



Hong Kong

June 2021

IMPLEMENTATION OF HONG KONG-THAILAND MUTUAL RECOGNITION OF FUNDS SCHEME

On 17 June 2021, the Securities and Futures Commission (the **SFC**) and the Securities and Exchange Commission of Thailand (the **SEC**) announced that the Hong Kong-Thailand Mutual Recognition of Funds scheme (the **MRF**) had come into force. The scheme is governed by the Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related Cooperation entered into by the two regulators on 20 January 2021.¹ The scheme provides for Hong Kong and Thai funds authorised or approved for retail distribution in their home market to be authorised or approved for retail distribution in each other's markets under the streamlined procedures set out in the SEC Circular² and SFC Circular³, respectively.

The MRF with Thailand is the latest addition to the suite of MRF schemes already in place between Hong Kong and other markets. The full list of the SFC's mutual recognition of funds arrangements is available at: <https://www.sfc.hk/en/Regulatory-functions/Products/List-of-publicly-offered-investment-products/Mutual-recognition-of-funds-arrangements>.

For the purposes of this newsletter, "Thai Covered Funds" refer to Thai domiciled funds that are eligible for SFC authorisation and/or have received SFC authorisation under the Hong Kong-Thailand Mutual Recognition of Funds scheme. "Hong Kong Covered Funds" refer to Hong Kong domiciled funds that are eligible for SEC approval and/or have received SEC approval under the Mutual Recognition of Funds scheme.

Hong Kong-Thailand Mutual Recognition of Funds – General Principles

Funds that are seeking SFC (or SEC) authorisation or have received SFC (or SEC) authorisation for public offering in Hong Kong (or Thailand) normally have to comply with the relevant laws and regulations of Hong Kong (or Thailand). However, under the MRF regime, if a Thai or Hong Kong Covered Fund complies with the relevant domestic laws and regulations and the conditions set out in the SFC Circular (for Thai Covered Funds) or the conditions set out in the SEC Circular (for Hong Kong Covered Funds), it will be considered to satisfy the laws and regulations for public offering in the other jurisdiction. The fund will then benefit from a streamlined authorisation process for offering its units or shares to retail investors in the other jurisdiction.

Under the MRF regime, for a Hong Kong Covered Fund or Thai Covered Fund to be approved for public offering in the other jurisdiction:

- 1 SFC and SEC. Jan 2021. "Memorandum of Understanding (MoU) Between the SFC and SEC Concerning Mutual Recognition of Covered Funds and Covered Management Companies and Related Cooperation". Available at https://www.sfc.hk/-/media/EN/files/ER/MOU/MoU-and-Appendices_20210120_Thai.pdf
- 2 SEC. Jan 2021. "Mutual Recognition of Funds (MRF) Between Hong Kong and Thailand". Available at https://www.sec.or.th/TH/Documents/LawsandRegulations/MRF/HK-TH-MRF_SEC-Circular.pdf
- 3 SFC. Jan 2021. "Mutual Recognition of Funds (MRF) Between Thailand and Hong Kong". Available at <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=21EC1>

- i) the fund must satisfy the eligibility requirements set out in the SEC Circular (for Hong Kong funds) or SFC Circular (for Thai funds);
- ii) the fund must have been authorised and remain authorised for offering, marketing and distribution to retail investors in its home jurisdiction;
- iii) the fund should operate and be administered in accordance with the relevant domestic laws and regulations and its constitutive documents;
- iv) the sale and distribution of the fund's units or shares must comply with the applicable laws and regulations of the other jurisdiction;
- v) covered funds and their management companies must comply with any additional rules imposed by the SEC or SFC governing the authorisation, post-authorisation and ongoing compliance of the fund in the context of its retail offering, marketing and distribution in the other jurisdiction;
- vi) covered funds and their management companies should ensure that investors in both jurisdictions receive fair treatment (including in respect of investor protection, exercise of rights, compensation and information disclosure). There should not be any arrangements which favour the investors of one jurisdiction over those of the other jurisdiction; and
- vii) ongoing disclosure of fund information should be made available to investors in both jurisdictions at the same time (as far as is reasonably practicable given differences in time zones and public holidays).

Hong Kong-Thailand Mutual Recognition of Funds - Eligible Fund Types

To apply for SFC (or SEC) authorisation, a Thai Covered Fund (or Hong Kong Covered Fund) must fall within one of the following eligible fund categories:

- i) General equity funds, bond funds and mixed funds;
- ii) Unlisted index funds;
- iii) Passively managed index tracking exchange-traded funds (ETFs) including physical gold ETFs; and

- iv) Feeder funds, where the underlying fund is not itself a feeder fund and falls within one of the fund categories in paragraphs (i), (ii) and (iii) and complies with the requirements of the SFC or SEC Circular;

The SFC and SEC may consider expanding the scope of the MRF to cover other types of funds in the future.

The management company that is seeking SFC (or SEC) authorisation must indicate to the SFC (or SEC) which category of eligible funds the relevant fund falls within. Thai Covered Funds (or Hong Kong Covered Funds) must also comply with the requirements set out in Annexes A and B to the SFC Circular and SEC Circular, respectively.

Requirements for Hong Kong and Thai Covered Funds

1. Fund Representatives in Hong Kong and Thailand

Each Thai Covered Fund (or Hong Kong Covered Fund) has to appoint a firm in the other jurisdiction to act as its representative.

2. Operational and Ongoing Requirements

Home jurisdiction supervision

A Thai Covered Fund (or Hong Kong Covered Fund) must remain approved by its domestic regulatory body for offering its units to the public in its home jurisdiction. The fund's management company is also required to remain licensed by the domestic licensing body (the Ministry of Finance on recommendation from the SEC in Thailand and the SFC in Hong Kong). Both the fund and its management company are required to be subject to ongoing regulation and supervision by the domestic regulatory body.

Jurisdiction of Hong Kong and Thai courts

The management company of a Thai Covered Fund authorised under the MRF for distribution in Hong Kong must ensure and procure its distributions to ensure that Hong Kong investors are able to bring actions in relation to the fund and its management company in the Hong Kong courts. Similarly, the management company of a Hong Kong Covered Fund authorised for distribution in Thailand must ensure and procure its distributions to ensure that Thai investors can bring actions against the fund and its management company in the Thai courts.

Changes to Thai Covered Funds and Hong Kong Covered Funds

No change may be made to a Thai or Hong Kong Covered Fund which would result in it ceasing to comply with the Eligibility Requirements set out in Annex B to the SFC Circular or SEC Circular. If the regulatory body in the home jurisdiction becomes aware of such a change, it will notify its counterpart in the other jurisdiction as soon as possible.

Changes to a Thai Covered Fund (or Hong Kong Covered Fund) must be made in accordance with the applicable domestic laws and regulations and the provisions of its constitutive documents. Any changes to a Thai Covered Fund (or Hong Kong Covered Fund) must not contravene the applicable domestic laws and regulations or the requirements set out in the SEC or SFC Circular (as applicable).

Changes that affect foreign investors only and revisions made to the offering documents relating to those changes should be made in accordance with the requirements of the relevant laws and regulations of both jurisdictions.

Management companies must ensure that the regulatory body in the other jurisdiction is informed of any change filed with or approved by the domestic regulator as soon as possible, and in any event within one week from the date of filing with or approval by the domestic regulator.

The domestic regulatory body will confirm to its foreign counterpart that a Thai Covered Fund (or Hong Kong Covered Fund) effecting:

- i) changes by way of holders' approval;
- ii) change of trustee (or custodian); and
- iii) change of investment delegate,

continues to meet the Eligibility Requirements set out in Annex B to the relevant Circular.

The relevant fund management company must notify investors in both jurisdictions of any changes to a Thai Covered Fund (or Hong Kong Covered Fund) at the same time.

Breach of Hong Kong or Thai Requirements

Where there is a material breach of domestic laws and regulations or the requirements of the SEC or SFC Circular, the fund manager

has to notify the SEC and SFC at the same time and rectify the breach promptly.

If, after authorisation by the SEC or SFC, a Hong Kong or Thai Covered Fund ceases to fulfil the requirements set out in the relevant Circular, the fund manager must notify the regulatory body in the relevant jurisdiction immediately. The fund's units or shares can no longer be offered to retail investors in the other jurisdiction and the management company can no longer accept subscriptions from investors in that jurisdiction, without the prior approval of the regulator in that jurisdiction.

Cessation of offering of Hong Kong Managed Fund

After SEC approval of a Hong Kong Covered Fund, if its fund management company no longer wishes to sell units or shares in the fund to Thai retail investors, it should give notice to the SEC and Thai investors of its intention to suspend the offering in accordance with the relevant Thai laws and regulations.

Withdrawal of SFC authorisation

After SFC authorisation of a Thai Covered Fund, if its fund management company no longer wishes to maintain the fund's authorisation, it should apply for withdrawal of authorisation of the fund from the SFC and provide notice to Hong Kong investors of its intention not to maintain that authorisation in accordance with relevant Hong Kong laws and regulations.

3. Sale/distribution, Fund Offering Documents, Ongoing Disclosure and Advertisements

Fund sale and distribution in Hong Kong and Thailand

The sale and distribution of units of a Thai Covered Fund (or Hong Kong Covered Fund) in the other jurisdiction must be carried out by intermediaries licensed by or registered with the regulatory body of that jurisdiction and must comply with its laws and regulations relating to the sale and distribution of units (or shares) of funds.

Offering documents for Hong Kong and Thai Covered Funds

The disclosure of information relating to Thai Covered Funds and Hong Kong Covered Fund must be complete, accurate, fair, clear, and effective.

The offering documents of a Thai Covered Fund (or Hong Kong Covered Fund) must be up-to-date and contain information

necessary for investors to be able to make an informed judgment of the investment proposed to them.

A Thai Covered Fund (or Hong Kong Covered Fund) may use the prospectus approved by the domestic regulatory body. Certain matters (e.g., the type of documents, content, format, frequency of update and the updating procedures) must comply with the applicable domestic laws and regulations and the provisions of the fund's constitutive documents. The domestically approved prospectus can be supplemented by a cover document to meet the disclosure requirements applicable in the other jurisdiction. The prospectus has to disclose any information which may have a material impact on investors in the other jurisdiction. The offering document and the foreign covering document should not contain any information that would be inconsistent with the offering document approved by the domestic regulatory body and/or any information about the fund which is inaccurate or misleading.

Fund management companies must take reasonable steps and measures to ensure that any updated offering documents and their changes are made available to investors in Thailand and Hong Kong at the same time.

Fund advertisements in Hong Kong and Thailand

All advertisements relating to a Thai Covered Fund which is offered for sale in Hong Kong must comply with Hong Kong laws and regulations including, in particular, the SFC's Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes.⁴

⁴ SFC. April 2013. Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes. Available at: <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/advertising-guidelines-applicable-to-collective-investment-schemes/Advertising-Guidelines--Applicable-to-Collective-Investment-Schemes-Authorized-under-the-Product-Cod.pdf>

Advertisements relating to a Hong Kong Covered Fund which is offered for sale in Thailand must comply with relevant Thai laws and regulations including, in particular, the Rules in Detail on Advertising and Sales Promotion for Securities Companies.

Ongoing disclosure to Hong Kong and Thai Investors

Fund management companies are also required to take reasonable steps and measures to ensure that the ongoing disclosure of information relating to covered funds (e.g., periodic financial reports, notices and announcements) is made available to investors in Thailand and Hong Kong at the same time (as far as is reasonably practicable given differences in time zones and public holidays). In the case of suspension of dealings, the fund management company is required to immediately notify the statutory body in the other jurisdiction. Thai Covered Funds and Hong Kong Covered Funds have to comply with the requirements set out in Annex A to the SFC Circular and SEC Circular, respectively. Covered funds must also disclose any other information which may have a material impact on investors in the other jurisdiction on an ongoing basis.

Language

The offering documents and notices to Hong Kong investors of a Thai Covered Fund have to be provided in English and Chinese. However, the constitutive documents and financial reports of a Thai Covered Fund can be offered either in English or Chinese.

The offering documents and notices to Thai investors of a Hong Kong Covered Fund and its constitutive documents and financial reports must be provided in either English or Thai.

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