



Hong Kong

June 2015

MAINLAND-HONG KONG MUTUAL RECOGNITION OF FUNDS INITIATIVE TO LAUNCH ON 1 JULY 2015

Introduction

The much anticipated Mainland-Hong Kong Mutual Recognition of Funds Initiative (**MRF**) will be launched on 1 July 2015 with a total investment quota of RMB 600 billion following a Joint Announcement made by Hong Kong's Securities and Futures Commission (**SFC**) and the China Securities Regulatory Commission (**CSRC**) on 22 May 2015. The two regulators have signed a Memorandum of Regulatory Cooperation on Mainland-Hong Kong Mutual Recognition of Funds which will allow Mainland and Hong Kong funds authorised for retail distribution in their home jurisdiction to follow a streamlined procedure to obtain authorisation for retail distribution in the other market. The initiative does not permit funds authorised for retail distribution in their home market to be privately placed in the other market.

The MRF represents a further step in the opening up of Mainland China's capital market and follows the success of the Shanghai-Hong Kong stock connect programme launched in November 2014. The stock connect programme allows international investors to trade Shanghai-listed A-shares through Hong Kong and Chinese investors to trade Hong Kong-listed shares and is set to be replicated between Shenzhen and Hong Kong in the coming months.

The SFC and CSRC expect the MRF to enhance the international competitiveness of both Mainland and Hong Kong fund markets and fund management companies and encourage the provision of more diverse fund investment products for Mainland and Hong Kong investors.

100 Hong Kong-domiciled funds and 850 Mainland funds would currently be eligible under the MRF.¹ The MRF is expected to further consolidate Hong Kong's position as Asia's leading asset management centre since only funds domiciled in Hong Kong and managed by an SFC-licensed fund manager will be eligible to apply for authorisation for Mainland retail distribution under the MRF. For further information on the requirements for licensing fund managers under Hong Kong's licensing regime, please see Charltons' note at: <http://www.charltonslaw.com/hong-kong-law/the-licensing-regime-under-the-securities-and-futures-ordinance/>.² It will also be a requirement that the fund is established in Hong Kong. Currently, open-ended funds can be established as unit trusts but not in corporate form due to various restrictions on capital reduction under the Hong Kong Companies Ordinance. The Financial Services and Treasury Bureau however published a consultation paper in March 2014 setting out proposals for a new open-ended fund company structure to be established under the Securities and Futures Ordinance which would facilitate the establishment of open-ended investment funds in corporate form with limited

¹ The Financial Times. "Hong Kong-China Mutual Fund Recognition Scheme Reveals Quotas". 31 May 2015.

² Charltons. "The Licensing Regime under the Securities and Futures Ordinance" at <http://www.charltonslaw.com/hong-kong-law/the-licensing-regime-under-the-securities-and-futures-ordinance/>.

liability and variable share capital. For further details of the proposals, please see Charltons' newsletter FSTB Consults on Open-ended Fund Company Structure.³

Quotas

The MRF's initial investment quota will be RMB 300 billion for in and out fund flows each way.

Regulation

The SFC has prepared the "Circular on Mutual Recognition of Funds between the Mainland and Hong Kong"⁴ (the **MRF Circular**), while the CSRC has issued the "Provisional Rules for Recognised Hong Kong Funds"⁵ in Chinese. These two documents set out the eligibility criteria, the procedures for application, the operational requirements and the MRF's regulatory arrangements. They form the basis for regulation and enforcement of the MRF.

General Principles

The basic principle underlying the MRF is that funds that have been authorised or registered with the relevant authority in one jurisdiction (the **Home Jurisdiction**) will be able to seek authorisation or approval for retail distribution in the other jurisdiction (the **Host Jurisdiction**). In general, funds seeking retail distribution authorisation under the MRF must:

- a) satisfy the eligibility requirements imposed by the regulator of the Home Jurisdiction;
- b) remain authorised by or registered with the Home Jurisdiction regulator and be permitted to be marketed to the public in the Home Jurisdiction;
- c) generally operate and be managed in accordance with relevant laws and regulations of the Home Jurisdiction and their constitutive documents;
- d) be sold and distributed in the Host Jurisdiction in compliance with the laws and regulations of the Host Jurisdiction;

e) comply with the additional rules released by the relevant authority in the Host Jurisdiction relating to authorisation or registration, post-authorisation and on-going compliance, and the sale and distribution of the fund in the Host Jurisdiction; and

f) treat investors in the Home and Host Jurisdictions fairly and equally, including in respect of investor protection, exercise of rights, compensation and disclosure of information. Responsibility for this is placed on the fund manager.

Authorisation of Mainland Funds for Hong Kong Distribution

Generally, if a Mainland fund complies with the relevant Mainland laws and regulations, it will be deemed to comply in substance with the relevant SFC requirements for authorisation for offering to the Hong Kong public and a streamlined authorisation process will apply. Mainland funds that are eligible for SFC authorisation or have been authorised by the SFC are referred to as "Recognised Mainland Funds".

The MRF Circular details the eligibility and other requirements for SFC authorisation.

Types of Funds Allowed

The following fund types will be eligible for MRF authorisation initially:

- a) general equity funds;
- b) bond funds;
- c) mixed funds;
- d) unlisted index funds; and
- e) physical index-tracking ETFs.

The MRF may be extended to include other fund types in the future.

Eligibility Requirements

A Mainland fund seeking retail distribution authorisation in Hong Kong must meet the following requirements:

³ Charltons. "FSTB Consults on Open-ended Fund Company Structure", April 2014 at <http://www.charltonslaw.com/fstb-consults-on-open-ended-fund-company-structure/>.

⁴ Circular on Mutual Recognition of Funds (MRF) between the Mainland and Hong Kong. 22 May 2015. Available at: <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=15EC29>.

⁵ <http://www.csrc.gov.cn/pub/zjhpublic/G003062011/201505/P020150522552573901196.pdf>

- a) it must be established and managed and operate in compliance with relevant Mainland laws and regulations and its constitutive documents;
- b) it must be a publicly offered securities investment fund registered with the CSRC under the Securities Investment Fund Law of the People's Republic of China;
- c) it must have been established for at least 1 year;
- d) it must have a minimum fund size of not less than RMB 200 million or its foreign currency equivalent;
- e) it must not primarily invest in the Hong Kong market; and
- f) the value of the fund's shares/units which are sold to investors in Hong Kong must be 50% or less of the value of the fund's total assets.

Requirements for Fund Managers

To be eligible as a Recognised Mainland Fund, a fund's manager must:

- a) be registered and operate in the Mainland in accordance with Mainland laws and regulations;
- b) be licensed by the CSRC to manage publicly offered securities investment funds;
- c) not have been the subject of any major CSRC regulatory action in the previous 3 years (or since the date of its establishment if the fund has been established for less than 3 years); and
- d) not delegate its investment management functions to a party operating outside the Mainland.

Requirements for Custodians

A Recognised Mainland Fund must have a custodian that is qualified to act as a custodian for publicly offered securities investment funds under Mainland laws and regulations.

Requirements for Hong Kong Representatives

A Recognised Mainland Fund must appoint a firm in Hong Kong to be its representative who must comply with Chapter 9 of the Code on Unit Trusts and Mutual Funds (**UT Code**).

Operational and On-going Requirements

Operational and on-going compliance requirements set out in the UT Code apply to Recognised Mainland Funds authorised under the MRF.

1) Supervision by Home Jurisdiction

Recognised Mainland Funds must remain registered with the CSRC for offering to the Mainland public and be subject to the CSRC's on-going regulation and supervision.

2) Inspection of Constitutive Documents

Managers of Recognised Mainland Funds must make their constitutive documents available for inspection by the public in Hong Kong, free of charge at all times during normal office hours at the place of business of the Hong Kong representative. Copies of these documents must also be made available upon payment of a reasonable fee.

3) Pricing Errors and Scheme Changes

If a pricing error, change in dealings or suspension or deferral of dealings in a Recognised Mainland Fund is required to be notified to the CSRC, it must also be notified to the SFC.

4) Jurisdiction

Where the constitutive documents provide for dispute resolution by way of litigation, the Recognised Mainland Fund's manager must ensure that the Hong Kong courts are not excluded from entertaining an action concerning the fund.

5) Changes to a Recognised Mainland Fund

Changes to Recognised Mainland Funds must be made in accordance with applicable Mainland laws and regulations and the provisions of the constitutive documents. The changes will take effect when approved by the CSRC or on compliance with relevant procedures. The changes must then be filed with the SFC.

Changes to Recognised Mainland Funds must not contravene requirements of the MRF Circular. All changes must be notified to Hong Kong investors.

6) Contravention

If there is a breach of Mainland laws and regulations or of the MRF Circular requirements, the fund manager must notify the CSRC and the SFC at the same time and rectify the breach promptly.

If after being authorised by the SFC, a Recognised Mainland Fund ceases to meet the requirements of the MRF Circular, its manager must immediately notify the SFC. The Recognised Mainland Fund cannot then be marketed to the Hong Kong public and new subscriptions must not be accepted.

7) Withdrawal of Authorisation

If the manager of a Recognised Mainland Fund wishes to discontinue the relevant SFC authorisation, it can apply for it to be withdrawn.

The SFC can also review authorisations granted from time to time and may modify, add to or withdraw any conditions attaching to an authorisation, or withdraw the authorisation.

Sale, Distribution, Offering Documents, Continuing Disclosure and Advertisements

1) Sale and distribution of a Recognised Mainland Fund in Hong Kong

Recognised Mainland Funds must be sold or distributed in Hong Kong by intermediaries who are licensed by or registered with the SFC and in compliance with Hong Kong's laws and regulations on fund distribution.

2) Offering documents

Offering documents for a Recognised Mainland Fund must contain information necessary for investors to be able to make an informed judgement on the investment, which is up-to-date, complete, accurate, fair and clear and easily understood by investors.

Offering documents registered with the CSRC relating to the Recognised Mainland Fund can be distributed in Hong Kong. Generally, matters such as the type of document, its content, format and update procedures will be governed by the applicable Mainland laws and regulations and provisions of the constitutive documents.

CSRC-registered offering documents must be supplemented by a Hong Kong covering document which meets the following disclosure requirements:

- a) the offering document must be bilingual;⁶
- b) a product key facts statement (**KFS**) must be prepared;⁷
- c) information on the handling of investor enquiries and complaints must be included;⁸
- d) information required to be disclosed under several paragraphs of Appendix C of the UT Code including:
 - the names and registered addresses of the Hong Kong Representative;⁹
 - a statement that money should not be paid to any intermediary in Hong Kong who is not licensed or registered to carry on Type 1 regulated activity under Part V of the SFO;¹⁰
 - details of Hong Kong and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to holders;¹¹
 - particulars of annual and interim reports that will be sent to registered holders within 4 months of the end of the scheme's financial year end and within 2 months of the end of the period covered by the interim report. If there are bearer units in issue, information must be given on where in Hong Kong reports can be obtained;¹²
 - a statement whether the annual and interim reports will be published in English and/or Chinese;¹³
 - prominent inclusion in the offering document of the following statement:

6 Clause 5.6 of the Overarching Principles Section (OPS) of the SFC Handbook

7 Clause 6.2A of the UT Code

8 Clause 7.4 of OPS of the SFC Handbook

9 Appendix C 3(d) of the UT Code

10 Appendix C 12 of the UT Code

11 Appendix C 16 of the UT Code

12 Appendix C 18 of the UT Code

13 Appendix C 18A of the UT Code

*“Important - if you are in any doubt about the contents of this offering document, you should seek independent professional financial advice”;*¹⁴

- a list of the constitutive documents and an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price;¹⁵ and
- the date of publication of the offering document;¹⁶
- e) a prominent statement that SFC authorisation does not imply official recommendation;¹⁷
- f) disclosure regarding stock lending as described in FAQ 21 of the FAQs on the UT Code; and
- g) any other information which may have a significant impact on Hong Kong investors.

The fund manager is required to ensure simultaneous release of offering documents and any relevant changes to Mainland and Hong Kong investors. The revised offering documents of a Recognised Mainland Fund must be filed with the CSRC and the SFC at the same time.

3) Language

Offering and other documents (including PKF statements, notices and announcements) for a Recognised Mainland Fund that are provided to Hong Kong investors must be prepared in both Traditional Chinese and English. If the original documents are in simplified Chinese, the fund must ensure that the traditional Chinese text is a true and accurate reflection of the original, taking into account market practice and customary use of Chinese language in Hong Kong.

4) On-going Obligations

The manager of a Recognised Mainland Fund is required to ensure that on-going disclosure of information in relation to the fund (including periodic financial reports, notices and announcements) is made to Mainland and Hong Kong investors at the same time and filed with the SFC and CSRC at the same time.

¹⁴ Appendix C 19(a) of the UT Code

¹⁵ Appendix C 20 of the UT Code

¹⁶ Appendix C 23 of the UT Code

¹⁷ Clause 1.10 of OPS of the SFC Handbook

Mainland laws will govern the type of ongoing disclosure documents, their format, content, timing and frequency of disclosure, and matters to be disclosed, unless the MRF Circular provides otherwise.

Recognised Mainland Funds are also required to:

- a) state prominently that SFC authorisation does not imply official recommendation;¹⁸
- b) ensure that notices to holders are bilingual, are filed with the SFC within one week of issue, and contain information that is accurate, not misleading and adequate for keeping investors informed;¹⁹
- c) give holders at least three months’ notice of an intention not to maintain its SFC authorisation and obtain the SFC’s prior approval of that notice;²⁰
- d) notify holders of the merger or termination of the fund and submit the relevant notice to the SFC for prior approval;²¹
- e) include disclosure regarding stock lending as described in FAQ 21 of the UT Code; and
- f) disclose any other information which may have a significant impact on Hong Kong investors.

Mainland Recognised Funds may also use their Mainland financial reports as the basis for distribution in Hong Kong, as long as they additionally disclose:

- a) the number or quantity of each holding in their investment portfolio with a description and market value, distinguishing between listed and unlisted investments and categorised by country (for investments in schemes by a unit portfolio management fund, schemes’ place of incorporation should be disclosed);²²
- b) a statement of movements in portfolio holdings since the end of the preceding accounting period;²³ and

¹⁸ Clause 1.10 of OPS of the SFC Handbook

¹⁹ Clauses 11.2, 11.2A and 11.2B of the UT Code

²⁰ Clause 11.4 of the UT Code

²¹ Clause 11.5 of the UT Code

²² paragraph 1 under the “Investment portfolio” section of Appendix E of the UT Code

²³ paragraph 4 under the “Investment portfolio” section of Appendix E of the UT Code

c) a prominent statement that SFC authorisation does not imply official recommendation.²⁴

Managers of Recognised Mainland Funds are required to respond promptly to SFC enquiries regarding a fund and must provide the SFC with fund-related information (including but not limited to its financial reports and accounts) upon request.

5) Advertisements

All advertisements relating to Recognised Mainland Funds which are issued in Hong Kong must comply with applicable Hong Kong laws and regulations.

Application Process

The SFC encourages applicants to consult the Investment Products Division of the SFC for clarification and guidance as to how relevant requirements will apply. Further details of the MRF application process for a Recognised Mainland Fund seeking SFC authorisation for offering in Hong Kong are set out in the Information Checklist²⁵ available on the SFC's website.

Authorisation of Hong Kong Funds for Mainland Distribution

The CSRC has issued Provisional Rules for Recognised Hong Kong Funds (the **Provisional Rules**) explaining the eligibility requirements for Hong Kong funds seeking authorisation for distribution in the Mainland as a Recognised Hong Kong Fund.

Eligible Funds

Types of Funds Allowed

Initially, only the following fund types will be eligible for MRF authorisation:

- a) general equity funds;
- b) bond funds;
- c) mixed funds;
- d) unlisted index funds; and

²⁴ Clause 1.10 of OPS of the SFC Handbook

²⁵ Information Checklist for Application for Authorisation of Mainland Funds seeking SFC's Authorisation under the Mutual Recognition of Funds Arrangement at http://www.sfc.hk/web/EN/files/PCIP/Checklist-and-Forms/31_Information%20Checklist%20for%20Application%20for%20Authorization%20under%20MRF%20_eng.pdf

e) physical index-tracking ETFs.

The MRF may be extended to include other fund types in the future.

Eligibility Requirements

Funds seeking CSRC authorisation must satisfy the following requirements:

- a) they must be established and operated in Hong Kong in accordance with Hong Kong laws and regulations;
- b) they must be authorised by the SFC for retail distribution and regulated by the SFC;
- c) they must have been established for at least 1 year;
- d) they must have a custody arrangement and have a trustee and custodian that meet the relevant SFC requirements;
- e) they must have a minimum size of at least RMB 200 million or its foreign currency equivalent;
- f) the value of the fund's shares/units which are sold to investors in the Mainland must be 50% or less of the value of the fund's total assets;
- g) where the trust deed or constitutive documents provide for dispute resolution by way of litigation, the Mainland courts must not be excluded from entertaining an action in relation to the fund; and
- h) they must not primarily invest in the Mainland market.

The requirement that funds must be established in Hong Kong means that funds that are established outside Hong Kong but are authorised for public distribution in Hong Kong, such as UCITS funds, will not be able to obtain authorisation under the MRF for Mainland distribution.

Requirements for Fund Managers of Hong Kong Funds

The Provisional Rules require the fund manager of a Recognised Hong Kong Fund to:

- a) be licensed by the SFC to conduct Type 9 (Asset Management) regulated activity;

- b) not have been subject to any material penalty imposed by the SFC during the previous 3 years (or since the date of its establishment if it has been established for less than 3 years); and
- c) not delegate its investment management function to a party operating outside Hong Kong.

Mainland Agent

The CSRC requires a Recognised Hong Kong Fund to engage a Mainland agent that is qualified to perform public fund management or custodial activities in Mainland China²⁶ to be responsible for:

- a) the Recognised Hong Kong Fund's registration and distribution in Mainland China;
- b) conducting compliance reviews;
- c) the distribution agreements with Mainland distributors (which can also be appointed by the fund manager);
- d) disclosure of information to Mainland investors via designated hubs;
- e) Mainland customer service; and
- f) regulatory reporting to the CSRC.

The Provisional Rules also require the fund manager to sign an agency agreement with the Mainland agent which clearly outlines matters such as the obligations of each party and the arrangements for expiry or termination of the agreement.

Sale, Distribution and Relevant Disclosure

Disclosure

Hong Kong laws and regulations will govern the type of ongoing disclosure documents, the format, content, timing and frequency of disclosure, and the matters to be disclosed, unless the Provisional Rules provide otherwise.

The offering document of a Recognised Hong Kong Fund must be based on its SFC-approved offering document and must include additional information to address:

²⁶ The CSRC maintains a list of qualified custodians in PRC (Chinese only): http://www.csrc.gov.cn/pub/zjpublic/G00306208/201504/t20150424_275543.htm

- a) risk factors and information specific to the MRF;
- b) the type, timing and means of fund disclosures to Mainland investors, including where these documents can be inspected;
- c) the rights and obligations of parties to the fund, including the procedures and requirements for fund investor meetings, the grounds on which fund documents may be terminated, and the dispute resolution mechanism;
- d) the types and nature of services provided to fund investors and relevant contact details; and
- e) any major difference between the rights of Mainland and Hong Kong investors, and any other material information relevant to Mainland investors.

Recognised Hong Kong Funds are required to make the following documents available to Mainland investors 3 days prior to their Mainland distribution:

- a) a supplementary statement and disclosure of specific risks associated with Recognised Hong Kong Funds under the MRF in the product key facts statement;
- b) announcement of offering of fund units informing investors about matters such as account opening, settlement and clearance, registration, timing, and the fund's distribution channels; and
- c) the fund's trust deed or constitutive documents.

Announcements and financial reports in relation to Recognised Hong Kong Funds are required to be:

- a) released simultaneously to Mainland and Hong Kong investors;
- b) filed with the CSRC and SFC at the same time; and
- c) published on a website designated by the CSRC or on the Mainland agent's own website.

Language

Recognised Hong Kong Funds are required to prepare their offering document and other documents, including notices and announcements made to Mainland investors, in simplified Chinese and they should ensure that translation from other

languages gives a true and accurate reflection of the original version, taking into account market practice and customary use of Chinese language in Mainland China.

Distribution

As mentioned above, a qualified Mainland distributor²⁷ is required to be appointed either by the fund manager or the Mainland agent. The parties need to sign a distribution agreement outlining their respective responsibilities.

Distribution of Hong Kong Recognised Funds under the MRF will also be subject to relevant Mainland laws on marketing and promotion. The Provisional Rules provide that:

- a) the Mainland agent will be responsible for reviewing and commenting on marketing or promotional materials (where these are produced by the fund manager or another entity engaged by the manager) to be distributed to Mainland investors as to compliance with relevant Mainland laws and for filing the materials with the CSRC within 5 days of issue; and
- b) where marketing or promotional materials are prepared by the Mainland fund distributors, their senior management will be responsible for reviewing and commenting on those materials as to compliance with relevant Mainland laws and for filing the materials with the CSRC within 5 days of issue;
- c) marketing and promotional materials for Recognised Hong Kong Funds should be comprehensive, accurate and clear, and should indicate that the establishment, operation and disclosure of information regarding the funds are governed by Hong Kong law and regulations;
- d) marketing and promotional materials which refer to appraisals or ratings by non-Mainland institutions should clearly indicate any difference in appraisal methods and results between non-Mainland and Mainland appraisal institutions.

CSRC Authorisation Application Procedures

An eligible Hong Kong fund may apply to the CSRC for authorisation for Mainland distribution under the MRF by submitting:

- a letter of application;
- the fund's constitutive documents or trust deed;
- the offering document and product key facts statement;
- the latest audited annual report;
- an agency agreement between the fund manager and the appointed Mainland agent;
- documents establishing the qualifications of the fund manager, trustee and custodian and of the Mainland agent under Mainland law;
- a legal opinion;
- other materials as may be requested by the CSRC; and
- an explanation of any key differences between the version of the above documents authorised by the SFC and the version submitted to CSRC.

The CSRC will review the application in accordance to Article 55 of the Fund Laws and inform applicants of the results of authorisation within 6 months of accepting the application.

Enforcement and Regulator Briefings

The CSRC and SFC have established cooperation mechanisms for cross-border regulation and enforcement to ensure the protection of Hong Kong and Mainland investors.

Both the SFC and CSRC plan to hold briefing sessions to explain the application procedures and requirements.

²⁷ The CSRC maintains a list of qualified fund distributors in PRC (Chinese only): http://www.csrc.gov.cn/pub/zjhpublic/G00306208/201504/t20150414_275012.htm

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