irish funds

HONG KONG: A GUIDE TO INTERNATIONAL FUND DISTRIBUTION

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ABOUT IRISH FUNDS

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland. We represent the fund promoters / managers, administrators, custodians, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with more than 13,500 funds and net assets of more than €4 trillion. The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it continues to be the location of choice for the domiciling and servicing of investment funds. Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland's regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.

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MARKET OVERVIEW

Hong Kong can be described as the centre of the Funds industry in Asia.

According to the Securities and Futures Commission's (the "SFC's") Fund Management Activities Survey 2015, published July 2016, overseas investors remained a significant source of funding for Hong Kong's fund management business, accounting for 68.5% of the HKD 17,393 billion figure for combined fund management business (of which HKD12,259 billion was asset management business). There was also an increase in the proportion of assets managed in Hong Kong (accounting for 55.7% of the asset management business).

It is the hub for alternative funds investing in Asia (predominant amongst which are Cayman funds or funds domiciled in other jurisdictions which are attractive from a tax perspective) and also for Asia's private banking industry. At the end of 2014, total hedge fund AUM in Hong Kong stood at US$120.9 billion.[1]

Hong Kong is also a significant market for UCITS funds which have successfully dominated the non-domestic funds offering in the region. There were just under 1,300 UCITS registrations in Hong Kong as of the end of October 2016.[2]

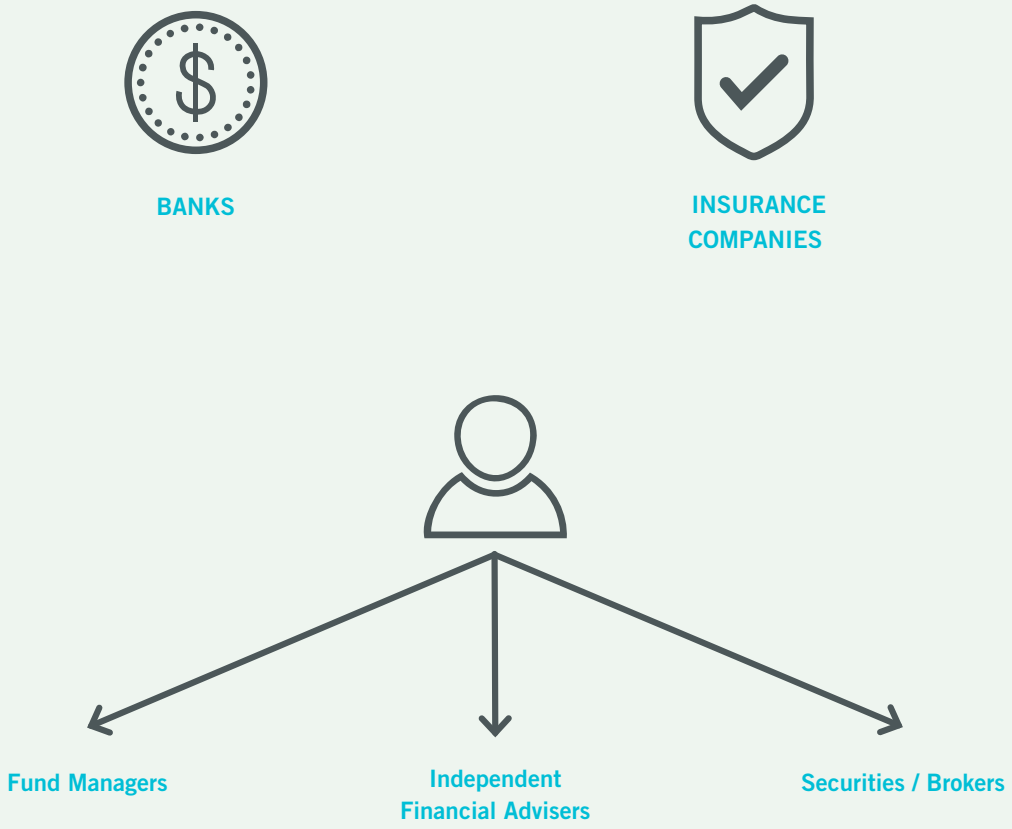
Regulatory developments such as the mutual recognition of funds ("MRF") scheme and the launch of Shanghai and Shenzhen Stock Connect have attracted significant interest from investors and indicate the willingness of the Hong Kong authorities to innovate to ensure that Hong Kong's funds market continues to evolve and grow.

HONG KONG
CENTRE OF THE FUNDS INDUSTRY
IN ASIA

HONG KONG'S ROBUST REGULATORY FRAMEWORK AND INNOVATIVE PRODUCTS CONTINUE TO ATTRACT INTERNATIONAL INVESTORS ALONG WITH CONTINUED REGULATORY DEVELOPMENTS FACILITATING EASY ACCESS TO OTHER ASIAN MARKETS.

[1] http://www.sfc.hk/web/EN/files/ER/Reports/HF%20Survey%20Report%202015_En.pdf
[2] SFC List of products: http://www.sfc.hk/productlistWeb/ searchProduct/UTMF.do

KEY DISTRIBUTION CHANNELS



DISTRIBUTING UCITS IN HONG KONG

UCITS funds from Ireland and the UK are what are known in Hong Kong as "recognised jurisdiction schemes" which means that although the UCITS passport does not extend to Hong Kong, the SFC accept that UCITS already comply with certain provisions of the Code on Unit Trusts and Mutual Funds (the "Code") and accordingly benefit from a streamlined application process.[3]

The enhanced process for applications seeking SFC's authorization of unit trusts and mutual funds was formally adopted on 9 May 2016 upon expiry of the 6-month pilot period.[4] The processing time for retail fund application authorisation is reduced under this new regime.

Although recognised jurisdiction schemes may not fully comply with the Code, the SFC nonetheless deems that UCITS funds meet certain structural, operational, investment requirements and core investment restrictions. The SFC expects a scheme to comply in all material respects with the local requirements and reserves the right to require such compliance as a condition of authorisation.

In general, it appears as though the SFC is looking to take opportunities to expand the types of retail fund products which are available to Hong Kong investors. The first crude oil futures ETF was authorised in Hong Kong in April 2016, and the SFC are expected to take further steps towards accepting and facilitating the use of more innovative structures in the future. Furthermore, with the adoption of the Ordinance introducing an open-ended fund company structure to Hong Kong, there will in the future be even greater opportunities for asset managers both on and off-shore.

Any marketing must be done by a person holding a "Type 1" licence for undertaking a regulated activity. Exemptions apply in some circumstances where a fund manager instead holds a "Type 9" license.

UCITS FUNDS FROM IRELAND AND THE UK ARE WHAT ARE KNOWN IN HONG KONG AS "RECOGNISED JURISDICTION SCHEMES."

[3] Circular to Fund Management Companies of SFC-authorised Funds - Streamlined Measures for Processing UCITS III Schemes with Special Features dated 30 March 2007
[4] Circular to management companies of SFC-authorized unit trusts and mutual funds - Formal adoption of revamped fund authorization process dated 22 April 2016

DISTRIBUTING AIFS IN HONG KONG

Alternative investment funds which are not authorised in Hong Kong by the SFC may not be offered to the public in Hong Kong. These funds are instead offered under private placement arrangements to persons who are outside Hong Kong, or, to investors classified as 'professional investors' (such as high net worth individuals, other collective investment schemes, and governments) pursuant to the Hong Kong Securities and Futures Ordinance. Other exemptions are available, relating to the size of the group the fund is offered to, or the minimum investment required (this latter exemption being available in respect of funds structured as corporates, only, and as such funds structured as LLPs, or trusts, for example, would not benefit from it).

The only way in which an AIF may be offered to the public in Hong Kong is if the SFC approve the offering document of the AIF (which in practice would likely only occur if the AIF was itself authorised by the SFC).

In order to be authorised, the following documents would commonly be required:

- Prospectus / offering document
- Constitutional documents
- All material agreements (such as the Depositary Agreement, Administration Agreement, Investment Management Agreement)
- Hong Kong covering document or wrapper
- Key Fact Statement
- Other documents as specified in the SFC's information checklist

In addition, unless the manager of the scheme is incorporated and has a place of business in Hong Kong, a scheme would be required to have an appointed representative in Hong Kong throughout the period the scheme is authorised in Hong Kong.

Application, authorisation and annual fees are payable. Depending on the kind of scheme and its principle investment strategies further disclosures may be required.

Closed ended funds (such as REITs) are authorised by the SFC and listed on Hong Kong's stock exchange.

Any marketing must be done by a person holding a "Type 1" licence for undertaking a regulated activity. Exemptions apply in some circumstances where a fund manager instead holds a "Type 9" license and the marketing activity is purely ancillary and in respect of the funds it manages under the Type 9 license.

REGULATORY AUTHORITIES

The Regulatory Authority responsible for overseeing fund distribution in the market is the Securities and Futures Commission (SFC).

SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Securities and Futures Commission
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2 Queen's Road Central, Hong Kong
Tel: (852) 2231 1222
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www.sfc.hk

COSTS OF REGISTRATION IN HONG KONG

	Initial Application Fee	Authorization Fee	Annual * Fee
Single Fund Application Fee	HK$ 20,000	HK$ 10,000	HK$ 6,000
Umbrella Fund Application Fee	HK$ 40,000	HK$ 20,000	HK$ 7,500
Sub-fund Application Fee	HK$ 5,000	HK$ 2,500	HK$ 4,500

* Please note fees must include Umbrella fee plus fees for each sub-fund.

SOURCE: Securities and Futures (Fees) Rules (Cap.571AF)

LOCAL TAXATION REQUIREMENTS

	Details of local taxation requirements	Scale of required local agents and/or translation fees
UCITS	In respect of UCITS funds registered for distribution in Hong Kong, the general principle is that there is no tax reporting obligation for the fund provided that no investment management activity is undertaken on-shore. If a retail fund such as a UCITS is found to be domiciled in Hong Kong, stamp duty on transfer of stock may become payable.	For UCITS registered in Hong Kong, there is a requirement to appoint a representative agent. Responsibilities of the representative include receipt of dealing requests and the agent must hold a 'Type 1' licence.
AIFS	For AIFs established off-shore a similar approach applies, and funds are generally exempt from profit tax on certain transactions, provided they are effected through a licensed corporation, and that none of the fund's central management and control functions are in practice exercised in Hong Kong. Care must therefore be taken to ensure that the fund is not inadvertently 'on-shored', and examples of ways this is effected are by ensuring that any directors (where applicable) are resident off-shore, and board meetings are conducted off-shore. Generally, provided investors are not holding interests in an off-shore fund for business purposes, they should be exempt (subject to certain requirements) from tax on profits derived from such fund. Capital gains are not taxed.	For an AIF marketed in Hong Kong, there is no requirement to appoint a local representative agent, however, if any marketing activity is being undertaken, this must be through an authorised person holding a 'Type 1' licence or by the AIF itself.

ADVANTAGES OF DISTRIBUTING AN IRISH FUND

Hong Kong is a major market for the distribution of both UCITS and AIFs established in Europe and elsewhere. Accessing the Hong Kong market brings with it not only access to a large pool of investors in Hong Kong but also can act as a gateway to other large and desirable Asian markets such as China. Recent developments in the regulatory landscape in Hong Kong include several developments designed to facilitate access to China and Chinese investment both north- and south-bound.

Furthermore, in respect of UCITS funds registered in Hong Kong, the SFC is very familiar with the UCITS brand and Irish UCITS in particular.

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April 2018