



## FCA Circular

### **Mutual Recognition of Funds (MRF) between the United Kingdom (UK) and Hong Kong**

The Financial Conduct Authority (FCA) and the Securities and Futures Commission (SFC) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 8 October 2018.

For the purpose of this circular, unless otherwise defined herein, the words beginning with a capital letter refer to the list of definitions set out in Article 1 of the Memorandum.

The SFC and the FCA may consider extending this MRF to include other types of funds in future in accordance with the Memorandum.

#### **General principles**

The Memorandum operates on the principles that, in respect of a Covered Fund that has been authorised by the relevant Authority in one jurisdiction (home jurisdiction) and is seeking or has received authorisation or recognition for public offering in the other jurisdiction (host jurisdiction):

- a. The Covered Fund must meet the eligibility requirements in accordance with this circular and comply with all of the applicable requirements set out in this circular (see below);
- b. The Covered Fund must remain authorised by the relevant Authority in the home jurisdiction and be allowed for public offering within the home jurisdiction;
- c. The Covered Fund must operate and be managed in accordance with the relevant laws and regulations in the home jurisdiction and its constitutive documents;
- d. The sale and distribution of the Covered Fund in the host jurisdiction must comply with the applicable laws and regulations in the host jurisdiction;
- e. Where relevant, the Covered Fund and its Covered Management Company must comply with the additional rules required by the relevant Authority in the host jurisdiction governing the authorisation or recognition of the Covered Fund, including post-authorisation or recognition requirements, and the sale and distribution of the Covered Fund in the host jurisdiction;

- f. Investors of the Covered Fund must be treated fairly; there must be no arrangements which provide an advantage for investors in the home jurisdiction that would result in prejudice to the investors in the host jurisdiction, and vice versa; and
- g. Post sale ongoing disclosure of information on the Covered Fund must be made available to investors in the home jurisdiction and host jurisdiction at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).

Covered Funds, and their Covered Management Companies where applicable, that are seeking FCA recognition or have received FCA recognition pursuant to s272 of FSMA for offering to the public in the UK must comply with the relevant requirements set out in Annex A and the applicable UK Domestic Law.

On the basis of the principles set out above, if an eligible Hong Kong Covered Fund complies with the relevant Hong Kong laws and regulations and the conditions as set out in this circular, it will enjoy a streamlined process of recognition for offering to the public in the UK.

### **Eligibility requirements and types of eligible funds**

Hong Kong Covered Funds applying for FCA recognition must meet the requirements of s272 of FSMA, namely that adequate protection is afforded to participants in the scheme, that the arrangements for the fund's constitution and management must be adequate, and the powers and duties of the operator and of the trustee or depositary must be adequate.

Hong Kong Covered Funds applying for FCA recognition must meet the eligibility requirements set out in Annex B.

Hong Kong Covered Funds applying for FCA recognition must also fall within one or more than one of the following fund types under the UT Code:

- a. General equity funds, bond funds and mixed funds;
- b. Feeder funds, where underlying fund falls within one of the fund types in paragraphs (a), (c), (d) and (e), and complies with the requirements in this circular;
- c. Fund of funds;
- d. Index funds; or
- e. Passively managed index tracking exchange traded funds.

The applicant Hong Kong Covered Fund for which FCA recognition is sought must indicate to the FCA the fund type(s) in the paragraph above it falls within.

All applicant Hong Kong Covered Funds applying for recognition under s272 of FSMA and all recognised Hong Kong Covered Funds must comply with the requirements set out under the 'Requirements applicable to all Hong Kong Covered Funds seeking recognition and recognised Hong Kong Covered Funds' section below, and must otherwise satisfy/continue to satisfy the criteria for recognition under s272 of FSMA.

### **Requirements applicable to all Hong Kong Covered Funds seeking recognition and recognised Hong Kong Covered Funds**

In view of the differences between the UK's and Hong Kong's regulatory regimes and to ensure that there is adequate investor protection and consistency with the existing UK regime for authorised retail funds, all applicant Hong Kong Covered Funds seeking recognition under s272 of FSMA and all Hong Kong Covered Funds that are recognised by the FCA must also comply with requirements set out in this circular. The SFC will issue a separate circular which sets out the eligibility and ongoing requirements with which a UK Covered Fund and UK Covered Management Companies must comply if it wishes to obtain authorization and remain authorized under section 104 of the SFO and in line with the terms of the Memorandum.

#### *Facilities in the UK*

Each Hong Kong Covered Fund must maintain facilities for investors in the UK as required by COLL 9.4 (Facilities in the UK).

Each applicant Hong Kong Covered Fund must confirm to the FCA the address of the place of business in the UK for service on the Hong Kong Covered Fund of notices and /or other documents and must keep the FCA updated should these details change.

#### *Operational and ongoing requirements*

A summary of the ongoing regulatory rules and requirements applicable to a Hong Kong Covered Fund and its Hong Kong Covered Management Company are set out in this circular.

#### *Home jurisdiction supervision*

The recognised Hong Kong Covered Fund must, on an ongoing basis, remain authorized by the SFC for offering to the public in Hong Kong. The Hong Kong Covered Management Company must also remain appropriately licensed by or registered with the SFC for this activity, and both must be subject to ongoing regulation and supervision by the SFC.

#### *Changes to recognised Hong Kong Covered Funds*

Any proposed alteration to a recognised Hong Kong Covered Fund must be made in accordance with the applicable Hong Kong and UK laws and regulations and the provisions of its constitutive documents.

Any proposed alteration to the recognised Hong Kong Covered Fund, including changes that concern the eligibility of a recognised Hong Kong Covered Fund under this MRF and revisions made to its offering documents relating to such changes must be submitted by the Hong Kong Covered Fund/Management Company for approval by the FCA in accordance with s277 of FSMA. Effect is not to be given to any proposed alteration to the recognised Hong Kong

Covered Fund unless the FCA has either given its approval under s277(2)(a) of FSMA, or the period specified in s277(2)(b) of FSMA has expired and the FCA has not refused approval. In addition, changes that affect UK investors only and revisions made to the offering documents of a recognised Hong Kong Covered Fund relating to such changes should be made in accordance with s277 of FSMA.

For the avoidance of any doubt, if a proposed alteration is received by the FCA which renders the recognised Hong Kong Covered Fund ineligible to be considered as a Covered Fund under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible covered fund type definition), the expectation is that the alteration request submitted will be for de-recognition of the fund in the UK. If the fund still wishes to access the UK market, we would expect a new s272 application to be completed, but this application will not be subject to the streamlined application process accessible by eligible applicant Hong Kong Covered Funds.

Investors in the UK and Hong Kong must also be notified at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions) about any changes to the recognised Hong Kong Covered Fund by the Hong Kong Covered Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes.<sup>1</sup>

#### *Breach*

In the event of a breach of Hong Kong Domestic Laws, the constitutive documents or the requirements set out or referred to in this circular, which is notifiable to the SFC and which could affect UK investors in a Hong Kong Covered Fund, the Hong Kong Covered Management Company must endeavour to notify the FCA and the SFC at the same time and rectify the breach promptly. The Hong Kong Covered Management Company will notify the FCA once the breach has been rectified.

Following FCA recognition of a Hong Kong Covered Fund under s272 of FSMA, if a recognised Hong Kong Covered Fund ceases to meet the requirements as set out in this circular, its Hong Kong Covered Management Company must notify the FCA immediately. The recognised Hong Kong Covered Fund must not continue to be offered to the public in the UK and must not accept subscriptions from new investors in the UK.

#### *Withdrawal of recognition*

Following the recognition in the UK of a Hong Kong Covered Fund, if the Hong Kong Covered Fund/Management Company no longer wishes to maintain such recognition of the fund, it should notify the FCA under s277 of FSMA. Any UK investor who has invested in the fund during the time it has been recognised in the UK should receive appropriate notice of the proposed de-recognition of the Hong Kong Covered Fund in the UK.

The FCA may at any time review a Hong Kong Covered Fund's recognition and may modify, add to or withdraw any of the conditions of such recognition, or withdraw the recognition, as it considers appropriate.

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<sup>1</sup> To the extent there are requirements on minimum notice period and content of or template for notice to UK investors under relevant UK laws and regulations, the recognised Hong Kong Covered Fund should comply with these requirements and ensure that investors in the UK and Hong Kong receive equal treatment in terms of the notice period and information disclosed.

### *Sale/distribution*

The sale and distribution of a recognised Hong Kong Covered Fund in the UK must comply with the relevant UK laws and regulations relating to the sale and distribution of funds.

Specific requirements apply to the communication of financial promotions and other marketing information in the UK. Unless they are exempt under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended), such financial promotions must be communicated or approved by a UK authorised person as defined in s31 of FSMA and must meet the requirements set out in Chapter 4 of the FCA's Conduct of Business Sourcebook (Communicating with clients, including financial promotions) (COBS 4).

### *Offering documents*

The disclosure of information relating to a recognised Hong Kong Covered Fund must be complete, clear, fair and not misleading. It must be capable of being easily understood by investors.

The offering documents of a recognised Hong Kong Covered 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.

A recognised Hong Kong Covered Fund may use the prospectus approved by the SFC, to the extent it complies with the rules relating to financial promotions described above. Unless otherwise provided for in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. The SFC-approved prospectus may be supplemented by a UK covering document to comply with the disclosure requirements set out in this circular. The prospectus should also disclose any other information which may have a material impact on investors in the UK.

The recognised Hong Kong Covered Fund must take reasonable steps and measures to ensure that any updated offering documents are made available to investors in Hong Kong and the UK at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).

### *Financial reports*

A recognised Hong Kong Covered Fund may use its Hong Kong financial reports as the basis for distribution in the UK, provided that it is supplemented by the additional information and meet the other requirements set out in Annex A.

### *Filing*

As soon as reasonably practicable, a recognised Hong Kong Covered Fund must file with the FCA (recognisedcis@fca.org.uk) any revised instrument constituting the fund, any revised prospectus, any annual and subsequent half yearly financial reports and any updated PRIIPs Key Information Document (KID).

### *Language*

The constituting and offering documents and financial reports and notices to UK investors of a recognised Hong Kong Covered Fund must be provided to UK investors in English.

### *Financial promotions, advertising and marketing materials*

All financial promotions, advertisements and marketing materials in relation to a recognised Hong Kong Covered Fund offered in the UK must comply with applicable UK Domestic Laws, in particular those which are set out in Annex A.

### *Fees*

The recognised Hong Kong Covered Fund/Management Company must ensure that any FCA invoiced periodic fees in respect of the Hong Kong Covered Fund are paid.

## **Application Process**

The FCA must assess each Hong Kong Covered Fund which applies for recognition under this MRF agreement to ensure that it satisfies the requirements of s272 of FSMA. The recognition of a Hong Kong Covered Fund is not automatic.

The following application documents shall be provided to the FCA by the applicant directly:

A duly signed and completed s272 application form along with the required scheme documentation set out in the form; and  
The application fee

A complete application should be sent to [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk)

Applicants shall also request the SFC to provide directly to the FCA a certificate confirming that the Eligibility Requirements listed in Annex B to this circular are met. The FCA will not proceed to recognise the applicant Hong Kong Covered Fund if no such certificate is received from the SFC.

Once the application has been determined as being complete an acknowledgement email will be sent to the applicant. If an application is deemed incomplete, an email will be sent to the applicant informing them of this and what the FCA considers to be missing.

Additional questions may be raised by the FCA during the course of the review to ensure that the conditions set out in s272 of FSMA is satisfied.

If the FCA approves the application and the applicant fund becomes a recognised fund in the UK, the recognised Hong Kong Covered Fund details will be published on the Financial Services Register.

The FCA encourages applicants to consult its Fund Authorisations Team as early as possible for any clarifications as to how the relevant requirements may apply and be complied with in light of their specific circumstances. They can be contacted by telephone via the FCA switchboard - +44 (0)20 7066 1000 or by emailing [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk). The Fund Authorisations Team is able to give factual information on the recognition process and our

expectations but it is not however able to give specific advice on the rules and regulations and how they apply in specific circumstances so if you are not sure on this you may wish to seek legal advice.

The FCA may issue other practical guidance to the industry from time to time. Please refer to the FCA's website – [www.fca.org.uk](http://www.fca.org.uk)

The FCA will aim to determine an application under s272 of FSMA from an applicant Hong Kong Covered Fund within two months of receipt of a complete application provided that the applicant Hong Kong Covered Fund satisfies the conditions set out in s272 of FSMA and it meets the applicable requirements set out in this circular.

*Regular provision of information relating to compliance with requirements for recognition*

The Hong Kong Covered Management Company of a recognised Hong Kong Covered Fund, recognised by virtue of s272 of FSMA must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether the requirements for the making of an order under s272 of FSMA in respect of the scheme continue to be satisfied as set out in s277A of FSMA.

## **Annex A**

### General requirements

Registration, including application process	<p>FSMA section 272</p> <p>COLL 6.9.2G – 6.9.5G in respect of the fund depositary</p> <p>With effect from 30 September 2019, demonstrate equivalent outcomes to COLL 6.6.25R in respect of independent directors and COLL 6.6.20R, 6.6.21R and COLL 4.5.7R (8) or (9) on value assessments.</p>
Application: information and documents	COLL 9.3 (section 272 recognised schemes)
Valuation Frequency	COLL 6.3.4R (1)
Facilities in the UK	COLL 9.4 (Facilities in the United Kingdom)
Prior notification before marketing funds to UK retail (public) investors	<p>Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773)(AIFMR) Regulations 58 – 64.</p> <p>Investment Funds sourcebook (“FUND”) 10.5 (National private placement, which reflects Chapter 3 of Part 6 of the Alternative Investment Fund Managers Regulation 2013) in particular: FUND 10.5.1G, FUND 10.5.2G, FUND 10.5.6G to FUND 10.5.13G (inclusive where these are relevant to the fund in question) and FUND 10 Annex 1.</p> <p>FUND 3.3.2R to FUND 3.3.7R; FUND 3.2.2R to FUND 3.2.6R (except for FUND 3.2.4AG and 3.2.4BG) and FUND 3.4.2R to FUND 3.4.6AR and AIFMR Part 5 Regulations 34-44<sup>2</sup>.</p> <p>FUND 10.5.13G: PRIIPS KID</p>

<sup>2</sup> For the avoidance of doubt, unless otherwise specified in this circular and annex, Hong Kong Covered Management Companies and Hong Kong Covered Funds are not required to meet the substantive or operational requirements set out in other parts of FUND, AIFMD and its related regulation in AIFMR.



Pre-sales disclosures and Prospectus	<p>COLL 9.3.3R (Preparation and maintenance of prospectus), which applies COLL 4.2 (Pre-sale notifications).</p> <p>COLL 9.3.2R (Additional information required in the prospectus for an application under section 272).</p> <p>COLL 6.7.6G – performance fees</p> <p>COLL 9.3.4G (Preparation of a key information document in accordance with the PRIIPS regulation)</p> <p>PRIIPS Regulation – Regulation (EU) No 1286/2014 – key information documents for packaged retail and insurance-based investment products (PRIIPS).</p> <p>The prospectus, and any other marketing materials which are directed at UK investors, must prominently disclose i) whether or not UK investors are covered by the UK Financial Services Compensation Scheme and if they are, it must state the circumstances in which they are covered and who they would need to contact for further information; ii) that UK investors are not covered by any Hong Kong compensation scheme and a UK investor’s monies are at risk; and iii) information on how a UK investor can make a complaint to the SFC in respect of the Hong Kong Covered Fund/Hong Kong Covered Management Company.</p>
Financial promotions, marketing and advertising	<p>Section 21 of FSMA and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529)</p> <p>COBS 4 (Communicating with clients, including financial promotions).</p>
Changes to funds, or the manager or depositary of funds	FSMA section 277

Withdrawal of recognition	FSMA section 277 or section 279 (revocation of recognition)
Breaches	FSMA sections 279 and 281
Language	COLL 9.3.1D.
Passively managed index tracking exchange traded fund or index fund	The financial index or benchmark being tracked must meet the requirements set out in COLL 5.2.31R – 5.2.34G or 5.6.23R and 5.6.23AG.

**Annex B**  
**Eligibility Requirements**  
**Hong Kong Covered Funds**

Hong Kong Covered Funds applying for FCA recognition under s272 of FSMA must be established, domiciled and managed in accordance with Hong Kong laws and regulations and their constitutive documents. They must be authorised by SFC under section 104 of the SFO for public offering in Hong Kong.

The applicant/recognised Hong Kong Covered Fund must not use leverage exceeding 100% of the fund's net asset value as calculated under the commitment approach provided under the UT Code.

The applicant/recognised Hong Kong Covered Fund must not invest in (i) physical commodities including precious metals or commodity based investments or real estate, or (ii) certificates representing them.

The applicant/recognised Hong Kong Covered Fund must not have share classes with hedging arrangements other than currency hedging.

**Hong Kong Covered Management Company**

The Hong Kong Covered Fund must be managed by a Hong Kong Covered Management Company that is licensed by or registered with the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO that satisfies the requirements in Chapter 5 of the UT Code.

The Hong Kong Covered Management Company of a Hong Kong Covered Fund must not have been the subject of any major regulatory or enforcement actions by SFC in the past three years or, if it has been established for less than three years, since the date of its establishment.

The Hong Kong Covered Management Company of a Hong Kong Covered Fund may delegate its investment management functions to any person, provided such delegation is accepted under Hong Kong laws and regulations for Hong Kong funds authorised for public offering, and the Hong Kong Covered Management Company remains responsible for any action of its delegate(s).

**Hong Kong Covered Fund's trustee/depositary**

The Hong Kong Covered Fund must have a trustee/depositary that is qualified to act as a trustee/depositary of publicly offered funds.