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[online version](http://www.charltonslaw.com/sfc-publishes-guidance-on-marketing-of-existing-collective-investment-schemes-and-investment-linked-assurance-schemes-to-the-hong-kong-public-under-the-revised-code-on-unit-trusts-and-mutual-funds/)

# SFC Publishes Guidance On Marketing Of Existing Collective Investment Schemes And Investment-Linked Assurance Schemes To The Hong Kong Public Under The Revised Code On Unit Trusts And Mutual Funds From 25 June 2011

## 1. Introduction

The Securities and Futures Commission (**SFC**) issued guidance, on 13 May 2011, in preparation for the full implementation of the Code on Unit Trusts and Mutual Funds (**UT Code**) and the Code on Investment-Linked Assurance Schemes (**ILAS Code**), both of which commenced on **25 June 2011**. This guidance was released in circulars addressed to the management and issuers of Existing Schemes and the issuers of ILAS schemes respectively. It states that fund managers of Existing Schemes and issuers of Existing ILAS Schemes, who intend to continue to market such Schemes to the Hong Kong public on or after 25 June 2011, are required to produce:

1. a key facts statement (**KFS**); and
2. a revised offering document (**ROD**) which satisfies the other disclosure requirements detailed in the SFC Handbook (**Handbook**), for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products

### (a) Definition of “Existing Schemes”

Existing Schemes means:

1. collective investment schemes which have been authorised by the SFC prior to 25 June 2010 and remain authorised on that date; and
2. collective investment schemes for which applications for authorisation were submitted to the SFC before 25 June 2010, but which are authorised on or after 25 June 2010.

### (a) Definition of “Existing ILAS Schemes”

Existing ILAS Schemes means:

1. ILAS Schemes which have been authorised by the SFC prior to 25 June 2010 and remain authorised on that date; and
2. ILAS Schemes for which applications for authorisation were submitted to the SFC before 25 June 2010, but which are authorised on or after 25 June 2010

### (c) The Other Disclosure Requirements for Existing schemes which the ROD must satisfy

The Other Disclosure Requirements are:

The “Overarching Principles Section” of the Handbook

1. New information regarding “Enquires and complaints handling” as set out in paragraph 7.4;
2. The prominent note about a product described as having been authorised by the Commission as updated and set out in the Note to paragraph 1.10; and
3. Where conflicts of interest cannot be avoided, the measures and safeguards to manage and minimize the conflicts shall be properly disclosed to investors as set out in paragraph 4.2.

Chapter 8 of the UT Code

1. The additional information regarding structured funds as set out in 8.8 (h); and
2. The additional information regarding funds (including both UCITS and non-UCITS schemes) that invest in financial derivative instruments as set out in 8.9(j).

Appendix C of the UT Code

1. The description of the risk management policy in place, where appropriate, as set out in paragraph C2
2. The description of collateral policy and criteria as set out in paragraph C2A. Reference should be made to Q.7 of Frequently Asked Questions on SFC Authorisation of UCITS Funds for the applicability of this requirement to UCITS funds that may engage in activities, such as securities lending, that involve the collection of collateral;
3. The statement whether the annual and interim reports would be published in English and/or Chinese as set out in paragraph C18A and the Note to paragraph 11.6; and
4. If available, the website address of the scheme as set out in paragraph C22A.

### (d) The Other Disclosure Requirements for ILAS Schemes which the ROD must satisfy

The Other Disclosure Requirements are:

The Overarching Principles Section of the Handbook

1. New information regarding “Enquiries and complaints handling” as set out in paragraph 7.4;
2. The prominent note about a product described as having been authorised by the Commission as updated and set out in the Note to paragraph 1.10; and
3. Where conflicts of interest cannot be avoided, the measures and safeguards to manage and minimize the conflicts shall be properly disclosed to investors as set out in paragraph 4.2.

5.7 of the ILAS Code

1. An authorised scheme must issue a Product KFS

6.4 of the ILAS Code

1. Disclosure requirements in respect of a scheme with “with-profits” or similar features.

7.15 of the ILAS Code

1. Addition of a prominent note where a scheme is described as having been authorised by the Commission

Appendix A to the ILAS Code

1. Paragraph (c). Investment return – A statement to the effect that the unit(s) allocated to the policy is notional and is solely for the purpose of determining the value of the policy shall be included
2. Paragraph (e). Investment objective and restriction
* Where the return of an investment option is determined with reference to one or more SFC-authorised funds, a statement as to how to make available offering documents of such SFC-authorised fund(s) shall be included
* For other cases, the specific investments, associated risk (e.g. the use of financial derivative instrument), or leverage (if any) and a statement that the return of the investment option is calculated with reference to a pool of assets internally managed on a discretionary basis by the Authorised Insurer are required to be disclosed.
1. Paragraph (i). Warning statements.
2. Paragraph (k). General information

## 2. SFC Guidance And Support

The SFC has provided assistance to the fund houses and ILAS issuers in complying with its new regulations, giving guidance and clarification in the form of FAQs and circulars as well as templates for fund managers of Existing Schemes. The SFC has also stated that, for fund managers of Existing Schemes, as long as the SFC guidance and templates are followed, the KFS and RODs need not be submitted for the SFC to review before they are provided to investors. This is not the case with the ILAS issuers’ KFS and RODs, which need to be processed and authorised by the SFC before being provided to investors

## 3. Continuation Of Marketing

### (a) Continuation of marketing of Existing Schemes in Hong Kong

The SFC has made clear to fund managers that, commencing 25 June 2011, any Existing Scheme that does not have a KFS and/or ROD may no longer be marketed to the public in Hong Kong. This will mean that these funds shall not accept subscriptions from new investors as of 25 June 2011, regardless of the means of distribution or subscription employed. Such funds may, however, continue to accept subscriptions from existing investors, whether by way of a monthly investment plan or by way of topping-up.

### (b) Continuation of marketing of Existing ILAS Schemes in Hong Kong

Though the SFC has processed all 103 KFSs belonging to Existing ILAS Schemes, it warns that there are still remaining RODs to be processed prior to 25 June 2011 and that those ILAS issuers that have not submitted their RODs in accordance with the original, or specially revised, timetables risk their ROD application not being processed in time to meet the deadline.

In the same way as for Existing Schemes, any Existing ILAS Scheme that does not have an authorized KFS and a set of authorized ROD shall not continue to be marketed to the public in Hong Kong. This will mean that these ILAS Schemes shall not accept premium from new investors as from 25 June 2011, regardless of the distribution or subscription channels used. Such Schemes may, however, continue to accept premium from existing investors of such schemes.

In both cases, the SFC urges that all necessary training, appropriate notice, and clarification should be provided to the front-line sales staff and distributors as soon as possible and preferably well before 25 June 2011.

## 4. Additional 11.1 Changes To Offering Documents Of Existing Schemes And 7.1 Changes To Offering Documents Of Existing ILAS Schemes

Certain Existing Schemes and Existing ILAS Schemes industry participants have expressed to the SFC that, in conjunction with their preparation of the ROD, they wish to introduce other amendments to the structure or mechanics of their schemes, such as changes in investment objectives and constitutive documents. For Existing Schemes, these amendments will require the approval of the SFC pursuant to 11.1 of the UT Code (**Additional 11.1 Changes**), and for Existing ILAS Schemes the prior approval will be pursuant to 7.1 of the ILAS Code (**Additional 7.1 Changes**). The SFC has stated that the applications for additional changes to offering documents will be processed according to their established procedures.

The SFC is working to process all applications by 25 June 2011 in order to ensure that when the Existing Schemes and Existing ILAS Schemes release their KFS and RODs, they can include the Additional 11.1 Changes and the Additional 7.1 Changes.

If the Additional 11.1 Changes and the Additional 7.1 Changes are not able to meet with the approval of the SFC by 25 June 2011, the fund managers of the Existing Schemes and the ILAS issuers of the Existing ILAS Schemes will have the option not to proceed with the additional changes until a later date but to nevertheless continue to market their scheme to the public in Hong Kong with an authorised KFS and ROD. This will give them the latitude to deal with any relevant issues concerning the Additional 11.1 Changes and the Additional 7.1 Changes.

## 5. Effect Of Breach Of The Handbook

The SFC has sought to remind fund managers of Existing Schemes and ILAS issuers of the Existing ILAS Schemes that it will be a breach of the Handbook to continue to market and accept subscriptions or premiums from new investors for schemes that do not have the KFS and/or ROD necessary under the new regime.

The regulatory consequences for such a breach of the Handbook could include:

For Existing Schemes:

* Causing the SFC to consider whether such a failure might adversely affect the fitness and properness of persons licensed or registered under the Securities and Futures Ordinance and those set out in Section 1.6 of the Overarching Principles Section of the Handbook.

For Existing ILAS Schemes:

* Causing the SFC to consider whether such failure adversely reflects on whether further products issued, managed and/or originated by such an ILAS issuer, and/or offering documents and advertisements in relation to such products, should be granted authorisation in the interest of the investing public as set out in 1.6 of the Overarching Principles Section of the Handbook.

The SFC notes that if ILAS distributors or distributors of Existing Schemes are in any doubt as to whether the scheme has, or needs to have, an authorized KFS and/or ROD commencing 25 June 2011, they should seek clarification from the relevant fund manager or ILAS issuer so as to be certain of acting in accordance obligations detailed in the revised regulatory framework.

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