

Revamped post authorization process - Industry Briefing

17 and 24 July 2017

Agenda

- **Launch of SFC's Revamped Post Authorization Process**
- **Rationale**
- **Salient features**
- **Two-stream approach**
- **Application for approved pooled investment funds offered to retail investors (ÓAPIF Iô)**
- **Approval / authorization with conditions**
- **Post-vetting after approval / authorization**
- **Guidance for preparation of applications**
- **Enhanced measures**
- **Implementation**

Rationale

- **Facilitate management companies to manage their SFC-authorized funds more efficiently**

Aim to efficiently manage the time involved in processing the approval of post authorization changes and authorization of revised offering documents for the purpose of keeping investors properly informed on a timely basis

- **Reinforce the overall compliance culture of the asset management industry in Hong Kong**

Product providers should ensure quality submissions, proper, substantive and timely responses at all times

- **Enable SFC to use its resources more efficiently without compromising investors' protection**

Sub-standard and/or non-compliant applications will be returned

All applications will be subject to a lapse policy and response time limit

SFC will take appropriate regulatory actions against non-compliance matters

Salient features

- **Scope of the Revamped Post Authorization Process**

Applicable to applications for approval of post authorization changes including:

- scheme changes
- termination
- merger
- withdrawal of authorization

Applicable to applications for authorization of revised offering documents (ROD)

Not applicable to any MPF products authorized only pursuant to the SFC Code



Two-stream approach - Complex Applications

- **Types of applications which will be processed as Complex Applications:**

New and/or change of appointment of key operators, namely

- management company or delegated investment manager(s);
- trustee / custodian; and/or
- HK representative

each of which is not currently acting in the relevant capacity for any SFC-authorized funds

Change of place of domicile of SFC-authorized funds

Merger of SFC-authorized funds (also applicable to share classes)

Termination of SFC-authorized funds involving specific issues, considerations and/or circumstances (also applicable to share classes)

There are material issues and/or policy implications relating to the application

Applications for approved pooled investment funds offered to retail investors (ÓAPIF Iô)

- **APIF I applications are also subject to the two-stream approach and the respective applicable response time limit(s) and lapse period**
- **Approval-in-principle (ÓAIPô) will be granted provided:**
 - the applicant has addressed all requisitions (if any) in a satisfactory manner;
 - the application is in compliant with the applicable requirement under the UT Code and the MPF Code
- **SFC will then grant the final approval of scheme changes and/or authorization of ROD after the applicant submitted a duly completed and executed confirmation of fulfilment of AIP condition(s) confirming that:**
 - approval has been obtained; and
 - there are no subsequent/additional changes which approval
- **AIP granted by SFC will cease to have effect where there are subsequent amendments or any additional changes which are subject to the SFC's prior approval**
 - Applicant is required to re-submit the applications covering all the subsequent changes approval
 - Resubmission will be considered as a new application

Approval / authorization with conditions

- **SFC may approve a fund's post authorization change(s) or authorize the issue of a fund's offering document subject to conditions**
- **For approval/authorization subject to condition(s) to become effective, applicant must submit to the SFC:**
 - a duly completed and executed confirmation of fulfilment of approval/authorization condition(s)
 - approval/authorization letter
 - within
- **Non-fulfillment of relevant approval/authorization conditions could result in the approval/authorization being not effective**
- **Extension of the time to fulfil the relevant conditions may be considered by the SFC:**
 - upon submission of proper justification by the applicant

Some guidance for preparation of applications

Return / refusal / lapse of application

▪ **Return of application**

SFC is not satisfied with the completeness or sufficiency of the information contained in the initial submission package

Documents submitted are not in good order or otherwise not suitable for clearance

Application documents do not in any material aspect meet the applicable requirements

▪ **Refusal of application**

Applicant has not responded or provided proper, complete and substantive response to address limit(s)

Non-compliance with any key requirement(s) under the relevant Codes and regulatory guidance during the vetting process

▪ **Lapse of application**

Application will lapse if no approval/authorization was granted within 2 months (for Simple Applications) or 6 months (for Complex Applications)

▪ **Resubmission of application**

Application should be well-prepared and in compliance with all applicable requirements

Properly addressed/resolved all outstanding issues identified in the returned / refused/lapsed application

Some guidance for preparation of applications (contd)

Multiple / concurrent applications and multiple changes



Some guidance for preparation of applications (contd)

Multiple / concurrent applications and multiple changes (contd)



Some guidance for preparation of applications (contd)

Partial withdrawal of application

- After the initial submission, applicant may request in writing to withdraw one or some of the proposed scheme change(s) and/or revision(s) to the offering documents

Supported by proper and reasonable explanation

Clear indication of the proposed scheme change(s) and any related / consequential changes to be withdrawn

Submit amended executed application form(s) reflecting the proposed change(s) that remain in the application

- Partial withdrawal will not affect the processing of the remaining change(s) in accordance with the initial timeframe
- Any subsequent application for approval of the withdrawn change(s) will be treated as a new application

Some guidance for preparation of applications (contd)

Scheme change notices

- Notices currently subject to SFC's prior approval pursuant to the UT Code (i.e. notices on merger, termination and withdrawal of authorization) will still be required to be submitted to the SFC for approval
- Proposed 11.1 scheme changes should be approved by the SFC (except for 11.1 immaterial changes and/or 11.1B changes) prior to the distribution of the relevant notice(s) to holders
- Notices on matters relating to 11.1 of the UT Code need not be approved by the SFC prior to issuance
- **Simple Applications**

Applicants will generally not be required to submit the draft notices to SFC

Applicants must set out the key salient features of the proposed 11.1 changes in the updated Application Form for Scheme Change(s)

± Complex Applications

Applicants are expected to submit the draft notice in support of the 11.1 scheme changes application

- **Specific illustrative examples of key information or disclosure expected to be set out in the Notice(s) regarding the following 11.1 scheme changes are set out in the FAQeFAQec20 50m24e stemfo Tftedss29 nBT1or(r)2z-4(**

Revised forms

- **Revised application forms**

Nature / brief details of change(s) should be set out in a clear and succinct manner in the relevant application forms

Some guidance for preparation of applications (cont'd)

Revised forms (cont'd)

- **Revised filing forms**

Additional confirmation to accommodate the expansion of scope of Immaterial CD Amendments for Filing Form for Notice of Scheme Change(s)

set out relevant section number/ heading reflecting these changes in a clear and succinct manner in the filing form

to be shown as mark-up in the revised offering documents

annotation is not required

- Illustrative examples are set out below (extract of the updated 11.1B ROD Filing Form):



Some guidance for preparation of applications (contd)

- **In the case of 11.1 changes which require SFC's prior approval:**

consequential changes are also subject

related administrative changes (e.g. disclosure of the address of the newly appointed

approval

- **At the initial submission of the application and post-filing, the relevant application and filing forms should be duly completed and executed by:**

senior ranking executive of the management company; or

an appropriate person designated by senior ranking executive of the management company

- **Standardised templates of confirmations of compliance**

To facilitate initial submission by applicant

Applicant should submit the relevant duly completed and properly executed confirmation(s) / undertaking(s) set out in the List of Confirmations of Compliance as part of the application for approval of scheme changes including:

change of constitutive documents

change of management company and/or its delegate(s)

change of trustee / custodian

change of Hong Kong Representative

Enhanced measures

Expansion of scope of Immaterial Changes

- **Immaterial CD Amendments (11.1(a))**
 - Non-UCITS funds
 - UCITS funds
- **Change of distribution policy (11.1(c))**
 - Change

Implementation

- **30 June 2017**

- Launch of the pilot revamped post authorization process

- Publication of the circular, FAQs, revised forms, standardized templates of confirmations of compliance and confirmation of fulfilment of approval/authorization condition(s)

- **1 August 2017**

- Effective date for adoption of the revamped process

- Subject to a pilot run of 6 months

- May extend the pilot period and/or make changes to the revamped process where appropriate taking into account comments from the industry

- **31 January 2018**

- End of pilot period

Q & A



Thank you

