

**Securities and Futures (Amendment) Bill 2016**  
**Debate and voting arrangements**

**Main object of the Bill :** To amend the Securities and Futures Ordinance (Cap. 571) and other enactments, including the Inland Revenue Ordinance (Cap. 112), the Stamp Duty Ordinance (Cap. 117) and the Business Registration Ordinance (Cap. 310), to provide for the incorporation of open-ended fund companies (“OFCs”) and the regulation of such companies and their business.

<b>First debate</b>	<b>: Clauses with no amendment</b>	<b>– Clauses 1 to 5, 7 to 11, 14 to 21, 23 to 26, 28, 29 and 34 to 44</b>
<b>Voting</b> : To vote on the above clauses standing part of the Bill		
<b>Second debate</b>	<b>: Clauses with amendments proposed by the Secretary for Financial Services and the Treasury (“SFST”)</b>	<b>– Clauses 6, 12, 13, 22, 27 and 30 to 33</b>
Joint debate on the original clauses and the amendments thereto.		
<b>Debate theme : Amendments to the above clauses of the Bill on various matters</b>		
<b>Clauses 6 and 22</b>		
<ul style="list-style-type: none"> <li>– To amend the proposed section 112ZA(5) to reflect the Government’s policy intent to allow sub-custodial arrangements to be conducted by a custodian or sub-custodian in respect of the property under a collective investment scheme of an OFC, which is in line with the existing market practice; and to make consequential amendments to the proposed section 112A on the definition of “sub-custodian” to ensure that the enforcement powers of the Securities and Futures Commission (“SFC”) will reach sub-custodians;</li> <li>– to amend the proposed section 112U(3) to specify that the “other duties” that are owed by a director of an OFC should only comprise the duty to exercise reasonable care, skill and diligence which is owed by the directors of an ordinary company to the company under section 465 of the Companies Ordinance (Cap. 622);</li> <li>– to add subsection (3A) to the proposed section 112ZF to enable SFC's directions under section 112ZF(1) and its amendment or revocation of such directions under section 112ZF(3) to take effect at the time of notice or a later time as specified in the notice in the event that an OFC or its key operators contravene any of the relevant provisions or conditions;</li> <li>– to remove all references to “inquiry” in the proposed section 112ZG to avoid giving the impression that the Court of First Instance (“CFI”) will conduct inquiries into a person’s failure to comply with SFC’s directions (given under section 112ZF);</li> </ul>		

- pursuant to the proposed sections 112ZJ(3) and (5), upon cancellation of registration of an OFC, SFC may impose conditions while giving permission to the OFC to carry on essential business operation, and the permission given or the condition imposed takes effect at the time of the service of the notice or such later time as specified in the notice. The amendment seeks to add subsection (6A) to the proposed section 112ZJ to provide that an amendment to or revocation of any condition imposed or imposition of new conditions by SFC under the proposed section 112ZJ(6) also takes effect at the time stated above;
- in view of the above amendments to the proposed sections 112ZF and 112ZJ, to make consequential amendments to the proposed schedule 8 (Securities and Futures Appeals Tribunal) in clause 22; and
- to add subsection (ga) to the proposed section 112ZK(4) to provide for SFC’s rule-making power in respect of the creation of personal liability of a person who acts as a director or is involved in the management of an OFC while being an undischarged bankrupt or acting in contravention of a disqualification order.

### **Clause 12**

- To amend the proposed section 213(3A) concerning the grounds on which SFC may apply to CFI for the additional orders under the proposed section 213(3B) to ensure that such orders may be sought from CFI in the circumstances where a person aids, abets, assists or induces an OFC or a director, an investment manager, a custodian or a sub-custodian of the OFC to contravene any of the relevant provisions or conditions of any licence or registration; and, in view of the above amendments, to delete clause 12(6); and
- to amend the proposed section 213(3B) to include any ancillary order that CFI considers necessary for the purposes of section 213(3A).

### **Clause 13**

- To amend the proposed section 214A (Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies) to provide that SFC must first consult the Monetary Authority (“MA”) when making applications under the proposed section 214A(1) for orders against an authorized financial institution, or a corporation which is a controller of an authorized financial institution, has as its controller an authorized financial institution or has a controller that is also a controller of an authorized financial institution; and
- to add subsection (5) to the proposed section 214A to provide for the definition of “controller”.

### **Clauses 27 and 30 to 33**

- In relation to the Inland Revenue (Amendment) (No. 4) Bill 2015,<sup>1</sup> to make technical amendments to the proposed sections 19 and 63 of and schedules 1, 8 and 9 to the Stamp Duty Ordinance in clauses 27 and 30 to 33 of the Bill.

**Voting** : To vote on the above amendments together, and then vote on the original clauses or the clauses as amended standing part of the Bill

<sup>1</sup> The Inland Revenue (Amendment)(No. 4) Bill 2015 was passed at the Council meeting of 25 May 2016.

**Third debate : New clauses proposed – Clauses 33A, 33B and 43A by SFST**

**Debate theme : Adding new clauses to amend the Bill**

**New clauses 33A and 33B**

- In view of the amendment to the definition of “misconduct” under the proposed section 193(1) in clause 9(3) of the Bill, to make corresponding amendments to sections 58A and 71C of the Banking Ordinance (Cap. 155) (“BO”) on the definition of “misconduct” to ensure that MA has the power to take disciplinary action against a relevant individual or an executive officer guilty of misconduct in relation to an OFC; and
- to amend sections 58A and 71C of BO to stipulate that MA shall not form any opinion that any act or omission by a relevant individual or an executive officer relating to an OFC is prejudicial to the interest of the investing public or to the public interest, unless he has had regard to the relevant codes and guidelines published under the proposed section 112ZR in clause 6 of the Bill.

**New clause 43A**

- To amend the definition of “relevant code” in section 2(1) of the Financial Reporting Council Ordinance (Cap. 588) to include the codes and guidelines published under the proposed section 112ZR in clause 6 of the Bill so that the Financial Reporting Council will be able to investigate the possible auditing and reporting irregularities and inquire into possible non-compliance with accounting requirements in relation to a listed OFC.

**Voting** : To vote on the addition of the above new clauses

**Secretary for Financial Services and the Treasury’s amendments**

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