



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 Autorité des Marchés Financiers**  
**concerning Mutual Recognition of Covered Funds, Management**  
**Companies and related Cooperation**

**Dated 10 July 2017**

This MoU has been concluded between SFC and AMF in light of global financial market growth and increasing cross-border activity in asset management and the offering, marketing and distribution of shares or units of collective investment schemes. Its purpose is to enhance cooperation in relation to (i) certain SFC or AMF authorized collective investment schemes domiciled and managed in either Hong Kong or France and offered, marketed and distributed to retail investors in France and/or to the public in Hong Kong on a cross-border basis, and (ii) management companies of collective investment schemes, based in either Hong Kong or France and licensed by the SFC or authorized by the AMF, respectively.

Based on their common understanding of their regulatory and supervisory frameworks concerning their respective management companies and collective investment schemes, the SFC and the AMF have agreed to promote reciprocal market access for fund providers by facilitating cross-border offering, marketing and distribution of certain funds between their jurisdictions subject to the requirements set out in this MoU and its Appendices.

SFC and AMF 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**

For the purpose of this MoU:

- a) “AIFMD” means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as may be amended, supplemented or otherwise modified from time to time.
- b) “Authority” or “Authorities” means the Securities and Futures Commission (SFC) and/or the Autorité des Marchés Financiers (AMF), including their possible successor(s).

- c) "CIS" means collective investment schemes.
- d) "COMOFI" means the French Monetary and Financial Code (Code monétaire et financier) as may be amended, supplemented or otherwise modified from time to time.
- e) "Covered Entities" means Covered Funds and/or Covered Management Companies.
- f) "Covered Fund" means French UCITS Funds or Hong Kong CIS authorized or seeking authorization on a cross-border basis in accordance with Article 3 of this MoU.
- g) "Covered Management Company" means a French Management Company or a Hong Kong Management Company including Persons (employed by, or given the authority to act on behalf of, such entity) who are licensed or authorized by the relevant Authority to manage Covered Funds and meet the applicable conditions as set out in Appendix B to this MoU.
- h) "Cross-border On-site Visit" means any visit made in the context of this MoU by one Authority to the premises of a Covered Management Company located in the other Authority's jurisdiction for supervisory purposes.
- i) "Delegate" means an entity to which (i) a French Management Company delegates the investment management function of one or more funds under its management in accordance with Article 13 of the 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, as may be amended, supplemented or otherwise modified from time to time 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.
- j) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of Covered Entities, the investors of Covered Funds or the proper functioning of the financial markets.
- k) "Enforcement Actions" or "Enforcement Purposes" means an action or purpose referred to in Paragraph 10(a) of the IOSCO MMoU.
- l) "French UCITS Funds" means UCITS (as defined in aa below) domiciled in France which are authorized by AMF under the COMOFI, the RG AMF, and the applicable AMF's instructions, positions and recommendations.
- m) "Home Authority" means SFC, including its possible successor(s), in the case of Hong Kong Covered Entities; or AMF, including its possible successor(s), in the case of French Covered Entities.
- n) "Home Jurisdiction" means the jurisdiction of the Home Authority, namely Hong Kong, in the case of Hong Kong Covered Entities; or France, in the case of French Covered Entities.
- o) "Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.
- p) "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.
- q) "Host Authority" means AMF, including its possible successor(s), in the case of Hong Kong Covered Entities; or SFC, including its possible successor(s), in the case of French Covered Entities.
- r) "Host Jurisdiction" means the jurisdiction of the Host Authority, namely France, in the case of Hong Kong Covered Entities; or Hong Kong, in the case of French Covered Entities.
- s) "IOSCO MMoU" means the multilateral memorandum of understanding concerning consultation and cooperation and the exchange of information established by the International Organization of Securities Commissions to which AMF and SFC are signatories.

- t) “Management Company” means:
  - i. “French Management Company” which means a corporation authorized by the AMF to manage CIS assets in accordance with the COMOFI, the RG AMF, and the applicable AMF’s instructions, positions and recommendations; and/or
  - ii. “Hong Kong Management Company” which means a corporation which is licensed by the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
- u) “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.
- v) “Person” means a natural person or legal person, or an unincorporated entity or association, including partnerships and corporations.
- w) “Requested Authority” means the Authority to whom a request is made under this MoU.
- x) “Requesting Authority” means the Authority making a request under this MoU.
- y) “RG AMF” means the General Regulation (règlement général) issued by the AMF, as may be amended, supplemented or otherwise modified from time to time.
- z) “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market in Hong Kong, as may be amended, supplemented or otherwise modified from time to time.
- aa) “UCITS” means an undertaking for collective investment in transferable securities authorized in accordance with Article 5 of 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, as may be amended, supplemented or otherwise modified from time to time.
- bb) “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 an agreement concluded by the AMF and the SFC to promote reciprocal market access for fund providers by facilitating cross-border offering, marketing and distribution of certain funds to retail investors in France and to the public in Hong Kong, subject to the requirements set out in this MoU and its Appendices.
2. This MoU is also an agreement concluded by the AMF and the SFC to cooperate in relation to the supervision of Covered Entities that may engage in cross-border offering, marketing and distribution of shares or units of CIS to retail investors in France and to the public in Hong Kong in a manner consistent with domestic laws and regulations applicable in the Host Jurisdiction.
3. This MoU does not create any legally binding obligations, confer any rights, modify or supersede any domestic laws and regulations.
4. This MoU complements, but does not alter, the terms and conditions of existing arrangements between the Authorities including without limitation, the MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities established by the European Securities and Markets Authority to which AMF and SFC are signatories and the IOSCO MMoU.

5. Within the framework of this MoU, each Authority will remain responsible for regulating and supervising the Covered Entities under its jurisdiction. The Covered Funds should be operated and managed in accordance with the domestic laws and regulations in the Home Jurisdiction as well as with their constitutive documents.
6. 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 laws and regulations where and to the extent that such offering, marketing and distribution are carried out in its jurisdiction. The offering, marketing and distribution of the Covered Funds in the Host Jurisdiction shall comply with the applicable domestic laws and regulations in the Host Jurisdiction. Subject to the provisions in this MoU, the Covered Entities should comply with additional rules provided in Appendix B to this MoU by the Host Authority governing the authorization, post-authorization and ongoing compliance in the context of the offering, marketing and distribution of the Covered Funds in the Host Jurisdiction.
7. Within the framework of this MoU, and subject to Article 12 of this MoU, the Authorities will provide each other with the fullest cooperation in relation to Covered Entities operating on a cross-border basis. Following consultation, cooperation may be denied:
  - a) where cooperation would require an Authority to act in a manner that would violate its domestic laws and regulations;
  - b) where the information could be used for any Enforcement Purposes in the jurisdiction of the Requesting Authority, in which case, it should be governed by the terms and conditions of the IOSCO MMoU;
  - c) on the grounds of public interest in the relevant jurisdiction; or
  - d) where a request for information is not made in accordance with Article 9 of this MoU.

Where a request for assistance is denied, or where assistance is not available under its domestic laws and regulations, the Requested Authority will provide the reasons for not granting the assistance and will consult pursuant to Article 11 below.

8. In accordance with its domestic laws and regulations, each Authority has discretion:
  - a) to regulate the offering, marketing and distribution of a Covered Fund within its jurisdiction, including the power to require Persons engaging in the offering, marketing and distribution of the Covered Fund in its jurisdiction to be licensed, authorized or to have the relevant qualification;
  - b) subject to Article 11(2) below, to suspend or terminate the offering, marketing and distribution of a Covered Fund within its jurisdiction notwithstanding that the Covered Fund has been authorized for offering, marketing and distribution within the parameters of this MoU; and
  - c) to take such Enforcement Actions, as are appropriate, against Covered Entities, including, to the extent permitted by its domestic laws and regulations, against Covered Entities it has not licensed or authorized, should these Covered Entities be in breach of the laws and regulations of the Host Jurisdiction relating to the offering, marketing and distribution of Covered Funds.
9. To facilitate cooperation under this MoU, the Authorities have designated contact points as set out in Appendix A.

### **Article 3        Scope of mutual agreement**

1. Covered Funds

- a) Pursuant to this MoU, the Authorities agree to authorize Covered Funds for offering, marketing and distribution in Hong Kong and France respectively through a streamlined process of one month (the “one-month period”)<sup>1</sup>, as set out in Appendix B to this MoU, provided that the Covered Funds meet the applicable conditions as set out in Appendix B.
- b) Appendix B may be amended from time and time by mutual agreement between the Authorities and each Authority will publish the content of the latest version on its website.

## 2. Management Companies

Based on their common understanding of their regulatory and supervisory frameworks concerning management companies, the Authorities agree that their respective Covered Management Companies are eligible to manage Covered Funds authorized in their Home Jurisdiction and offered, marketed and distributed in the Host Jurisdiction provided that the Covered Management Companies meet the applicable conditions set out in Appendix B and that the offering, marketing and distribution of the Covered Funds comply with the requirements set out in the domestic laws and regulations of the Host Jurisdiction.

### **Article 4 Delegation**

1. The AMF recognises that Hong Kong Management Companies may be appointed as Delegates of the investment management function for French UCITS Funds, which includes French Covered Funds, which are or may be authorized by the AMF under the COMOFI, the RG AMF, and the applicable AMF’s instructions, positions and recommendations provided that the delegation arrangement complies with the requirements provided in domestic laws and regulations in France.
2. The SFC recognises that French Management Companies may be appointed as Delegates of the investment management function for Hong Kong CIS, which includes Hong Kong Covered Funds, which are or may be authorized by SFC under Section 104 of the SFO provided that the delegation arrangement complies with the requirements provided in domestic laws and regulations in Hong Kong.

### **Article 5 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 but does not include Enforcement Actions which are covered by the provisions of the IOSCO MMoU.
2. Cooperation will be most useful in, but is not limited to, the following circumstances:
  - a) the initial application of Covered Funds from one jurisdiction for authorization by the Host Authority; and,
  - b) the ongoing supervision of Covered Entities.
3. The Authorities may cooperate:
  - a) on an ongoing basis or ad hoc, upon request or without prior request (i.e. unsolicited assistance); and,
  - b) orally, provided that it is confirmed in writing shortly thereafter, or in writing.

### **Article 6 Provision of assistance for the implementation of this MoU**

1. Upon request and in accordance with Article 9 below and apart from assistance on Enforcement Actions which should be provided in accordance with the provisions of the IOSCO MMoU, each

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<sup>1</sup> Such period may be extended to two months should additional information be required by the Host Authority as set out in Appendix B.

Authority will use its reasonable endeavours to provide the Requesting Authority with assistance that would facilitate the Requesting Authority to assess whether or not a Covered Entity is in compliance with the requirements of mutual recognition arrangements set out in Appendix B to this MoU, at the time of application and on an ongoing basis, and to supervise the implementation of such requirements.

#### **Article 7 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 have a significant adverse impact on Covered Entities, investors of Covered Funds or the proper functioning of the financial markets; and
  - b) Enforcement Actions taken by them, including the revocation of, suspension of or modifications (other than modification at the request of Covered Entities or, in respect of any Covered Funds, modification of authorization conditions at the request of Covered Entities, which are governed by Appendix B to this MoU) to relevant licences or authorizations, in respect of Covered Entities which may have, in their reasonable opinion, a material impact on these Covered Entities.
2. With respect to a Covered Fund, each Authority will inform the other on a timely basis of :
  - a) any decreed or, where appropriate, pending revocation of authorization of distribution in or from France or Hong Kong taken by it;
  - b) relevant issues such as the revocation of, or any significant changes (other than modifications at the request of a Covered Entity or in respect of any Covered Funds, modification of authorization conditions at the request of a Covered Entity which are governed by Appendix B to this MoU) to licences or authorizations of related Covered Entities; and
  - c) complaints from third parties brought to its attention and associated with a Covered Fund after proper assessment of the relevant case, as and when considered necessary.
3. Each Authority will use its best endeavours to:
  - a) inform in a reasonable time the other about any significant amendments to its domestic laws and regulations which may have an impact on the mutual recognition of Covered Entities and/or cooperation under this MoU; and
  - b) provide, by the end of every six months, the other with a list of the Covered Funds domiciled in the other Authority's jurisdiction and authorized under this MoU.

#### **Article 8 Exchange of information based on request**

1. Upon request and in accordance with Article 9 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 laws and regulations that are administered or made by the Requesting Authority.
2. The information exchanged may include, but is not limited to:
  - a) information which would enable the Requesting Authority to verify that the Covered Entities comply with the relevant obligations and requirements of the domestic laws and regulations in the Requesting Authority's jurisdiction that are 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;

- c) relevant supervisory information and reports a Covered Entity is required to submit to an Authority including, for example, interim and annual financial statements and early warning notices;
- d) where appropriate, 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;
- g) Enforcement Actions against any Management Company which have, had or may have significant impact on the operations of such Management Company in the Requesting Authority's jurisdiction; and
- h) information relating to a Covered Fund, including the status, additional terms and conditions, and any waiver granted in respect of the authorization of a Covered Fund.

#### **Article 9 Execution of requests for information**

1. A request for written information in accordance with Article 8 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) a concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the domestic laws and regulations applicable to the supervisory activity;
  - b) the information sought by the Requesting Authority and indications of any sensitivity regarding the request; and
  - c) the desired time period for responding and, where appropriate, the urgency thereof.
3. During Emergency Situations or to expedite the approval process in relation to a Covered Fund, requests for information may be made in any form, including orally, provided such a request is confirmed in writing shortly thereafter.

#### **Article 10 Cross-border On-site Visits**

1. Prior to considering engaging in a Cross-border On-site Visit, the Authorities should give due and full consideration to each others' supervisory activities and to any information that has already been made available, or could be made available, by the Requested Authority. An Authority should communicate with the other Authority prior to carrying out any Cross-border On-site Visits. 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 a view to reaching an understanding on the intended timeframe for, and scope of, any Cross-border On-site Visit.
  - b) The Requested Authority in whose jurisdiction a Cross-border On-site Visit would be undertaken should decide whether the representatives of the Requesting Authority, or Persons mandated by the Requesting Authority, should be accompanied by its own officials during the visit.
  - c) The Authorities will endeavour to assist each other in understanding 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.

## **Article 11 Consultation**

1. The Requesting Authority and Requested Authority will consult with one another in matters relating to specific requests made pursuant to this MoU (e.g., where a request may be denied, or if it appears that responding to a request will involve substantial costs). The Authorities will use reasonable efforts to identify ways to address the specific requests made pursuant to this MoU.
2. Each Authority will, where practicable and appropriate, consult the other Authority prior to suspending (other than at the request of the Covered Entity) or withdrawing an authorization (other than at the request of the Covered Entity for withdrawal of authorization from the Host Authority) and prior to terminating the offering, marketing and distribution of a Covered Fund within its own jurisdiction.

## **Article 12 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 MMoU. With respect to information shared between the SFC and the AMF, use of non-public information for Enforcement Purposes will be in accordance with the terms and conditions of the IOSCO MMoU.

## **Article 13 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 15 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 14 Amendment; suspension**

1. The Authorities agree to review regularly the operation of this MoU, in particular in view of complaints from investors, and at least once a year, starting one year after entry into force.
2. The Authority wishing to review the MoU will notify the other Authority in writing, after which the Authorities will consult and use their reasonable endeavours to amend it as appropriate.



3. This MoU may be amended by written agreement.
4. In the event of an emergency situation, the Authorities may decide, by mutual agreement, to suspend market access for new funds until both Authorities agree that the MoU may resume running.

**Article 15 Termination; succession**

1. 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.
2. 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 12 and 13 above.
3. In the event of termination of this MoU, Covered Funds must cease further offering, marketing and distribution in the Host Jurisdiction as soon as practicable and in any event within such time as may be agreed between the Authorities.
4. Where the relevant function of an Authority is transferred or assigned to another supervisory authority or other supervisory authorities, the terms of this MoU will apply to the successor authority or authorities performing those relevant functions. No further amendments to this MoU are required for the successor to become a signatory to this MoU. This will not affect the right of the successor authority and its counterparty to terminate this MoU as set out in paragraph 2.

**Article 16 Entry into force**

This MoU enters into force upon signature of the Authorities.

**Signed on 10 July 2017**

**Securities and Futures Commission**

**Autorité des Marchés Financiers**

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**Ashley ALDER**  
**Chief Executive Officer**

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**Gérard RAMEIX**  
**Chairman**

## Appendix A

### Contact points

The contact points are:

Authority	Contact details
<b>SFC (Hong Kong)</b>	Securities and Futures Commission 35/F, Cheung Kong Center 2 Queen's Road Central Hong Kong  Email address: - <a href="mailto:mrffrance@sfc.hk">mrffrance@sfc.hk</a>
<b>AMF (France)</b>	Autorité des Marchés Financiers 17 place de la Bourse 75002 Paris France  Email addresses: - <a href="mailto:servicedesaffairesinternationales@amf-france.org">servicedesaffairesinternationales@amf-france.org</a> - <a href="mailto:celluleinternationale@amf-france.org">celluleinternationale@amf-france.org</a>