

SFC Fund Authorization

香港投资基金的監管

Hong Kong is widely recognized as one of Asia's leading fund management centers. The local fund industry has achieved substantial growth over the last ten years and attracted many large multinational investment management firms to be here offering a wide range of fund products.

The Securities and Futures Commission ("SFC") is the regulatory authority for funds. The SFC's *Fund Management Activities Survey 2006* shows that during 2006, a total of 223 unit trusts and mutual funds (excluding REITs) were authorized, bringing the total number of SFC-authorized funds at the end of the year to 1,973 with a net asset value of around HK\$7,100 billion.

Funds that are offered to the Hong Kong public are required to obtain prior authorization from the SFC under section 104 of the Securities and Futures Ordinance ("SFO"), unless one of the exemptions in the SFO or Companies (Amendment) Ordinance ("CAO") 2004 applies.

The first consideration is known as the "**professional investor**" exception. Funds that target at exclusively the professional investors who fall within one of the stated definitions do not require SFC authorization, and to quote 2 examples:

- 1) any trust corporation with total assets of not less than HK\$40 million; or
- 2) any high net-worth individual with an investment portfolio of not less than HK\$8 million, etc.

The second exception is in respect of the **funds that target at the persons outside Hong Kong.**

The third situation arises where the fund is not offered to the public and does not fall within the prohibition contained in the SFO; or the definition of “prospectus” in the Companies Ordinance (“CO”). Authorization from the SFC may not be required if the “**Private Placement**” exception applies, for example, an offer to not more than 50 persons; or an offer of shares in respect of which the total consideration does not exceed HK\$5 million plus a prescribed warning statement.

“Offer to the public” is not statutorily defined in the SFO but the following characteristics have been treated as some of the requirements for a private placement of securities:

- 1) each offering document to be issued is serially numbered and contain on the cover a statement that it is not an offer to the public.
- 2) each offering document is individually addressed to a named person and make clear that only the named person is entitled to take up the offer and may not transfer his acceptance to any other third party, etc.

Breach of the relevant provisions of the SFO regarding the regulation of fund is a criminal offence carrying the penalties of a fine and imprisonment.

*Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833)
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