

**Memorandum of Understanding (MoU)
between
the Securities and Futures Commission of Hong Kong (SFC)
and
the Securities and Exchange Commission of Thailand (SEC)
Concerning Mutual Recognition of Covered Funds and Covered
Management Companies and related Cooperation
Dated 20 January 2021**

This MoU has been concluded between the SFC and the SEC in light of global financial market growth and increasing cross-border activity in asset management and the offering and distribution of collective investment schemes. Its purpose is to enhance cooperation in relation to (i) collective investment schemes domiciled in either Hong Kong or Thailand and offered to the public in Thailand and/or Hong Kong on a cross-border basis, and (ii) management companies of collective investment schemes, based in either Hong Kong or Thailand, with a view to enriching the types of financial products offered and deepening the mutual access between the two financial markets, according to the Memorandum of Understanding signed on 29 November 2019 between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand on strengthening economic relations.

The SFC is the principal regulator of the securities and futures market in Hong Kong and the primary authority for regulating retail funds offered to the public in Hong Kong. The role of the SFC is as follows: licensing and supervision of the activities of intermediaries, including fund managers and distributors; authorising funds and their offering documents to be offered to the public in Hong Kong and the ongoing supervision of SFC-authorized funds.

As a statutory body, the SFC's regulatory objectives and functions are defined and governed by the Securities and Futures Ordinance. The SFC's regulatory objectives include:

- to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- to help the public understand the workings of the securities and futures industry;
- to provide protection for the investing public;
- to minimise crime and misconduct in the securities and futures industry;
- to reduce systemic risks in the securities and futures industry; and
- to assist the Financial Secretary in maintaining Hong Kong's financial stability.

The SEC was established under the Securities and Exchange Act B.E. 2535 (1992). The SEC has the power and duty to formulate policies to promote and develop, as well as to supervise, matters concerning securities, securities businesses, the Securities Exchange, over-the-counter centers, and related businesses, organizations related to securities business, issue or offer of securities for sale to the public, acquisition of securities for business takeovers, and prevention of unfair securities trading practices.

The SFC and the SEC 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, and use their best endeavours to work towards a level playing field with relevant authorities in terms of the tax treatment between offering Hong Kong funds and Thai funds in their respective markets.

Paragraph 1 Definitions

In this MoU:

- (a) “Authority” or “Authorities” means the SFC and/or the SEC, including their possible successor(s).
- (b) “CIS” means a collective investment scheme.
- (c) “Covered Entity” means a Covered Fund and/or Covered Management Company.
- (d) “Covered Fund” means a Thai CIS and/or a Hong Kong CIS managed by a Covered Management Company, authorised, approved, seeking authorisation, or seeking approval on a cross-border basis in accordance with Paragraph 3 of this MoU.
- (e) “Covered Management Company” means a Thai Management Company or a Hong Kong Management Company that is licensed (Thailand) by the Ministry of Finance upon the recommendation from the SEC or licensed/registered (Hong Kong) by the relevant Authority to manage Covered Funds and that meets the applicable conditions set out in Appendix B to this MoU.
- (f) “Cross-border On-site Visit” means any visit by one Authority to the premises of a Covered Entity located in the other Authority’s jurisdiction for supervisory purposes.
- (g) “Domestic Law” means any applicable laws, ordinances and other regulations or requirements in each Authority’s jurisdiction.
- (h) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, the investors of Covered Funds or the proper functioning of the financial markets.
- (i) “Enforcement Purpose(s)” means a purpose referred to in Paragraph 10(a) of the IOSCO MMoU.
- (j) “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.
- (k) “Hong Kong CIS” means open-ended fund companies, unit trusts or other forms of collective investment schemes domiciled in Hong Kong (as defined in Section 1 of Part 1 of Schedule 1 to the SFO) which are authorised by the SFC under Section 104 of the SFO in accordance with the Overarching Principles Section and the UT Code.
- (l) “Hong Kong Feeder Fund” means a Hong Kong CIS that is authorised by the SFC as a feeder fund and invests substantially all of its assets, in accordance with the requirements in the UT Code, in a single Thai CIS that is eligible for the mutual recognition of funds arrangement between Hong Kong and Thailand (“Thai Master Fund”).
- (m) “Hong Kong Management Company” means a corporation which is licensed or registered for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
- (n) “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 the SEC and the SFC are both signatories.

- (o) “Overarching Principles Section” means the Overarching Principles Section of the 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.
- (p) “Person” means a natural person or legal person, or an unincorporated entity or association, including partnerships, corporations and bodies corporate.
- (q) “Requested Authority” means the Authority to whom a request is made under this MoU.
- (r) “Requesting Authority” means the Authority making a request under this MoU.
- (s) “Securities and Exchange Act” means the Securities and Exchange Act B.E. 2535.
- (t) “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market and industry in Hong Kong, as may be amended, supplemented or otherwise modified from time to time.
- (u) “Thai CIS” means mutual funds domiciled in Thailand which are approved by the SEC under Section 117 of the Securities and Exchange Act, as may be amended, supplemented or otherwise modified from time to time.
- (v) “Thai Feeder Fund” means a Thai CIS that is approved by the SEC under Section 117 of the Securities and Exchange Act (as may be amended, supplemented or otherwise modified from time to time) as a feeder fund and invests substantially all of its assets, in accordance with the requirements in the Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds issued by the SEC, as may be amended, supplemented or otherwise modified from time to time, in a single Hong Kong CIS that is eligible for the mutual recognition of funds arrangement between Hong Kong and Thailand (“Hong Kong Master Fund”).
- (w) “Thai Management Company” means an entity that has been granted a securities license from the Ministry of Finance upon the recommendation from the SEC to manage mutual funds in accordance with Section 90 of the Securities and Exchange Act, as may be amended, supplemented or otherwise modified from time to time.
- (x) “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.
- (y) “week” means seven calendar days.

Paragraph 2 General provisions

1. This MoU is a statement of intent to cooperate in relation to Covered Entities to the extent possible under Domestic Law.
2. This MoU does not create any legally binding obligations, confer any rights on any Person, or modify or supersede any Domestic Law.
3. This MoU complements, but does not alter, the terms and conditions of existing arrangements between the Authorities such as the IOSCO MMoU. To the extent any provision of this MoU conflicts with the IOSCO MMoU in relation to any enforcement related assistance request or cooperation between the Authorities, the IOSCO MMoU prevails.
4. 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 Law. The offering, marketing and distribution of Covered Funds in the host jurisdiction shall comply with the applicable Domestic Law in the host jurisdiction.

5. Within the framework of this MoU, the Authorities will provide each other with the fullest cooperation in relation to Covered Entities. Following consultation, cooperation may be denied:
 - (a) where cooperation would require an Authority to act in a manner that would violate Domestic Law;
 - (b) where a request for information is not made in accordance with Paragraph 7 of this MoU;
 - (c) where the information could be used for any Enforcement Purposes in the jurisdiction of the Requesting Authority, in which case, it would be governed by the terms and conditions of the IOSCO MMoU; or
 - (d) on the grounds of public interest in the relevant jurisdiction.
6. In accordance with Domestic Law, each Authority has discretion:
 - (a) to regulate the offering, marketing and distribution of a Covered Fund within its jurisdiction, including by exercising the power to require Persons engaging in the offering, marketing and distribution of the Covered Fund to be authorised, approved, licensed, registered or to have the relevant qualifications, and to comply with applicable requirements;
 - (b) to suspend or terminate the offering of a Covered Fund within its jurisdiction notwithstanding that the Covered Fund has been authorised or approved, as the case may be, for offering, marketing and distribution within the parameters of this MoU; and
 - (c) to take appropriate enforcement action against a Covered Entity.
7. To facilitate cooperation under this MoU, the Authorities have designated contact points as set out in Appendix A.

Paragraph 3 Scope of mutual recognition

1. Recognition of Covered Funds

- (a) Pursuant to this MoU, the Authorities agree to authorise or approve, as the case may be, Covered Funds for offering to the public in Hong Kong and Thailand through a streamlined process in accordance with Section 104 of the SFO or Sections 57, 65, 69, and 72 of the Securities and Exchange Act (as the case may be, and as may be amended, supplemented or otherwise modified from time to time), provided that the Covered Funds meet the applicable conditions and requirements as set out in Appendix B.
- (b) Appendix B may be amended from time to time by mutual agreement in any form, including electronic correspondence, between the Authorities and each Authority will publish the content of the latest version on its website.
- (c) In accordance with Domestic Law and subject to prior consultation, each Authority may impose specific requirements on a Covered Fund in light of the specific circumstances of that Covered Fund, whether upon or subsequent to the authorisation or approval, as the case may be, of the relevant Covered Fund.

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 authorised or approved, as the case may be, in

their home jurisdiction and to offer, market and distribute such Covered Funds in the host jurisdiction, provided that

- (a) the Covered Management Companies meet the applicable conditions set out in Appendix B; and
- (b) the offering, marketing and distribution of the Covered Funds in the host jurisdiction comply with the requirements set out in the Domestic Law of the host jurisdiction.

3. Delegation

- (a) SEC recognises Hong Kong Management Companies are eligible to undertake asset management activities as delegates for Thai CIS and other CIS (provided that the home authority of the relevant other CIS recognises Hong Kong Management Companies also as eligible) which are approved by SEC for offering to the public in Thailand provided that the delegation arrangement complies with the requirements provided in the Domestic Law of Thailand.
- (b) SFC recognises Thai Management Companies are eligible to undertake asset management activities as delegates for Hong Kong CIS and other CIS (provided that the home authority of the relevant other CIS recognises Thai Management Companies also as eligible) which are authorised by SFC under Section 104 of the SFO for offering to the public in Hong Kong provided that the delegation arrangement complies with the requirements provided in the Domestic Law of Hong Kong.
- (c) If the investment management function is delegated in accordance with sub-paragraphs 3(a) and 3(b) above to a Hong Kong Management Company or a Thai Management Company, that Hong Kong Management Company or Thai Management Company in its capacity of delegate is deemed a Covered Entity for the purpose of this MoU.

4. Expedited review of application for the establishment of Hong Kong Feeder Funds and Thai Feeder Funds, and clarifying how they may be operated in a streamlined manner

SEC agrees to expedite the approval process of a Thai Feeder Fund investing in a Hong Kong Master Fund, and clarify how such Thai Feeder Fund may be operated in a streamlined manner in compliance with Domestic Law; and SFC agrees to expedite the authorisation process of a Hong Kong Feeder Fund investing in a Thai Master Fund, and clarify how such Hong Kong Feeder Fund may be operated in a streamlined manner in compliance with Domestic Law.

Paragraph 4 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 assistance for Enforcement Purposes 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 a Covered Entity from one jurisdiction for authorisation or approval, as the case may be, in the other jurisdiction; and
 - (b) the ongoing supervision of a Covered Entity.
- 3. Subject to the provisions of Domestic Law, the Authorities may cooperate:
 - (a) on an ongoing basis or ad hoc;
 - (b) orally or in writing; and
 - (c) upon request or on their own initiative (i.e. without a formal request).

Paragraph 5 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 impact the proper functioning of the financial markets, or have a significant adverse impact on Covered Entities or investors of Covered Funds; and
 - (b) any significant enforcement action taken by them, including the revocation of, suspension of or modifications to relevant authorisations, approvals, licences, or registrations in respect of a Covered Entity which may have, in their reasonable opinion, a material impact on that Covered Entity.
2. With respect to a Covered Fund, each Authority will, to the extent possible, inform the other on a timely basis of:
 - (a) any decision or, where appropriate, pending decision to revoke the authorisation or approval, as the case may be, for distribution in or from Thailand or Hong Kong taken by it;
 - (b) relevant issues such as the revocation of, or any significant changes to, authorisations, approvals, licences or registrations of related Covered Entities; and
 - (c) (where applicable and practicable in the relevant jurisdiction) material complaints from investors in relation to the Covered Entity which are brought to the Authority's attention.
3. As necessary from time to time, each Authority will inform the other about any significant amendments to Domestic Law which are likely to have a material impact on the matters covered by, and/or cooperation under, this MoU.
4. Subject to any restriction on the disclosure or sharing of information under Domestic Law, each Authority may disclose non-public information which it considers likely to be of assistance to the other Authority in securing compliance with Domestic Law applicable to the latter on a voluntary basis.
5. Once a year, each Authority will provide the other with a list of the Covered Funds authorised or approved, as the case may be, in the other Authority's jurisdiction under the relevant Domestic Law in accordance with this MoU.
6. For the avoidance of doubt, this Paragraph 5 does not apply to the notification of non-public information for any Enforcement Purposes in the jurisdiction of the Authority receiving the information, which will be governed by the terms and conditions of the IOSCO MMoU.

Paragraph 6 Request for information

1. Upon request and in accordance with Paragraph 7 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 Law that is administered or made by the Requesting Authority.
2. The information exchanged may, subject to any restriction on the disclosure or sharing of information under Domestic Law, include:
 - (a) information which would enable the Requesting Authority to verify that a Covered Entity is in compliance with the relevant obligations and requirements of the Domestic Law in the Requesting Authority's jurisdiction that is 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, where this is held and can be easily obtained;

- (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) 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; and
 - (g) enforcement action against any Covered Management Company which has, had or may have significant impact on the operations of such Covered Management Company in the Requesting Authority's jurisdiction.
3. Each Authority intends, upon request of the other Authority, to provide information relating to a Covered Fund, including the status, additional terms and conditions, and any waiver granted, in respect of the authorisation or approval of a Covered Fund.
 4. For the avoidance of doubt, this Paragraph 6 does not apply to the disclosure or sharing of non-public information for any Enforcement Purposes in the jurisdiction of the Requesting Authority, which will be governed by the terms and conditions of the IOSCO MMoU.

Paragraph 7 Form of requests for information

1. A request for information in accordance with Paragraph 6 above would be made in writing and addressed to the relevant contact point set out in Appendix A.
2. A request would specify the following:
 - (a) the information sought by the Requesting Authority, including specific questions to be asked and indications of any sensitivity regarding the request;
 - (b) a concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the Domestic Law applicable to the supervisory activity; and
 - (c) the desired time period for responding and, where appropriate, the urgency thereof.
3. During Emergency Situations, requests for information may be made in any form, including orally, provided such a request is confirmed in writing as early as possible thereafter.

Paragraph 8 Cross-border On-site Visits

1. Authorities will 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 each other about the intended timeframe for, and scope of, any Cross-border On-site Visit.
 - (b) The Authority in whose jurisdiction a Cross-border On-site Visit would be undertaken will decide whether the visiting officials or Persons mandated would be accompanied by its own officials during the visit.

- (c) When establishing the scope of any proposed Cross-border On-site Visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available, or is capable of being made available, by that Authority.
- (d) The Authorities will endeavour to assist each other in interpreting 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 for supervisory purposes.

Paragraph 9 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. The Authorities recognise that any information obtained under this MoU is not to be used for Enforcement Purposes. No information received under this MoU will be used in any judicial or any other proceedings. In cases where an Authority seeks to use non-public information obtained under this MoU for Enforcement Purposes, a request will be made pursuant to the IOSCO MMoU and any use of any such non-public information for Enforcement Purposes will be governed by the terms and conditions of the IOSCO MMoU.
3. Notwithstanding sub-paragraphs 1 and 2 above, the Authorities recognise that additional restrictions on the use of non-public information may be imposed under Domestic Law.

Paragraph 10 Confidentiality of information and disclosure

1. Subject to sub-paragraphs 2 and 3 of this Paragraph, the Authorities will keep confidential any non-public information communicated between them within the scope of cooperation of this MoU, except:
 - (a) this MoU (including its appendices), including any possible revision thereof after its coming into effect by agreement between the Authorities; and
 - (b) the fact that this MoU has been terminated under Paragraph 11 of this MoU.
2. The Requesting Authority would obtain prior written 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 – to the extent possible under Domestic Law – 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, unless it would be a breach of Domestic Law to do so. Where consent to such onward disclosure is not granted, the Requesting Authority will use all reasonable legal means to resist such a demand and to protect the confidentiality of the information.
4. For the avoidance of doubt, confidentiality and disclosure of information provided or exchanged by the Authorities pursuant to the IOSCO MMoU will be subject to the corresponding terms and conditions in the IOSCO MMoU.

Paragraph 11 Amendment; termination; succession

1. This MoU may be amended by mutual written agreement.
2. 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.
3. 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 Paragraphs 9 and 10 above.
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 sub-paragraph 2 above.

Paragraph 12 Validity

1. This MoU comes into effect upon signature of the Authorities.
2. The Authorities will endeavour to take all actions necessary to implement the mutual recognition of Covered Funds as contemplated under this MoU (including its appendices) within 6 to 12 months from this MoU coming into effect.

For SFC

For SEC

Ashley ALDER
Chief Executive Officer
Signed in Hong Kong on 20 January 2021

Ruenvadee Suwanmongkol
Secretary-General
Signed in Thailand on 20 January 2021

Appendix A

Contact points

Authority	Contact details
SFC (Hong Kong)	Securities and Futures Commission 54/F, One Island East 18 Westlands Road, Quarry Bay Hong Kong Email address: mrfthailand@sfc.hk
SEC (Thailand)	Securities and Exchange Commission of Thailand 333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak Bangkok 10900 Thailand Email address: mrfhongkong@sec.or.th