

**For discussion on
5 June 2017**

Legislative Council Panel on Financial Affairs

**Subsidiary Legislation and Code Relating to the
Open-ended Fund Company Regime**

PURPOSE

This paper briefs Members on the rules and code which set out the operational details of the open-ended fund company (“OFC”) regime.

BACKGROUND

2. In June 2016, the Legislative Council (“LegCo”) enacted the Securities and Futures (Amendment) Ordinance 2016 (“the Amendment Ordinance”) to provide a legal framework for the OFC structure¹ in Hong Kong. The introduction of this new form of investment fund vehicle will enhance Hong Kong’s attractiveness as a location for the domiciliation and origination of publicly and privately offered funds. This in turn would be conducive to the development of our asset management industry.

3. Under the OFC regime, the Securities and Futures Commission (“SFC”) serves as the principal regulator responsible for the registration and regulation of OFCs. Meanwhile, the Companies Registry (“CR”) oversees the incorporation and statutory corporate filings of OFCs and the Official Receiver’s Office (“ORO”) the winding up procedures.

4. The Amendment Ordinance sets out the framework for the incorporation and regulation of OFCs, with the operational details to be set out in subsidiary legislation and code. To implement the OFC

¹ An OFC is a collective investment scheme (“CIS”) with variable capital set up in the form of a company, but with the flexibility to create and cancel shares for investors’ subscription and redemption in the funds, which is currently not enjoyed by conventional companies. Also, OFCs will not be bound by restrictions on distribution out of capital applicable to conventional companies, and instead may distribute out of capital subject to solvency and disclosure requirements.

regime, the SFC proposes to make the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”) and to issue a Code on Open-ended Fund Companies (“OFC Code”), setting out the detailed legal and regulatory requirements for OFCs. An outline of the proposed OFC Rules and OFC Code is provided in paragraphs 11 to 27 below. There will also be a set of Fees Rules setting out the fees that an OFC should pay for various purposes. An outline of the proposed fees is provided in paragraphs 31 to 33 below. The OFC Rules and Fees Rules are subsidiary legislation to be made by the SFC and the Financial Secretary respectively, and are subject to negative vetting by LegCo. The OFC Code² will be made by the SFC under section 112ZR of the Securities and Futures Ordinance (Cap. 571) (“SFO”).

KEY LEGISLATIVE FRAMEWORK UNDER THE AMENDMENT ORDINANCE

5. The Amendment Ordinance introduced, among other things, a new Part IVA into the SFO to lay down the key structural requirements and the supervisory powers of the SFC in respect of OFCs. The key requirements in relation to which further regulations and guidance are now proposed in the OFC Rules and/or the OFC Code include –

- (a) an OFC must be registered with the SFC and incorporated by the CR under the SFO;
- (b) an OFC must have at least two individual directors. Directors of an OFC are subject to fiduciary duties and the duty to exercise reasonable care, skill and diligence;
- (c) the investment management function of the OFC must be delegated to an investment manager who must be licensed by or registered with the SFC to carry out Type 9 (asset management) regulated activity;

² Like other codes issued under the SFO, the OFC Code is non-statutory. Failure by any person or the OFC to comply with the OFC Code shall not by itself render the person or OFC liable to any judicial or other proceedings, but may cause the SFC to consider whether such failure adversely reflects on the person’s fitness and properness (if applicable) and the suitability of the OFC to remain authorised or registered.

- (d) an OFC must have a custodian to whom all scheme property shall be entrusted for safe-keeping. The custodian must take reasonable care, skill and diligence to ensure the safe-keeping of the scheme property so entrusted to it;
- (e) the instrument of incorporation of an OFC must include certain mandatory contents;
- (f) an OFC must appoint an auditor for each financial year of the OFC; and
- (g) a solvent OFC may make an application to the SFC for a termination of its registration under a streamlined process (“streamlined termination”).

6. Pursuant to the Amendment Ordinance, all OFCs will be subject to registration with the SFC under the new Part IVA of the SFO and be subject to the OFC Rules and the OFC Code.

7. In addition to SFC registration, all OFCs which are intended to be offered to the public (“publicly offered OFCs”), like other public funds, will have to obtain the SFC’s authorisation under Part IV of the SFO unless an exemption applies. Accordingly, they will also be subject to the authorisation and ongoing post-authorisation requirements set out in the SFC Products Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“SFC Products Handbook”) which applies to publicly offered investment funds authorised by the SFC.

8. Under Part IVA of the SFO, the SFC is empowered to register an OFC and may impose registration condition(s) that it considers appropriate. Also, the SFC may refuse to register a proposed OFC and to cancel the registration of an OFC. In considering such registration, cancellation and/or imposition of conditions, the SFC will have regard to, among other things, compliance with the SFO, the OFC Rules, and the codes and guidelines of the SFC (including the OFC Code and the SFC Products Handbook), where applicable.

9. A diagram showing the regulatory framework for OFCs is at **Annex A**.

OUTLINE OF THE PROPOSED OFC RULES AND OFC CODE

10. The proposed OFC Rules and OFC Code are prepared having regard to the feedback obtained from the public consultation conducted in 2014 on the legal and regulatory framework for OFCs, and taking into account international regulatory standards and practices, relevant principles of the International Organization of Securities Commissions, as well as the relevant provisions in the Companies Ordinance (Cap. 622) (“CO”) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“CWUMPO”). Paragraphs 11 to 15 below give an overview of what the OFC Rules and OFC Code cover. Paragraphs 16 to 27 below summarise the requirements pertinent to certain key aspects of the formation and operation of an OFC.

Proposed OFC Rules

11. The OFC Rules are to be made pursuant to sections 112ZK, 112ZL, 112ZM and 112ZN of the SFO, which provide that the SFC (with the consent of the Registrar of Companies and the Official Receiver for rules relating to their respective functions) may make rules to provide for various operational details of the OFC regime. In particular, the proposed OFC Rules will set out the detailed statutory requirements concerning an OFC’s formation and maintenance, appointment and cessation of appointment of key operators of the OFC, the functions of the CR (primarily in respect of corporate filings), the segregated liability feature of sub-funds (if any) of OFCs, disqualification of directors, winding-up, and offences.

12. As OFCs will be established and incorporated under the SFO, they will be subject to the SFO, and not the provisions under the CO unless otherwise specifically provided in Part IVA of the SFO³. Provisions in the CO for conventional companies which are relevant to an OFC (including those relating to, for example, company incorporation, capacity, maintenance of registers, issue and transfer of shares, meeting procedures, financial statements, auditors requirement, and filings with the CR) are set out in the proposed OFC Rules. As for winding-up, the CWUMPO provisions (including its subsidiary legislation) will be applied to OFCs on a wholesale basis (save for necessary modifications).

³ Under section 112U of the SFO, for example, it is specified that the directors of an OFC owe the OFC the duty to exercise reasonable care, skill and diligence that is owed by a director of an ordinary company to the ordinary company under section 465 of the CO.

Such a drafting approach has taken into account that the CWUMPO's winding-up regime should be largely applicable to an OFC. It is also in line with the approach taken in legislation for similar corporate fund vehicles in overseas jurisdictions such as the United Kingdom and Ireland.

Proposed OFC Code

13. The OFC Code will be a non-statutory code issued by the SFC under section 112ZR of the SFO, which empowers the SFC to issue codes and guidelines to provide guidance in respect of OFCs. It is expected to contain a set of general principles (for example, acting fairly, with due skill, care and diligence and ensuring compliance with regulatory requirements and constitutive documents) which all OFCs and their key operators are expected to comply with in managing and operating OFCs.

14. The proposed OFC Code will elaborate on various basic registration and ongoing post-registration requirements applicable to all OFCs (such as duties of the key operators, corporate administration matters, contents of financial reports and streamlined termination process). Requirements in relation to investment scope, fund operations and disclosure in the draft OFC Code are envisaged to apply to privately offered OFCs only, as the SFC Products Handbook already has specific requirements which are applicable to all publicly offered funds, including publicly offered OFCs.

15. In formulating the draft OFC Code, a principle-based approach will be adopted. This is in line with other codes or guidelines issued by the SFC.

"One-stop" establishment process of an OFC

16. Under sections 112C and 112D of the SFO, an OFC will be established by obtaining a registration from the SFC and a certificate of incorporation from the CR. This is done via a one-stop process whereby the SFC will notify the CR of the OFC's registration, and the SFC's registration will take effect upon the issuance of a certificate of incorporation by the CR.

17. The proposed OFC Rules further elaborate on this one-stop approach and the registration and incorporation procedures. In short, the applicant would only have to submit all documents required by the CR (for incorporation) and the Inland Revenue Department (for business

registration) to the SFC. The SFC will forward the documents to the relevant authorities. The name of the proposed OFC and any name change post-establishment of an OFC will need to be reviewed and approved by the SFC only.

18. The one-stop arrangement seeks to simplify the establishment process of the OFC, and is expected to enhance efficiency and provide cost-savings to the applicant. It is made in response to industry feedback received through the public consultation and LegCo's Bills Committee on the Securities and Futures (Amendment) Bill 2016 ("the Bills Committee").

19. Regarding incorporation, an OFC is required under section 112C of the SFO to submit an instrument of incorporation to the CR. Such instrument of incorporation must contain certain mandatory contents and other matters prescribed by the OFC Rules, including a statement that its object is the operation as a CIS⁴. The proposed OFC Rules also provide that any transaction entered into by the OFC which is outside its operation as a CIS is invalid. The provisions governing the capacity and powers of an OFC are otherwise largely similar to those for a conventional company under the CO.

Key operators of an OFC

20. Under the proposed OFC Rules, the appointment of the key operators (i.e. the directors, investment manager and custodian) of an OFC will be subject to the SFC's approval, failing which an appointment will have no effect. The relevant provisions in the OFC regime in relation to the key operators include –

- (a) the board of directors of an OFC must have at least two directors who are natural persons and not undischarged bankrupts⁵. An OFC must notify the CR of the cessation of office and change of particulars of a director for updating of the public index of directors, and the SFC

⁴ This is in line with section 112A of the SFO, which defines an OFC to mean "a collective investment scheme constituted as a corporation that holds a certificate of incorporation issued by the Registrar of Companies under section 112C".

⁵ These are requirements under sections 112V and 112X of the SFO. In particular, an undischarged bankrupt cannot act as a director without the leave of the Court of First Instance.

of the cessation of office of the custodian and investment manager. Failure to do so will attract sanctions proposed under the OFC Rules. The directors have fiduciary duties and a statutory duty to exercise reasonable care, skill and diligence pursuant to section 112U(3) of the SFO;

- (b) the investment manager has to be licensed by or registered with the SFC for Type 9 regulated activity⁶, and hence must comply with all relevant conduct requirements of the SFC (including the SFC's Fund Manager Code of Conduct) in carrying out their functions for an OFC; and
- (c) The custodian has to meet certain capacity and capital requirements which will essentially be the same as those in the existing Code on Unit Trusts and Mutual Funds. The custodian has to take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the OFC pursuant to section 112ZA of the SFO. For investor protection and also taking into account comments received during the Bills Committee's scrutiny of the Amendment Ordinance, there will be an explicit requirement on similar obligations for a sub-custodian of an OFC. Further, overseas custodians and directors should respectively appoint a process agent to facilitate service of process⁷.

21. Apart from the above, all of the key operators would have to meet the applicable legal and regulatory requirements, including compliance with the relevant SFC codes and guidelines such as the OFC Code and the SFC Products Handbook as applicable when discharging their functions in respect of an OFC.

⁶ This is a requirement under section 112Z of the SFO.

⁷ The requirement to appoint a process agent is not expected to apply to an overseas custodian which has a place of business in Hong Kong and therefore constitutes a registered non-Hong Kong company under Part 16 of the CO. For such registered non-Hong Kong companies, the CO already requires it to have an authorised representative to whom documents should be served.

Corporate administrative matters and financial reports

22. The OFC Rules include provisions for the CR's functions in relation to: (a) corporate filings by an OFC; (b) the establishing and maintaining of a register of OFCs; (c) making the register available for public inspection; and (d) ancillary functions such as specifying forms and issuing guidelines, with sanctions for non-compliance. Those provisions are largely similar to those under the CO in relation to conventional companies.

23. To further facilitate the one-stop approach, it is anticipated that there will be two types of filings with the CR. Generally, for filings the subject matter of which requires the SFC's approval, they will be submitted by the OFC to the SFC, and the SFC will then pass the documents to the CR after approving the subject matter. As for filings the subject matter of which does not require the SFC's approval, they will be submitted directly by the OFC to the CR.

24. Further, the proposed requirements in the OFC Rules and the OFC Code are expected to cover matters relating to the issuance of shares and share transfers, holding of meetings and passage of resolutions. The requirements will also cover the appointment of auditors and the issuance of financial reports, with elaboration on proposed contents of the financial reports in the OFC Code. These include, for example, requirements for an annual report and an auditors' report.

Streamlined termination

25. Under section 112ZH of the SFO, a solvent OFC may be terminated voluntarily by its board of directors by making an application to the SFC (i.e. streamlined termination). Such streamlined termination may be made in accordance with its instrument of incorporation, for example, when it is no longer economical or in the interest of investors for an OFC to continue operation (such as when the fund size has become too small). The draft OFC Code will include proposed detailed requirements and procedures for such termination.

26. After an OFC's liabilities have been settled and assets have been fully distributed to shareholders, an application for termination can be made to the SFC. In line with the one-stop approach, the SFC will notify the CR of the cancellation of the registration.

Others

27. Section 112S of the SFO provides for the segregation of liability of sub-funds (protected cell) for an umbrella OFC. To fortify the protected cell regime, the proposed OFC Rules will set out certain implied terms to be included in contracts and transactions entered into by an umbrella OFC as well as certain disclosure requirements for such an OFC. Such requirements are in line with those for similar corporate fund vehicles in major overseas fund jurisdictions.

SUPERVISION AND ENFORCEMENT

28. The Amendment Ordinance⁸ has enhanced the SFC's investigatory, supervisory and intervention powers so that the SFC may take effective action to protect the interests of investors where there is a breach of the OFC Rules or the OFC Code. For example, the SFC may investigate the affairs of an OFC if the SFC has reasonable suspicion of misconduct in connection with the management of the OFC, or the management or safekeeping of the OFC's scheme property.⁹ The SFC may also conduct inspections and make inquiries with the OFC's investment manager as to whether it is complying with the applicable legislative requirements, and relevant codes and guidelines of the SFC including the OFC Code.¹⁰ Further, the SFC may cancel the registration of an OFC for a breach of a registration condition, the SFO or the OFC Rules.¹¹

29. In addition, pursuant to the Amendment Ordinance, the SFC may exercise disciplinary powers under Part IX of the SFO against the investment manager of an OFC for misconduct¹² which is prejudicial to

⁸ The relevant investigatory, supervisory and intervention powers have been extended to cover OFCs and relevant key operators by amendments and/or additions to sections 112ZI, 180, 182, 193, 213, 214A and 214B of the SFO.

⁹ Section 182(1)(b)(vii) of the SFO.

¹⁰ Section 180(2)(a) and 180(2)(e) of the SFO.

¹¹ Section 112ZI of the SFO.

¹² In particular, section 193 of the SFO has been amended by the Amendment Ordinance to expand the definition of "misconduct" which would take into account a breach of the OFC Code.

the interest of the investing public. The SFC may also take enforcement action against the OFC and the key operators by application to the court for various court orders¹³ (including removal of the key operators or an injunctive order to restrain continuance of a breach) upon non-compliance with the SFO, the OFC Rules, or a registration condition of the OFC.

30. As compliance with the OFC Code is intended to be one of the registration conditions, the foregoing powers of the SFC would apply in the case of a contravention of the OFC Code. The OFC Rules will include specific offences to provide for sanctions in case of a breach of relevant requirements such as with regard to filings with the CR and the SFC, financial statement preparation, and provision of false statements.

FEES

31. Under section 112ZQ of the SFO, the Financial Secretary may make regulations for the charging or collecting of fees by the SFC, the CR and the ORO in performing their respective functions, and for things done or services provided under the SFO and the OFC Rules. The fees to be charged by these three parties will be set out in a separate piece of subsidiary legislation, the Fees Rules.

32. In respect of the fees chargeable by the SFC, it is proposed that no new fees will apply to publicly offered OFCs. In other words, they will only have to pay the existing application and authorisation fees applicable to publicly offered funds seeking the SFC's authorisation under Part IV of the SFO, as well as post-authorisation annual fees.¹⁴ For privately offered OFCs, it is proposed that only minimal basic registration fees, and fees for changes that require the SFC's approval will be charged. No annual fees will apply to privately offered OFCs after registration with the SFC. Please refer to **Annex B** for the SFC's proposed fees.

33. As for the CR and the ORO, it is the Government's established policy that fees for services charged by the Government should be set, as far as possible, at levels adequate to recover the full cost of providing the services. On this principle, the CR has identified 43 fees relevant to the

¹³ Section 213 of the SFO as amended by the Amendment Ordinance.

¹⁴ The fees applicable to SFC-authorized publicly offered investment funds are set out in Schedule 1 to the Securities and Futures (Fees) Rules (Cap.571AF).

formation and maintenance of an OFC (see **Annex C**), while the ORO has identified 31 fees (see **Annex D**). The fees proposed by the CR are largely the same as the current fees applicable to companies incorporated under the CO, with four of them adjusted to meet cost recovery. All of ORO's fees are the same as current ones as applicable to the winding-up of companies.

LEGISLATIVE TIMETABLE

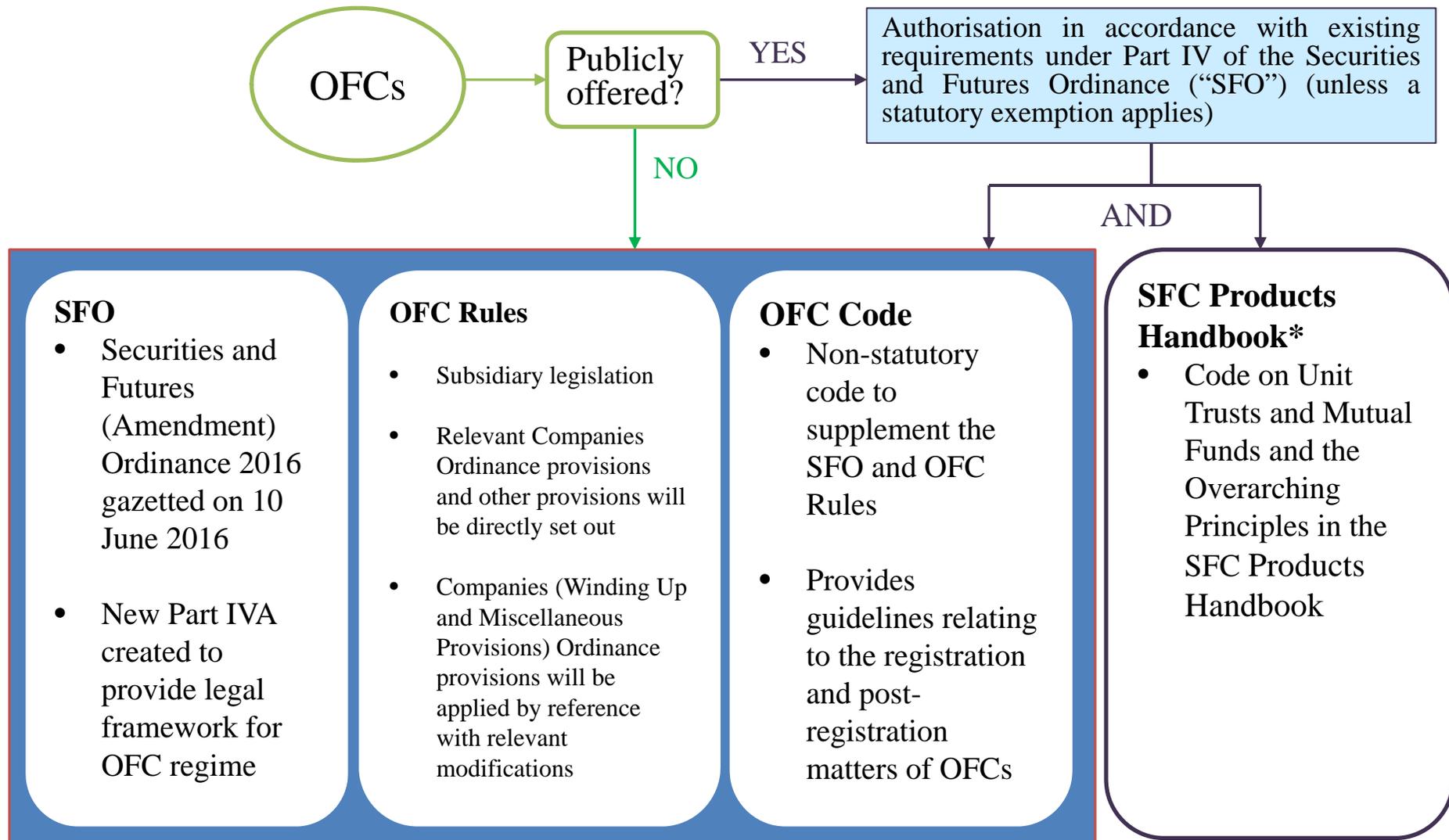
34. The SFC will launch a public consultation on the draft OFC Rules and OFC Code in June 2017. The finalised OFC Rules and Fees Rules, together with the commencement notice for the Amendment Ordinance, are expected to be tabled before LegCo for negative vetting in the first quarter of 2018, so that the OFC regime can be implemented in the same year.

ADVICE SOUGHT

35. Members are invited to note and comment on the proposals for the OFC subsidiary legislation and code.

Financial Services and the Treasury Bureau
Securities and Futures Commission
26 May 2017

General Regulatory Framework for Open-ended Fund Companies ("OFCs")



* SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Product

Annex B

**Proposed Fees to be Charged by the
Securities and Futures Commission (“SFC”)**

| | | Publicly Offered Open-ended Fund Company (“OFC”)¹ | Privately Offered OFC |
|--|------------------------------|---|--|
| Single OFC | | Application fee: \$20,000 Authorisation fee: \$10,000 Post-authorisation: Annual fee: \$6,000 | Application and registration fee: \$5,000 Post-registration: Per application for each item of change: \$300 |
| Umbrella OFC with sub-funds | For the umbrella | Application fee: \$40,000 Authorisation fee: \$20,000 Post-authorisation: Annual fee: \$7,500 | Application and registration fee: \$10,000 Post-registration: Per application for each item of change: \$300 |
| | For each sub-fund | Application fee: \$5,000 Authorisation fee: \$2,500 Post-authorisation: Annual fee: \$4,500 | Application and registration fee: \$1,250 Post-registration: Per application for each item of change: \$300 |

¹ In respect of publicly offered OFC, fees applicable to SFC-authorized publicly offered funds under the existing Securities and Futures (Fees) Rules (Cap.571AF) will apply. No new fees will be imposed.

Proposed Fees to be Charged by the Companies Registry

Table A: Overall fees (43 fees)

| Item no. | Fee particulars | Fee payable |
|---|---|---------------------------|
| <i>Incorporation of an open-ended fund company (“OFC”)</i> | | |
| 1. | For incorporation of an OFC under section 112C of the Securities and Futures Ordinance (Cap. 571) (“SFO”) | \$2,555 |
| 2. | For lodging of an incorporation form and a copy of the instrument of incorporation delivered under section 112C of the SFO | \$479 (non-refundable) |
| <i>Change of name</i> | | |
| 3. | For lodging of a notice of change of name delivered under the proposed Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”) | \$160 (non-refundable) |
| 4. | For issuing a certificate of change of name under the OFC Rules | \$1,245 |
| <i>Inspecting or obtaining documents or information</i> | | |
| 5. | 34 fees on the inspection or obtaining of documents relating to the | ranging from \$9 to \$500 |

| Item no. | Fee particulars | Fee payable |
|-----------------------------|--|--|
| | incorporation or particulars of OFCs (see Table B below) | |
| 6. | (a) On an inspection of a liquidator's statement sent to the Registrar of Companies ("the Registrar") under section 284 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as applied to the winding up of an OFC by virtue of the OFC Rules | \$26 |
| | (b) For a copy of or extract from any such statement – (i) if the copy is made by photographic means – for each page or portion of a page Provided that, where any copy exceeds in size 210 x 297 mm, such additional fee, not exceeding \$5, shall be paid as the Registrar may direct; (ii) if the copy is made by other means – per page (uncertified) per page (certified) | \$13 \$4 \$8 |
| <i>Miscellaneous</i> | | |
| 7. | For certifying a copy of or an extract from a document, or a copy of information contained in a record, per copy or extract | \$130 |

Table B: Fees on the inspection or obtaining of documents relating to the incorporation or particulars of OFCs

| Item no. | Fee particulars | Fee payable by unregistered online user | Fee payable by registered online user | Fee payable by on-site user |
|-----------------|--|--|--|--|
| 1. | For inspecting the index of directors kept by the Registrar – (a) for each inspection of the list of directors of an OFC (b) for each inspection of the particulars of a director of an OFC (c) for each inspection of all the directorships held by a person in any OFCs | \$11 \$11 \$22 | \$11 \$11 \$22 | \$11 \$11 \$22 |
| 2. | For obtaining, by way of downloading through online medium, an image record of the following documents kept by the Registrar – (a) each incorporation form (b) instrument of incorporation (c) the accounts made up by a liquidator in respect of an OFC being wound up under the OFC Rules (d) any other document | \$18 \$23 \$23 \$10 | \$16 \$21 \$21 \$9 | Not applicable Not applicable Not applicable Not applicable |

| Item no. | Fee particulars | Fee payable by unregistered online user | Fee payable by registered online user | Fee payable by on-site user |
|-----------------|---|--|--|--|
| 3. | For obtaining, at the office for the registration of OFCs, a copy of an image record of the following documents kept by the Registrar – (a) each incorporation form (b) instrument of incorporation (c) the accounts made up by a liquidator in respect of an OFC being wound up under the OFC Rules (d) any other document | Not applicable Not applicable Not applicable Not applicable | Not applicable Not applicable Not applicable Not applicable | \$30 \$35 \$35 \$20 |
| 4. | For online inspection of, and obtaining an image record of the following documents kept by the Registrar – (a) each incorporation form (b) instrument of incorporation (c) the accounts made up by a liquidator in respect of an OFC being wound up under the OFC Rules (d) any other document | \$23 \$29 \$29 \$13 | \$21 \$26 \$26 \$12 | Not applicable Not applicable Not applicable Not applicable |
| 5. | For obtaining a copy of any record containing the current particulars of an OFC, per OFC | \$22 | \$22 | \$22 |

| Item no. | Fee particulars | Fee payable by unregistered online user | Fee payable by registered online user | Fee payable by on-site user |
|-----------------|--|--|--|------------------------------------|
| 6. | For registering an account with the Registrar for inspecting and obtaining documents and information specified in items 1, 2, 4 and 5 above per year – (a) for a principal account (b) for each subsequent account | Not applicable Not applicable | \$500 \$100 | Not applicable Not applicable |

Proposed Fees to be Charged by the Official Receiver's Office¹

| Item no. | Fee particulars | Fee payable |
|---|---|--------------------|
| <i>Fees adapted from Table A of Schedule 3 to the Companies (Fees and Percentages Order) (Cap. 32C) ("the Order") (11 fees)</i> | | |
| 1. | On an inspection of a copy of the liquidator's accounts filed under section 203(4) or (6) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance ("CWUMPO") ² (as applied to an OFC by virtue of the Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules")) | \$11 |
| 2. | On an application by a liquidator to the OR for a special bank account under section 202 of the CWUMPO ³ (as applied to an OFC by virtue of the OFC Rules) | \$360 |

¹ Given that the winding-up procedures for conventional companies and OFCs are largely the same, the fee levels in this annex are the same as those for winding-up of conventional companies.

² Every liquidator (other than the Official Receiver ("OR")) of a company which is being wound up by the court is required send to the OR an account of his receipts and payments as liquidator. Section 203(4) of the CWUMPO provides for the filing with the OR and the court when such account has been audited (unless the OR decides that the account need not be audited). Even if the OR decided that the account need not be audited, the OR can subsequently cause it to be audited. Section 203(6) provides for the filing of such audited account.

³ Section 202 of the CWUMPO provides for payments of a liquidator into the bank account where the Companies Liquidation Account is kept or, on the application of the liquidator to the OR, into a special bank account specified by the liquidator.

| Item no. | Fee particulars | Fee payable |
|----------|--|---|
| 3. | On an order by the OR for a special bank account | \$360 |
| 4. | On an application by a liquidator to the OR acting as a committee of inspection | \$360 |
| 5. | <p>On an application to the OR –</p> <p>(a) under section 285 of the CWUMPO⁴ (as applied to an OFC by virtue of the OFC Rules) for payment of money out of the Companies Liquidation Account</p> <p>(b) after 6 months from the date of issue, for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of that account</p> | <p>\$55</p> <p>\$55</p> |
| 6. | <p>On every payment under section 285 of the CWUMPO (as applied to an OFC by virtue of the OFC Rules) of money out of the Companies Liquidation Account, to be charged as follows –</p> <p>(a) where the money consists of unclaimed dividends, on each dividend paid out;</p> <p>(b) where the money consists of undistributed funds or balances, on the amount paid out).</p> <p>The total fees taken under this item in respect of undistributed funds or balances shall not exceed \$37,500 in each liquidation.</p> | <p>\$50 (on each \$1,000 or fraction of \$1,000)</p> <p>\$50 (on each \$1,000 or fraction of \$1,000)</p> |
| 7. | For insertion in the Gazette of a notice relating to an OFC which is being wound up by the court | \$330 |

⁴ Section 285 of the CWUMPO provides for the payment of unclaimed assets to the Companies Liquidation Account.

| Item no. | Fee particulars | Fee payable |
|---|--|--|
| 8. | On an application by a member of the public to the OR for a search on whether a winding-up petition has been presented against an OFC | \$80 |
| 9. | On a proof of debt above \$250 (other than a proof for workmen's wages) (This fee includes administering oath and filing. No fee is payable on a proof for \$250 or under.) | \$35 |
| <i>Fees adapted from Table B of Schedule 3 to the Order (18 fees)</i> | | |
| 10. | On the aggregate amount of assets realised and brought to credit by a liquidator (including the OR when he is acting as liquidator), after deducting any sums paid to secured creditors, other than holders of floating charges in respect of their securities and any sums spent out of money received in carrying on the business of the OFC | <ul style="list-style-type: none"> (a) On the first \$500,000 or fraction thereof, \$100 on every \$1,000 or fraction thereof; (b) On the next \$500,000 or fraction thereof, \$75 on every \$1,000 or fraction thereof; (c) On the next \$4,000,000 or fraction thereof, \$65 on every \$1,000 or fraction thereof; (d) On the next \$5,000,000 or fraction thereof, \$37.5 on every \$1,000 or fraction thereof; (e) On the next \$40,000,000 or fraction thereof, \$20 on every \$1,000 or fraction thereof; (f) On all further amounts, \$10 on every \$1,000 or fraction thereof. |

| Item no. | Fee particulars | Fee payable |
|----------|--|---|
| 11. | Where the OR acts as provisional liquidator only – (a) where no winding-up order is made upon the petition, or where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories; or (b) where a winding-up order is made but the OR is not continued as liquidator after the statutory meetings of creditors and contributories | Such amount as the court may consider reasonable to be paid by the petitioner or by the OFC Such amount as the court may consider reasonable |
| 12. | Where the OR acts as liquidator of the OFC and a special manager is appointed (to include the OR's services as provisional liquidator) | Such amount as the court may consider reasonable |
| 13. | In all other cases where the OR acts as liquidator of the company (to include his services as provisional liquidator) – (a) In respect of every 10 members, creditors and debtors, and every fraction of 10 (This fee includes cost of official stationery, printing, books, forms and postages in Hong Kong.) (b) On every payment made into the Companies Liquidation Account under section 202 of the CWUMPO (as applied to an OFC by virtue of the OFC Rules) (This item does not include (i) where the OR collects, calls or realises property for debenture holders, the total assets, including the produce of calls on contributories, realised or brought to credit by the OR; or (ii) money received in carrying on the business of the OFC.) (c) On the amount distributed in dividend or paid to contributories, preferential creditors and debenture holders | \$620 \$170 5% on amount distributed |

| Item no. | Fee particulars | Fee payable |
|-----------------|--|--|
| 14. | <p>Where the OR collects, calls or realises property for debenture holders, fee is to be paid out of the proceeds of the calls or property –</p> <p>(a) On the total assets, including the produce of calls on contributories, realised or brought to credit by the OR, after deducting the amount spent out of the money received in carrying on the business of the OFC</p> <p>(b) The same fee as under Item 13(c) above to be paid out of the proceeds of such calls or property</p> | <p>10% on proceeds</p> <p>5% on amount distributed</p> |
| 15. | <p>Where the OR realises property for secured creditors other than debenture holders, a fee is to be paid out of the proceeds of the property –</p> <p>On the total assets, including the produce of calls on contributories, realised or brought to credit by the OR, after deducting the amount spent out of the money received in carrying on the business of the OFC.</p> | <p>10% on proceeds</p> |
| 16. | <p>Where the OR performs any special duties not provided for under the Tables in the Order</p> | <p>Such amount as the court may consider reasonable</p> |
| 17. | <p>Travelling, keeping possession, law costs, and other reasonable expenses of the OR</p> | <p>The amount disbursed</p> |
| 18. | <p>Notwithstanding the fees and percentages prescribed in Items 10, 12 to 16 above, where the OR acts as liquidator</p> | <p>Total fees collected should not be less than \$11,250</p> |

| Item no. | Fee particulars | Fee payable |
|---|--|-------------|
| <i>Fees adapted from the Companies (Winding-up) Rules (Cap. 32H) (2 fees)</i> | | |
| 19. | The costs of summoning a meeting of creditors or contributories at the instance of any person other than the OR, including all disbursements for stationery, printing, postage within Hong Kong (but excluding hire of room outside the ORO) | \$1,440 |
| 20. | Deposit in relation to a petition presented by the petitioner (to be paid before presenting a petition) | \$11,250 |