFC shall also be notified to FINMA via the Swiss Representative.

Place of jurisdiction

21. The offering documents of a Recognised Hong Kong Fund shall provide for a place of jurisdiction at the residence of the Swiss Representative in Switzerland for any litigation or dispute concerning the Public Offering of the Recognised Hong Kong Fund in Switzerland.

Changes to Recognised Hong Kong Funds

22. Changes to a Recognised Hong Kong Fund shall be made in accordance with the applicable Hong Kong laws and regulations and the provisions of the constitutive documents. These changes shall be effective upon approval by SFC or compliance with the appropriate procedures. Such changes shall then be submitted as soon as practicable to the Swiss Representative for filing with FINMA.
23. Changes to a Recognised Hong Kong Fund shall not contravene the applicable Hong Kong laws and regulations and the requirements set out in these FINMA Requirements. Holders in Switzerland and Hong Kong shall be notified at the same time about the changes to the Recognised Hong Kong Fund.
24. Changes concerning the eligibility of a Recognised Hong Kong Fund under the MRF shall be reported immediately to FINMA by the Swiss Representative. In addition, changes which only affect Swiss investors should be made in accordance with the requirements under the relevant Swiss laws and regulations.

Breach

25. In the event of breach of Hong Kong laws and regulations or the requirements set out or referred to in these FINMA Requirements, the Hong Kong Asset Manager shall notify SFC in accordance with Hong Kong laws and regulations. The Hong Kong Asset Manager or the Swiss Representative shall also notify FINMA promptly.
26. Following FINMA authorisation, if a Recognised Hong Kong Fund ceases to meet the requirements as set out in these FINMA Requirements, its Hong Kong Asset Manager or Swiss Representative shall notify FINMA immediately. The Recognised Hong Kong Fund shall not continue to be marketed to the public in Switzerland and shall not accept new subscriptions from investors in Switzerland.

Withdrawal of authorisation

27. Following authorisation of a Recognised Hong Kong Fund, if its Hong Kong Asset Manager does not wish to maintain such authorisation, it shall apply for withdrawal of authorisation from FINMA in accordance with the applicable Swiss laws and regulations.
28. FINMA may at any time pursuant to CISA review its authorisation and may modify, add to or withdraw any of the conditions of such authorisation, or withdraw the authorisation, as it considers appropriate.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

29. The sale and distribution of a Recognised Hong Kong Fund in Switzerland must be conducted by intermediaries properly licensed by FINMA. The sale and distribution of a Recognised Hong Kong Fund in Switzerland shall comply with the applicable Swiss laws and regulations on the distribution of funds.

Offering documents

30. The disclosure of information about a Recognised Hong Kong Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.
31. The offering documents of a Recognised Hong Kong Fund must be up-to-date and contain information necessary for investors to be able to make an informed judgement of the investment proposed to them.
32. A Recognised Hong Kong Fund may use the offering documents, including Product Key Facts Statement (Product KFS), authorised by the SFC translated into an official Swiss language (see para. 36 below). Unless otherwise provided in these FINMA Requirements, matters such as the types of document, content, format, frequency of update and the update procedures shall comply with the applicable Hong Kong laws and regulations and the provisions of the constitutive documents. Recognised Hong Kong Funds intending to use Product KFS instead of preparing a separate Swiss Key Investor Information Document should include in the Product KFS the relevant information for Swiss investors according to the SFAMA Guideline "Swiss mandatory provisions for KIID of foreign collective investment schemes to be distributed in Switzerland"¹.
33. In addition, the SFC-authorized offering documents must be supplemented by a Swiss annex to comply with the following disclosure requirements:
 - a. Name and address of the Swiss Representative in Switzerland (Art. 133 para. 2 let. b CISO);
 - b. Name and address of the paying agent in Switzerland (Art. 133 para. 2 let. c CISO);

¹ http://www.sfama.ch/en/self-regulation-model-documents/fund-management/available-documents/sfama_e_swiss-mandatory-provisions-for-kiid-of-foreign-cis.docx/@@download/file/SFAMA_e_Swiss%20mandatory%20provisions%20for%20KIID%20of%20foreign%20CIS.docx

- c. Location where the relevant documents (e.g. the funds constitutive documents, and offering documents) may be obtained (Art. 133 para. 2 let. d CISO);
- d. Medium through which publications about the Recognised Hong Kong Fund are made in Switzerland (Art. 133 para. 3 CISO in conjunction with Art. 39 CISO);
- e. Modalities for the payment of retrocessions and rebates in line with the SFAMA Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines) of 22 May 2014;
- f. Place of performance and jurisdiction of the Representative's registered office.

34. The Hong Kong Asset Manager shall take reasonable steps and measures to ensure that the offering documents of a Recognised Hong Kong Fund and their changes are made available to the investors in Switzerland at the same time. The revised offering documents of a Recognised Hong Kong Fund shall be filed with SFC and notified to FINMA accordingly.

Ongoing disclosure

35. The Hong Kong Asset Manager shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Hong Kong Fund (including periodic financial reports, notices and announcements) is dispatched and made available to the investors in Hong Kong and Switzerland at the same time and filed with the SFC and FINMA accordingly. Unless otherwise provided for in these FINMA Requirements, matters such as the types of ongoing disclosure document, format, content, timing and frequency of disclosure, matters to be disclosed shall comply with the applicable Hong Kong laws and regulations and the provisions of the constitutive documents.

Languages

36. All documents provided to FINMA or Swiss investors must be established in an official Swiss language (German, French or Italian), with the exception of representative agreements and paying agent agreements which can be filed in English.

Advertisements

37. All advertisements in relation to the Recognised Hong Kong Fund issued in Switzerland must comply with the applicable Swiss laws and regulations. Advertisements for Recognised Hong Kong Funds may qualify as fund distribution (Article 3 para. 1 CISA) and are therefore subject to FINMA authorisation. The Swiss distributors are also subject to FINMA authorisation (Article 2 para. 1 let. d CISA).

Application process

38. FINMA's single point of contact for the approval procedure is the Swiss Representative of the Recognised Hong Kong Fund. The Swiss Representative shall submit the relevant binding documents for authorisation to FINMA and handle any correspondence between FINMA and the Recognised Hong Kong Fund and its Hong Kong Asset Manager, respectively (Article 120 Paragraph 1 CISA).

39. The Swiss Representative and the Hong Kong Asset Manager of the Recognised Hong Kong Fund prepare the filing of the authorisation request to FINMA.
40. Upon receipt of an application for authorisation of a Recognised Hong Kong Fund, FINMA shall conduct a first formal screening to check whether the correct forms and the required information have been submitted.
41. An applicant for authorisation of a Recognised Hong Kong Fund must submit a completed application form as specified on FINMA's website. The application must also include:
- a) current certificate issued by SFC stating that the Recognised Hong Kong Fund was approved by SFC and falling within the categories of funds set out in paragraph 6 of this Circular (the certificate must not be older than six months at the time the application is submitted; no electronic signatures are accepted.);
 - b) a confirmation of the Hong Kong Asset Manager stating, that the Recognised Hong Kong Fund respects the eligibility criteria set out in paragraph 7 of these FINMA Requirements.
 - c) current SFC certificate stating that the Hong Kong Asset Manager is licensed by or registered with SFC (the certificate must not be older than six months at the time the application is submitted; no electronic signatures are accepted);
 - d) the offering documents of the Recognised Hong Kong Fund, validly signed by the Hong Kong Asset Manager, the Custodian and the Swiss Representative. It must be filed in an official Swiss language;
 - e) Product KFS, unsigned, written in an official Swiss language;
 - f) Representative agreement in a copy, validly signed by the Hong Kong Asset Manager and the Swiss Representative;
 - g) Paying Agency Agreement in a copy, validly signed by the Hong Kong Asset Manager, the Swiss paying agent and the Custodian;
 - h) constitutive documents, validly signed by the Hong Kong Asset Manager. They must be filed in an official Swiss language;
 - i) most recent annual and semi-annual reports, filed in an official Swiss language.
42. FINMA may, from time to time, issue additional circulars, frequently asked questions or other documents to provide practical guidance on the application process in the industry. Any relevant information will be made available on FINMA's website or from its Institutions and Products section.
43. Further details about the MRF application process for a Recognised Hong Kong Fund seeking authorisation from FINMA are posted on FINMA's website <https://www.finma.ch/en/authorisation/institutions-and-products-subject-to-the-collective-investment-schemes-act/foreign-collective-investment-schemes/> starting from today.

Institutions and Products section

Swiss Financial Market Supervisory Authority FINMA