

《2016 年證券及期貨（修訂）條例草案》

**Securities and Futures (Amendment)
Bill 2016**

Securities and Futures (Amendment) Bill 2016

Contents

Clause	Page
Part 1	
Preliminary	
1.	Short title and commencement C247
2.	Enactments amended C247
Part 2	
Amendments to Securities and Futures Ordinance	
3.	Section 36 amended (rules by Commission) C251
4.	Section 56 amended (property deposited with recognized clearing house)..... C251
5.	Section 103 amended (offence to issue advertisements, invitations or documents relating to investments in certain cases)..... C251
6.	Part IVA added C253
Part IVA	
Open-ended Fund Companies	
Division 1—Preliminary	
112A.	Interpretation of Part IVA C255

Clause	Page
112B. Prohibition against carrying on business as open-ended fund company without registration etc.	C255
Division 2—Incorporation, Registration, Name and Registered Office	
112C. Incorporation of open-ended fund company	C259
112D. Application for registration with Commission before incorporation.....	C261
112E. Requirements for registration.....	C263
112F. Commission may amend conditions of registration	C265
112G. Publication of particulars of open-ended fund company.....	C265
112H. Name of open-ended fund company.....	C265
112I. Registered office of open-ended fund company.....	C267
Division 3—Capacity and Powers	
112J. Capacity of open-ended fund company	C267
112K. Instrument of incorporation of open-ended fund company	C269
112L. Effect of instrument of incorporation.....	C271
Division 4—Contracts	
112M. Contracts made by or on behalf of open-ended fund company.....	C271

Clause	Page
112N.	Contracts made before open-ended fund company's incorporation..... C275
112O.	Contracts made after cancellation of registration C277
Division 5—Share Capital and Shareholders' Liability	
112P.	Share capital of open-ended fund company..... C277
112Q.	Shareholders' liability C279
Division 6—Sub-funds	
112R.	Sub-funds of open-ended fund company C279
112S.	Segregated liability of sub-funds C279
Division 7—Directors, Investment Manager, Custodian, Sub-custodian and Auditor	
112T.	Interpretation of Division 7 of Part IVA C281
112U.	Directors C285
112V.	Restrictions on body corporate being director C285
112W.	Minimum age for appointment as director C287
112X.	Provisions as to undischarged bankrupt acting as director C287
112Y.	Validity of acts of director..... C289
112Z.	Investment manager C291
112ZA.	Custodian..... C291
112ZB.	Auditor..... C293

Clause	Page
112ZC.	Provision protecting specified officer from liability void C293
112ZD.	Court of First Instance may grant specified officer relief in proceedings for misconduct C293
112ZE.	Court of First Instance may grant specified officer relief for misconduct on specified officer's application C295
Division 8—Supervision by Commission	
112ZF.	Commission's power to give directions..... C297
112ZG.	Application to Court of First Instance for inquiry into failure to comply with direction C301
112ZH.	Commission's power to cancel registration on open-ended fund company's application C303
112ZI.	Commission's power to cancel registration otherwise than on open-ended fund company's application..... C307
112ZJ.	Permission to carry on essential business operations on cancellation of registration..... C311
Division 9—Rules made by Commission	
112ZK.	Commission's power to make rules C313
112ZL.	Rules made with consent of Registrar of Companies C321

Clause	Page
112ZM. Rules made with consent of Official Receiver.....	C327
112ZN. OFC rules may prescribe offences.....	C327
112ZO. Modification or waiver of requirements of OFC rules by notice.....	C329
112ZP. Modification or waiver of requirements of OFC rules by rules.....	C333
Division 10—Miscellaneous	
112ZQ. Financial Secretary may make regulations relating to fees.....	C333
112ZR. Commission may publish codes and guidelines.....	C337
112ZS. Effect of codes and guidelines.....	C339
112ZT. Offence of fraudulent trading.....	C341
7. Section 180 amended (supervision of intermediaries and their associated entities).....	C343
8. Section 182 amended (investigations by Commission).....	C343
9. Section 193 amended (interpretation of Part IX).....	C347
10. Section 201 amended (general provisions relating to exercise of powers under Division 2 or 3).....	C349
11. Section 212 amended (winding-up orders and bankruptcy orders).....	C349

Clause	Page
12.	Section 213 amended (injunctions and other orders)..... C351
13.	Sections 214A and 214B added..... C357
	214A. Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies C359
	214B. Order under section 214A altering open-ended fund company's instrument of incorporation C363
14.	Section 336 amended (register of interests in shares and short positions) C365
15.	Section 352 amended (register of directors' and chief executives' interests and short positions) C365
16.	Section 378 amended (preservation of secrecy, etc.) C367
17.	Section 379 amended (avoidance of conflict of interests)..... C367
18.	Section 400 amended (service of notices, etc.)..... C367
19.	Schedule 1 amended (interpretation and general provisions)..... C369
20.	Schedule 2 amended (Securities and Futures Commission)..... C369
21.	Schedule 5 amended (regulated activities)..... C369
22.	Schedule 8 amended (Securities and Futures Appeals Tribunal) C369

Clause	Page
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Part 3

Related Amendments

Division 1—Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

23.	Section 168R amended (register of disqualification orders).....	C375
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Division 2—Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. 1)

24.	Schedule 1 amended.....	C375
-----	-------------------------	------

Division 3—Amendments to Inland Revenue Ordinance (Cap. 112)

25.	Section 2 amended (interpretation).....	C375
26.	Section 57 amended (principal officer to act on behalf of a corporation or body of persons).....	C377

Division 4—Amendments to Stamp Duty Ordinance (Cap. 117)

27.	Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock).....	C379
28.	Section 30A added.....	C379
	30A. Sub-schemes under unit trust schemes.....	C379
29.	Part IVA added.....	C381

Part IVA

Open-ended Fund Companies

37A.	Interpretation of Part IVA.....	C381
------	---------------------------------	------

Clause	Page
37B.	Application of certain provisions relating to unit trust schemes to open-ended fund companies C381
37C.	Sub-funds of open-ended fund companies..... C385
30.	Section 63 amended (regulations) C385
31.	First Schedule amended C385
32.	Schedule 8 amended (transactions and transfers relating to exchange traded funds)..... C387
33.	Schedule 9 added C387
	Schedule 9 Transactions and Transfers Relating to Authorized Open-ended Collective Investment Schemes C387
Division 5—Amendments to Business Registration Ordinance (Cap. 310)	
34.	Section 2 amended (interpretation and application) C393
35.	Section 3 amended (persons answerable for doing all acts, etc. required to be done)..... C395
36.	Section 5A amended (simultaneous business registration applications of companies incorporated under Companies Ordinance) C397
37.	Section 6 amended (registration of business and issue of business registration certificate) C397
38.	Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies) C401

Clause	Page
39. Section 8 amended (information to be furnished).....	C401
40. Section 9 amended (exemption from payments of fees for small businesses)	C403
41. Section 15 amended (offences).....	C403
Division 6—Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)	
42. Regulation 3A amended (business particulars in relation to simultaneous business registration applications).....	C403
Division 7—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)	
43. Schedule 1 amended (services to be provided by the trading fund).....	C405
Division 8—Amendments to Contracts (Rights of Third Parties) Ordinance (Cap. 623)	
44. Section 3 amended (application).....	C405

A BILL

To

Amend the Securities and Futures Ordinance and other enactments to provide for the incorporation, registration, management, operation and regulation of open-ended fund companies; and to provide for related matters and make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2016.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Enactments amended

- (1) The Securities and Futures Ordinance (Cap. 571) is amended as set out in Part 2.

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- (2) The enactments specified in Part 3 are amended as set out in that Part.
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Part 2

Amendments to Securities and Futures Ordinance

3. Section 36 amended (rules by Commission)

Section 36(1)(e)—

Repeal

“companies”

Substitute

“corporations”.

4. Section 56 amended (property deposited with recognized clearing house)

Section 56(3)—

Repeal

“the operation of section 633 of the Companies Ordinance (Cap. 622).”

Substitute

“the operation of—

(a) section 633 of the Companies Ordinance (Cap. 622); or

(b) any provision of the OFC rules relating to the rectification of the register of shareholders of an open-ended fund company.”.

5. Section 103 amended (offence to issue advertisements, invitations or documents relating to investments in certain cases)

(1) Section 103(2)—

Repeal paragraph (ga)

Substitute

“(ga) made by or on behalf of a corporation, but only to the extent that the advertisement, invitation or document relates to an offer specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule;”.

(2) Section 103(3)(b)—

Repeal

“not a registered company”

Substitute

“neither a registered company nor an open-ended fund company”.

(3) Section 103(3)(c)—

Repeal

“a corporation,”

Substitute

“a corporation that is not an open-ended fund company,”.

6. Part IVA added

After Part IV—

Add

“Part IVA

Open-ended Fund Companies

Division 1—Preliminary

112A. Interpretation of Part IVA

In this Part—

OFC rules (《開放式基金型公司規則》) means rules made under section 112ZK, 112ZL or 112ZM;

open-ended fund company (開放式基金型公司) means a collective investment scheme constituted as a corporation that holds a certificate of incorporation issued by the Registrar of Companies under section 112C;

proposed company (擬成立公司) means a company intended to be incorporated under this Part;

scheme property (計劃財產), in relation to an open-ended fund company, means the property under the collective investment scheme that is constituted as the company;

sub-custodian (次保管人), in relation to an open-ended fund company, means a person to whom any scheme property of the company is entrusted for safe keeping by virtue of section 112ZA(5)(a) or (b);

sub-fund (子基金)—see section 112R.

112B. Prohibition against carrying on business as open-ended fund company without registration etc.

- (1) A person, not being an open-ended fund company that is registered under section 112D, must not—

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- (a) carry on business as an open-ended fund company; or
 - (b) hold out as an open-ended fund company.
- (2) A person must not manage any property on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
 - (b) holds out as an open-ended fund company.
- (3) A person must not hold out as acting on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
 - (b) holds out as an open-ended fund company.
- (4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day during which the offence continues; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues.

- (5) A person who, without reasonable excuse, contravenes subsection (2) or (3) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Division 2—Incorporation, Registration, Name and Registered Office

112C. Incorporation of open-ended fund company

- (1) Any person may incorporate a company under this Part by delivering to the Registrar of Companies for registration—
- (a) an incorporation form prescribed by the OFC rules; and
 - (b) a copy of the instrument of incorporation of the proposed company that has been signed in accordance with the OFC rules.
- (2) The documents specified in subsection (1)—
- (a) must be delivered in the manner prescribed by the OFC rules; and
 - (b) must be accompanied by any document or information prescribed by the OFC rules.

- (3) Subject to subsection (4), if the Registrar of Companies is satisfied that the requirements for incorporation prescribed by the OFC rules are met with respect to the proposed company, the Registrar—
 - (a) must register the documents delivered under subsection (1); and
 - (b) must issue a certificate of incorporation in respect of the proposed company certifying that it is a company incorporated under this Part.
- (4) The Registrar of Companies must not register the relevant documents or issue a certificate of incorporation under subsection (3) unless the Registrar has been notified of the registration of the proposed company under section 112D(7).

112D. Application for registration with Commission before incorporation

- (1) On an application by a person, the Commission may register a proposed company for the purposes of this Part.
- (2) An application for the purposes of subsection (1)—
 - (a) must be made in the manner specified by the Commission; and
 - (b) must be accompanied by any document or information that the Commission requires.
- (3) The registration of a proposed company takes effect on the day on which a certificate of incorporation is issued by the Registrar of Companies under section 112C(3)(b) in respect of it.

- (4) The Commission must refuse to register a proposed company unless it is satisfied that the requirements for registration specified in section 112E will, on the day on which the registration takes effect, be met with respect to the company.
- (5) Without limiting any other ground on which the Commission may refuse to register a proposed company, the Commission may refuse to do so if it is not satisfied that the registration is in the interest of the investing public.
- (6) On registering a proposed company, the Commission may impose any condition that it considers appropriate.
- (7) The Commission must, as soon as reasonably practicable after registering a proposed company under subsection (1), notify the Registrar of Companies in writing of the registration.
- (8) The Commission must, as soon as reasonably practicable after refusing to register a proposed company under subsection (1), notify the applicant in writing of the refusal and the reasons for it.

112E. Requirements for registration

The requirements for registration specified for the purposes of section 112D(4) are—

- (a) the requirements relating to the name of an open-ended fund company as set out in section 112H(2), (3), (4) and (5);
- (b) the requirement relating to the registered office of an open-ended fund company as set out in section 112I;

- (c) the requirements relating to directors of an open-ended fund company as set out in sections 112U(1), 112V(1), 112W(1) and 112X(1);
- (d) the requirements relating to an investment manager of an open-ended fund company as set out in section 112Z;
- (e) the requirement relating to a custodian of an open-ended fund company as set out in section 112ZA(1); and
- (f) any other requirements for registration prescribed by the OFC rules.

112F. Commission may amend conditions of registration

The Commission may, by notice in writing served on an open-ended fund company, amend or revoke any of the conditions imposed, or impose new conditions, in respect of its registration.

112G. Publication of particulars of open-ended fund company

- (1) The Commission may publish, in any manner it considers appropriate, particulars of an open-ended fund company.
- (2) Particulars published under subsection (1) are not subsidiary legislation.

112H. Name of open-ended fund company

- (1) The name of an open-ended fund company is—
 - (a) the name stated in its certificate of incorporation; or
 - (b) if a change of name has effect under the OFC rules, its new name.

- (2) The name of an open-ended fund company must not—
 - (a) in the opinion of the Commission, be misleading or otherwise undesirable; or
 - (b) be the same as the name of another existing open-ended fund company.
- (3) For an open-ended fund company that has an English name only, the name must end with “Open-ended Fund Company” or “OFC”.
- (4) For an open-ended fund company that has a Chinese name only, the name must end with “開放式基金型公司”.
- (5) For an open-ended fund company that has both an English name and a Chinese name—
 - (a) the English name must end with “Open-ended Fund Company” or “OFC”; and
 - (b) the Chinese name must end with “開放式基金型公司”.

112I. Registered office of open-ended fund company

An open-ended fund company must have a registered office in Hong Kong to which all communications and notices may be addressed.

Division 3—Capacity and Powers

112J. Capacity of open-ended fund company

An open-ended fund company has the capacity, rights, powers and privileges as are prescribed by the OFC rules.

112K. Instrument of incorporation of open-ended fund company

- (1) An open-ended fund company must have an instrument of incorporation prescribing regulations for the company.
- (2) The instrument of incorporation of an open-ended fund company must contain—
 - (a) the name of the company;
 - (b) a statement that the registered office of the company is situated in Hong Kong;
 - (c) the objects of the company;
 - (d) provision as to the kinds of property in which the company is to invest;
 - (e) a statement that the company is an open-ended fund company with variable share capital;
 - (f) a statement that the amount of the paid-up share capital of the company is at all times equal to the net asset value of the company;
 - (g) a statement that the company's shareholders are not liable for the debts of the company;
 - (h) a statement that the company's scheme property is entrusted to a custodian of the company for safe keeping in compliance with the law; and
 - (i) any other matters prescribed by the OFC rules.
- (3) For an open-ended fund company with sub-funds, its instrument of incorporation must also contain a statement that the assets of a sub-fund of the company belong exclusively to the sub-fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.

112L. Effect of instrument of incorporation

- (1) Subject to this Ordinance, the instrument of incorporation of an open-ended fund company, once registered under this Ordinance—
 - (a) has effect as a contract under seal—
 - (i) between the company and each shareholder; and
 - (ii) between a shareholder and each other shareholder; and
 - (b) is to be regarded as containing covenants on the part of the company and of each shareholder to observe all the provisions of the instrument.
- (2) Without limiting subsection (1), the instrument of incorporation of an open-ended fund company is enforceable—
 - (a) by the company against each shareholder;
 - (b) by a shareholder against the company; and
 - (c) by a shareholder against each other shareholder.
- (3) Money payable by a shareholder to an open-ended fund company under its instrument of incorporation—
 - (a) is a debt due from the shareholder to the company; and
 - (b) is of the nature of a specialty debt.

Division 4—Contracts**112M. Contracts made by or on behalf of open-ended fund company**

- (1) This section applies to—

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- (a) a contract that would be required by law to be in writing and under seal if made between natural persons;
 - (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
 - (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by an open-ended fund company—
 - (a) in writing under the company's common seal (if any); or
 - (b) in writing executed in accordance with the OFC rules and expressed (in whatever words) to be executed by the company.
 - (3) A contract specified in subsection (1)(b) may be made on behalf of an open-ended fund company in writing signed by any person acting with the company's authority (whether express or implied).
 - (4) A contract specified in subsection (1)(c) may be made on behalf of an open-ended fund company orally by any person acting with the company's authority (whether express or implied).
 - (5) A contract made by or on behalf of an open-ended fund company in accordance with this section—
 - (a) is effective in law; and
 - (b) binds the company and its successors and all other parties to the contract.

- (6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

112N. Contracts made before open-ended fund company's incorporation

- (1) This section applies if a contract purports to have been made in the name or on behalf of an open-ended fund company before the company was incorporated.
- (2) Subject to any express agreement to the contrary—
 - (a) the contract has effect as a contract made by the person purporting to act for the company or as an agent for the company; and
 - (b) the person is personally liable on the contract and is entitled to enforce the contract.
- (3) After incorporation, the company may ratify the contract to the same extent as if—
 - (a) the company had already been incorporated when the contract was made; and
 - (b) the contract had been made on the company's behalf by an agent acting without the company's authority.
- (4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had made the contract after the company's incorporation as an agent acting without the company's authority.

112O. Contracts made after cancellation of registration

If—

- (a) an open-ended fund company makes a contract after its registration has been cancelled under section 112ZH or 112ZI; and
- (b) the company fails to comply with any obligation under the contract within 21 days of being called on to do so by the other party to the contract,

the person who has authorized the contract is liable, and if the contract was authorized by 2 or more persons, they are jointly and severally liable, to indemnify that other party in respect of any loss or damage suffered by that other party by reason of the company's failure to comply with the obligation.

Division 5—Share Capital and Shareholders' Liability**112P. Share capital of open-ended fund company**

- (1) An open-ended fund company may issue shares.
- (2) Shares in an open-ended fund company have no nominal value.
- (3) The amount of the paid-up share capital of an open-ended fund company is at all times equal to the net asset value of the company.
- (4) In this section—

net asset value (淨資產值), in relation to an open-ended fund company, means the balance after deducting the total liabilities of the company from its total assets.

112Q. Shareholders' liability

The liability of the shareholders of an open-ended fund company is limited to any amount unpaid on the shares held by the shareholders.

Division 6—Sub-funds**112R. Sub-funds of open-ended fund company**

- (1) The instrument of incorporation of an open-ended fund company may provide for the division of its scheme property into separate parts.
- (2) Each separate part of the scheme property of an open-ended fund company is a sub-fund of the company.

112S. Segregated liability of sub-funds

- (1) The assets of a sub-fund of an open-ended fund company belong exclusively to the sub-fund and must not be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.
- (2) Any liability incurred on behalf of, or attributable to, a sub-fund of an open-ended fund company may only be discharged out of the assets of the sub-fund.
- (3) A provision contained in the instrument of incorporation of an open-ended fund company, or in a contract or any other instrument made or executed by an open-ended fund company, is void to the extent that it is inconsistent with subsection (1) or (2).
- (4) An application of, or agreement to apply, assets of a sub-fund of an open-ended fund company in contravention of subsection (1) or (2) is void.

- (5) An open-ended fund company with sub-funds may allocate any assets or liabilities that—
- (a) it receives or incurs—
 - (i) on behalf of its sub-funds; or
 - (ii) in order to enable the operation of its sub-funds; and
 - (b) are not attributable to any particular sub-fund, between its sub-funds in a manner that it considers is fair to its shareholders.
- (6) A sub-fund of an open-ended fund company is not a legal person separate from the company but the assets of the sub-fund may be subject to orders of the court as if it were a separate legal person.
- (7) Without affecting subsections (1) and (2) and except as provided by the OFC rules, an open-ended fund company may sue and be sued in respect of any sub-fund of the company and may exercise the same rights of set-off in relation to the sub-fund as apply in respect of companies.

Division 7—Directors, Investment Manager, Custodian, Sub-custodian and Auditor

112T. Interpretation of Division 7 of Part IVA

In this Division—

misconduct (失當行為)—

- (a) in relation to a director of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the director occurring in the course of performing duties as a director in relation to the company;

- (b) in relation to an investment manager of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the investment manager occurring in the course of performing duties as an investment manager in relation to the company;
 - (c) in relation to a custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the custodian occurring in the course of performing duties as a custodian in relation to the company;
 - (d) in relation to a sub-custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the sub-custodian occurring in the course of performing duties as a sub-custodian in relation to the company; and
 - (e) in relation to an auditor of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the auditor occurring in the course of performing duties as an auditor in relation to the company;
- specified officer* (指明人員), in relation to an open-ended fund company, means—
- (a) a director of the company;
 - (b) an investment manager of the company;
 - (c) a custodian of the company;
 - (d) a sub-custodian of the company; or
 - (e) an auditor of the company.

112U. Directors

- (1) An open-ended fund company must have at least 2 directors.
- (2) The first directors of an open-ended fund company are the persons named as directors in the incorporation form delivered to the Registrar of Companies under section 112C(1)(a).
- (3) A director of an open-ended fund company owes the open-ended fund company the same fiduciary and other duties that are owed by a director of an ordinary company to the ordinary company.
- (4) In the case of a breach or threatened breach by a director of an open-ended fund company of any of the director's duties referred to in subsection (3), the director is liable to the same consequences as would apply if the director were a director of an ordinary company.
- (5) In this section—

ordinary company (普通公司) means a company formed and registered under the Companies Ordinance (Cap. 622).

112V. Restrictions on body corporate being director

- (1) A body corporate must not be appointed a director of an open-ended fund company.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a body corporate under this Ordinance for—
 - (a) purporting to act as a director of an open-ended fund company; or

- (b) acting as a shadow director of an open-ended fund company.

112W. Minimum age for appointment as director

- (1) A person must not be appointed a director of an open-ended fund company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a person below the age of 18 years under this Ordinance for—
 - (a) purporting to act as a director of an open-ended fund company; or
 - (b) acting as a shadow director of an open-ended fund company.

112X. Provisions as to undischarged bankrupt acting as director

- (1) A person who is an undischarged bankrupt must not, except with the leave of the Court of First Instance by which the person was adjudged bankrupt—
 - (a) act as a director of an open-ended fund company; or
 - (b) directly or indirectly, be concerned, or take part, in the management of an open-ended fund company.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or

- (b) on summary conviction to a fine of \$150,000 and to imprisonment for 1 year.
- (3) The Court of First Instance must not give leave for the purposes of this section unless a notice of the intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application for leave should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

112Y. Validity of acts of director

- (1) The acts of a person acting as a director of an open-ended fund company are valid even though it is afterwards discovered—
 - (a) that there was a defect in the appointment of the person as a director;
 - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;
 - (c) that the person had ceased to hold office as a director; or
 - (d) that the person was not entitled to vote on the matter in question.
- (2) Subsection (1) applies even if the appointment of the person as a director is void under section 112V or 112W.

112Z. Investment manager

- (1) An open-ended fund company must have an investment manager who is responsible for managing the scheme property of the company.
- (2) An investment manager of an open-ended fund company must be an intermediary licensed or registered for Type 9 regulated activity.

112ZA. Custodian

- (1) An open-ended fund company must have a custodian.
- (2) All the scheme property of an open-ended fund company must be entrusted to a custodian of the company for safe keeping.
- (3) Despite subsection (2), any scheme property of a class or description specified by the Commission for the purposes of this subsection is not required to be entrusted to a custodian.
- (4) A custodian of an open-ended fund company must take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the company that is entrusted to the custodian under subsection (2).
- (5) This section does not prohibit a custodian to whom any scheme property is entrusted for safe keeping from—
 - (a) entrusting to a third party for safe keeping any or all of the scheme property; or
 - (b) authorizing a third party, to whom the custodian has entrusted any scheme property for safe keeping, to entrust any or all of the scheme property to other persons.

112ZB. Auditor

An open-ended fund company must appoint an auditor for each financial year of the company.

112ZC. Provision protecting specified officer from liability void

- (1) This section applies to a provision contained in—
 - (a) the instrument of incorporation of an open-ended fund company; or
 - (b) a contract, or any other instrument, made or executed by an open-ended fund company.
- (2) If a provision purports to exempt a specified officer of the company from any liability that would otherwise attach to the officer in connection with the officer's misconduct, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a specified officer of the company against any liability attaching to the officer in connection with the officer's misconduct, the provision is void.

112ZD. Court of First Instance may grant specified officer relief in proceedings for misconduct

- (1) This section applies if, in any proceedings for any misconduct against a specified officer of an open-ended fund company, it appears to the Court of First Instance that the officer—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and

- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).
- (2) The Court of First Instance may relieve the specified officer, either wholly or partly, from the liability on any terms that the Court thinks fit.
- (3) If the case is tried by a judge with a jury, the judge may—
 - (a) withdraw the case in whole or in part from the jury; and
 - (b) direct judgment to be entered for the specified officer on any terms as to costs or otherwise that the judge thinks fit.
- (4) To avoid doubt, this section does not apply in relation to criminal proceedings.

112ZE. Court of First Instance may grant specified officer relief for misconduct on specified officer's application

- (1) A specified officer of an open-ended fund company may apply to the Court of First Instance for relief if the officer has reason to apprehend that a claim will or might be made against the officer for any misconduct.
- (2) On an application by a specified officer of an open-ended fund company, the Court of First Instance may relieve the officer, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the officer—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and

- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).

Division 8—Supervision by Commission

112ZF. Commission's power to give directions

- (1) The Commission may, by notice in writing, give any of the directions specified in subsection (2) if it appears to the Commission that—
 - (a) with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;
 - (b) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company;
 - (c) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has, in purported compliance with—
 - (i) any of the relevant provisions;

- (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;
 - (d) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance;
 - (e) an investment manager of an open-ended fund company has, in purported compliance with any of the terms and conditions of its licence or registration under this Ordinance, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular; or
 - (f) it is desirable to do so in order to protect the interest of the investing public.
- (2) The directions are—
- (a) a direction to the company or its investment manager that the company is to cease to issue or redeem, or cease to issue and redeem, shares or any class of shares in the company; and
 - (b) a direction to a director of the company that the director is to cease to transfer shares or any class of shares in the company to or from, or to and from, the director's own holding of shares.

- (3) The Commission may, by notice in writing served on the person to whom a direction is given under this section, amend or revoke the direction.
- (4) Subject to subsection (5), if the registration of an open-ended fund company is cancelled under section 112ZH or 112ZI while a direction given under this section in relation to the company is in force—
 - (a) the direction is not to be affected in any respect by the cancellation; and
 - (b) this section continues to apply to the company as if its registration had not been cancelled.
- (5) If an order for the winding up of an open-ended fund company is made by the court under section 212 or the OFC rules, a direction given under this section in relation to the company ceases to have effect on the making of the order.

112ZG. Application to Court of First Instance for inquiry into failure to comply with direction

- (1) If a person fails to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an inquiry into the failure.
- (2) In the inquiry, the Court of First instance may—
 - (a) if satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and
 - (b) if satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if

applicable, that other person had been guilty of contempt of court.

- (3) If there is a reasonable likelihood that a person will fail to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an order that—
 - (a) the person; and
 - (b) any other person whom the Court is satisfied is able to procure the person to comply with the direction,
take any action or refrain from taking any action that the Court directs.
- (4) An application under this section must be made by originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

112ZH. Commission's power to cancel registration on open-ended fund company's application

- (1) Subject to subsection (2), the Commission must cancel the registration under section 112D of an open-ended fund company on an application made by the company in accordance with the OFC rules.
- (2) The Commission may refuse to cancel the registration of an open-ended fund company if it considers that—
 - (a) it is in the public interest that any matter concerning the company should be investigated before its registration is so cancelled; or
 - (b) the cancellation would not be in the interest of the investing public.

- (3) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
- (5) The Commission must not exercise a power under subsection (2), (3) or (4) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
- (6) If the Commission cancels the registration of an open-ended fund company, it must notify the company in writing of the cancellation.
- (7) If the Commission exercises a power under subsection (2), (3) or (4) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
- (8) If the Commission cancels the registration of an open-ended fund company, it—
 - (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and
 - (b) may publish notice of the cancellation and the reason for the cancellation in any manner that it considers appropriate.

112ZI. Commission's power to cancel registration otherwise than on open-ended fund company's application

- (1) The Commission may cancel the registration under section 112D of an open-ended fund company if—
 - (a) it appears to the Commission that, with respect to the company, any of the requirements for registration specified in section 112E is no longer met;
 - (b) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has contravened—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company;
- (c) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has, in purported compliance with—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;

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- (d) the Commission is not satisfied that the continued registration of the company is in the interest of the investing public; or
 - (e) an order for the winding up of the company has been made by the court under the OFC rules.
- (2) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.
 - (3) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
 - (4) The Commission must not exercise a power under subsection (1), (2) or (3) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
 - (5) If the Commission exercises a power under subsection (1), (2) or (3) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
 - (6) If the Commission cancels the registration of an open-ended fund company, it—
 - (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and
 - (b) may publish notice of the cancellation and the reasons for the cancellation in any manner that it considers appropriate.

112ZJ. Permission to carry on essential business operations on cancellation of registration

- (1) The Commission may, by notice in writing served on an open-ended fund company the registration of which has been cancelled under section 112ZH or 112ZI, permit the company to carry on essential business operations.
- (2) The registration of an open-ended fund company to which permission is given is, while it carries on essential business operations in accordance with the permission, deemed not to be cancelled for the purposes of this Ordinance.
- (3) On giving permission to an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) A condition imposed under subsection (3) must be specified in the notice in respect of the permission.
- (5) A permission given or a condition imposed in respect of it under subsection (3) takes effect—
 - (a) at the time of the service of the notice in respect of the permission; or
 - (b) if a later time is specified in the notice, at that time.
- (6) The Commission may, by notice in writing served on an open-ended fund company to which permission is given, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the permission.
- (7) In this section—

essential business operations (必要的業務運作), in relation to an open-ended fund company, means business operations that are essential for closing down its business.

Division 9—Rules made by Commission

112ZK. Commission's power to make rules

- (1) The Commission may make rules to provide for—
 - (a) the carrying on of collective investments by means of open-ended fund companies; and
 - (b) the regulation of open-ended fund companies.
- (2) Rules made under subsection (1) may provide for—
 - (a) the requirements for incorporation of proposed companies;
 - (b) the requirements for registration of proposed companies with the Commission;
 - (c) the naming of open-ended fund companies;
 - (d) the change of names of open-ended fund companies;
 - (e) the capacity, objects, powers, privileges, rights and liabilities of open-ended fund companies;
 - (f) the instruments of incorporation of open-ended fund companies, including the form of such instruments;
 - (g) the requirements relating to the execution of documents by open-ended fund companies;
 - (h) the types of investments that open-ended fund companies may make;

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- (i) the management and operation of open-ended fund companies, including their administration and procedure;
 - (j) the management of the scheme property of open-ended fund companies;
 - (k) the accounting and reporting requirements with which open-ended fund companies must comply;
 - (l) the making or issue of statements, certificates or other documents by open-ended fund companies and their officers;
 - (m) the keeping of accounts and records by open-ended fund companies, and the inspection of such accounts and records;
 - (n) the keeping of a register of shareholders and other registers by open-ended fund companies, and the inspection and rectification of such registers;
 - (o) matters relating to the share capital of open-ended fund companies, including valuation, purchase, redemption and transfer of shares, redenomination of share capital and variation of rights attached to shares;
 - (p) the requirements relating to segregating the liabilities of sub-funds of an open-ended fund company; and
 - (q) the cross investments between sub-funds of an open-ended fund company.
- (3) Rules made under subsection (1) may also provide for—

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- (a) the rights, powers and liabilities of a shareholder of an open-ended fund company;
 - (b) the rights, powers, duties and liabilities of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
 - (c) the eligibility of a person to be a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
 - (d) the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company, including the procedures to be followed when they cease to act;
 - (e) the notification of the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company; and
 - (f) the notification of changes in the particulars of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company.
- (4) Rules made under subsection (1) may also provide for—
- (a) the procedures to be followed in relation to the giving, amendment and revocation of directions under section 112ZF;
 - (b) the procedures to be followed in relation to the cancellation of the registration of open-ended fund companies under section 112ZH or 112ZI;

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- (c) the merger of 2 or more open-ended fund companies and the reorganization of an open-ended fund company into 2 or more open-ended fund companies;
 - (d) matters relating to the arrangements and compromises entered into, or proposed to be entered into, by open-ended fund companies, including the Commission's right to be heard in the related court process and the registration of arrangements and compromises with the Registrar of Companies;
 - (e) the winding up and dissolution of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
 - (f) the winding up and dissolution of sub-funds of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
 - (g) the power of the Court of First Instance to make an order to disqualify a person from acting in any capacity in relation to open-ended fund companies or the scheme property of open-ended fund companies, or from acting in any capacity in the promotion or incorporation of proposed companies;
 - (h) a court's functions in relation to any matter concerning open-ended fund companies and sub-funds of open-ended fund companies; and
 - (i) any other thing that, under this Part, is required or permitted to be prescribed or provided by rules.

- (5) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.
- (6) Subsections (2), (3), (4) and (5) do not have the effect of limiting subsection (1).

112ZL. Rules made with consent of Registrar of Companies

- (1) The Commission may, with the consent of the Registrar of Companies, make rules to provide for the functions of the Registrar in relation to open-ended fund companies, including—
 - (a) specifying the form of any document required or authorized to be delivered to the Registrar, other than a document the form of which is or may be prescribed by this Ordinance;
 - (b) specifying requirements in relation to documents and information required or authorized to be delivered to the Registrar;
 - (c) keeping records of documents and information relating to open-ended fund companies;
 - (d) keeping a list of the names of open-ended fund companies;
 - (e) establishing and maintaining a register of open-ended fund companies;
 - (f) making available the OFC register for public inspection;

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- (g) issuing copies or certified true copies of documents and information on the OFC register;
 - (h) requiring an open-ended fund company to resolve any inconsistency between information contained in a document registered by the Registrar in respect of the company and any other information relating to the company on the OFC register;
 - (i) ensuring that the OFC register is accurate and up-to-date;
 - (j) annotating the OFC register;
 - (k) issuing certificates of change of name; and
 - (l) destroying or disposing of documents and information delivered to the Registrar for registration.
- (2) The Commission may also, with the consent of the Registrar of Companies, make rules to provide for—
- (a) the registration by the Registrar of documents delivered by or on behalf of proposed companies and open-ended fund companies;
 - (b) appeals to the Court of First Instance against a decision of the Registrar to refuse registration of a document;
 - (c) the information to be contained in the OFC register;
 - (d) the withholding of information on the OFC register from public inspection, and the use and disclosure of the withheld information;

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- (e) applications to the Court of First Instance for an order to rectify information on, or to remove information from, the OFC register and the Court's powers in relation to such applications;
 - (f) the Registrar taking part in the proceedings for an order mentioned in paragraph (e) before the Court of First Instance;
 - (g) the forms of the certificates issued by the Registrar;
 - (h) the admissibility in evidence in judicial or other proceedings of documents and information certified to be true by the Registrar;
 - (i) the delivery of documents and information required or authorized to be delivered to the Registrar by electronic means;
 - (j) the effect of a discrepancy between a document delivered to the Registrar that is in a language other than English and Chinese and the certified translation of the document;
 - (k) inquiry by the Registrar into acts that would constitute offences relating to the giving of any misleading, false or deceptive information or statement to the Registrar and the delegation of the Registrar's powers to inquire into such acts;
 - (l) calculation of the daily fine imposed under rules made under this section or section 112ZK or 112ZM that make it an offence for failing to comply with a requirement to deliver a document or information to the Registrar under those rules and that impose a fine for each day during which the offence continues;

- (m) the issue of guidelines by the Registrar and the effect of such guidelines; and
 - (n) the protection and immunity of the Registrar, other public officers and other persons.
- (3) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.
- (4) In this section—

OFC register (《開放式基金型公司登記冊》) means the register of open-ended fund companies maintained by the Registrar of Companies under rules made under this section.

112ZM. Rules made with consent of Official Receiver

The Commission may, with the consent of the Official Receiver, make rules to provide for the functions of the Official Receiver in relation to—

- (a) the winding up and dissolution of open-ended fund companies; and
- (b) the winding up and dissolution of sub-funds of open-ended fund companies.

112ZN. OFC rules may prescribe offences

- (1) The OFC rules may—
- (a) make it an offence for a person to do, or omit to do, any specified act; and
 - (b) provide that the offence is punishable by a fine, imprisonment or both.

- (2) The OFC rules may provide for defences to any offence prescribed by those rules.
- (3) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding level 6 for each day during which the offence continues may be prescribed.
- (4) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding level 3 for each day during which the offence continues may be prescribed.

112ZO. Modification or waiver of requirements of OFC rules by notice

- (1) The Commission may, on an application by a person specified in subsection (2), grant a modification or waiver in relation to the person in respect of any of the requirements of the OFC rules.
- (2) The person is—
 - (a) an open-ended fund company;
 - (b) a director of an open-ended fund company;
 - (c) an investment manager of an open-ended fund company;
 - (d) a custodian of an open-ended fund company;
 - (e) a sub-custodian of an open-ended fund company; or

- (f) an auditor of an open-ended fund company.
- (3) An application for the purposes of subsection (1)—
 - (a) must be made in the manner prescribed by the OFC rules; and
 - (b) must be accompanied by the fee prescribed by regulations made under section 112ZQ for the purposes of this section.
 - (4) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
 - (5) The grant of a modification or waiver in relation to a person is to be effected by a notice in writing served on the person specifying the period (if any) for which the modification or waiver is in force.
 - (6) On granting a modification or waiver, the Commission may impose any condition that it considers appropriate.
 - (7) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke the modification or waiver.
 - (8) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the modification or waiver.
 - (9) A person who contravenes a condition imposed under subsection (6) or (8), or as amended under subsection (8), commits an offence and is liable on conviction to a fine at level 6.

112ZP. Modification or waiver of requirements of OFC rules by rules

- (1) The Commission may by rules grant a modification or waiver, in relation to a class of open-ended fund companies, or a class of directors, investment managers, custodians, sub-custodians or auditors of open-ended fund companies, in respect of any of the requirements of the OFC rules.
- (2) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
- (3) The Commission may specify in the rules the conditions subject to which a modification or waiver is granted.
- (4) The rules may—
 - (a) make it an offence for a person to contravene any of the conditions specified in respect of a modification or waiver; and
 - (b) provide that the offence is punishable by a fine not exceeding level 6.

Division 10—Miscellaneous**112ZQ. Financial Secretary may make regulations relating to fees**

- (1) Despite section 395, the Financial Secretary may make regulations to provide for—
 - (a) the charging or collecting of fees by the Commission—

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- (i) in respect of any things done, or services provided, by the Commission in performing the Commission's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Commission in connection with any other matters specified in the OFC rules;
 - (b) the charging or collecting of fees by the Registrar of Companies—
 - (i) in respect of any things done, or services provided, by the Registrar in performing the Registrar's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Registrar in connection with any other matters specified in the OFC rules; and
 - (c) the charging or collecting of fees by the Official Receiver—
 - (i) in respect of any things done, or services provided, by the Official Receiver in performing the Official Receiver's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Official Receiver in connection with any other matters specified in the OFC rules.
- (2) The regulations may—
- (a) provide for the amount of the fees to be fixed by or determined under the regulations;

- (b) provide for different fees to be payable in respect of the same matter in different circumstances;
 - (c) specify when and how fees are to be paid; and
 - (d) provide for the waiver of payment of any fee prescribed by the regulations, either generally or in a particular case.
- (3) The Registrar of Companies—
- (a) may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the things done, or services provided—
 - (i) for which fees are not provided for by the regulations; or
 - (ii) in circumstances other than those for which fees are provided by the regulations; and
 - (b) may charge such fees.

112ZR. Commission may publish codes and guidelines

- (1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, any code or guideline to provide guidance in respect of any matter relating to—
- (a) the incorporation, registration, management and operation of open-ended fund companies, including their administration and procedure; or
 - (b) the business of open-ended fund companies.
- (2) Without limiting subsection (1), a code or guideline published under that subsection may refer to obligations to observe any other codes or guidelines issued, or requirements imposed, otherwise than by the Commission.

- (3) The Commission may amend any code or guideline published under subsection (1).
- (4) Any amendments made to a code or guideline published under subsection (1) must be published in the Gazette and in any other manner the Commission considers appropriate.
- (5) A code or guideline published under subsection (1)—
 - (a) may be of general or special application and, in particular, may be made so as to apply, or so as not to apply—
 - (i) to a specified extent in relation to a specified person or to members of a specified class of persons; or
 - (ii) in specified circumstances; and
 - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (6) A code or guideline published under subsection (1) and all amendments made to it are not subsidiary legislation.

112ZS. Effect of codes and guidelines

- (1) A failure by a person to comply with a provision in a code or guideline does not itself make the person liable to any judicial or other proceedings.
- (2) However, a failure on the part of an intermediary acting as an investment manager of an open-ended fund company, or a representative of such an intermediary, to comply with a provision in a code or guideline may be taken into account in considering, for the purposes of any provision of this Ordinance—

- (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
 - (b) in the case of a representative of an intermediary that is a licensed corporation, whether he or she is a fit and proper person to be or to remain licensed as a representative; or
 - (c) in the case of a representative of an intermediary that is a registered institution, whether he or she is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity.
- (3) Despite subsection (1), in any proceedings under this Ordinance before a court—
- (a) a code or guideline is admissible in evidence; and
 - (b) if any provision in a code or guideline appears to the court to be relevant to a question arising in the proceedings, the provision is to be taken into account in determining the question.

- (4) In this section—

code or guideline (守則或指引) means a code or guideline published under section 112ZR.

112ZT. Offence of fraudulent trading

- (1) If any business of an open-ended fund company is carried on—

- (a) with intent to defraud creditors of the company or creditors of any other person; or
 - (b) for any fraudulent purpose,
every person who is knowingly a party to the carrying on of the business with that intent or for that purpose commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 10 years; or
 - (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) This section applies whether or not the open-ended fund company has been, or is in the course of being, wound up.”.

7. Section 180 amended (supervision of intermediaries and their associated entities)

- (1) Section 180(2)(d)—

Repeal the full stop

Substitute

“; or”.

- (2) After section 180(2)(d)—

Add

“(e) any provision in a code or guideline published under this Ordinance.”.

8. Section 182 amended (investigations by Commission)

- (1) Section 182(1)(b)(vi)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 182(1)(b)(vii), after “transactions;”—

Add

“or”.

- (3) After section 182(1)(b)(vii)—

Add

“(viii) the management of an open-ended fund company or the management or safe keeping of the scheme property of an open-ended fund company;”.

- (4) Section 182(1)(d)—

Repeal

“(vii)”

Substitute

“(viii)”.

- (5) Section 182(1)(f)—

Repeal

“; or”

Substitute a semicolon.

- (6) After section 182(1)(f)—

Add

“(fa) the Commission has reason to inquire whether, with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;

(fb) the Commission has reason to inquire whether any of the conditions imposed in respect of the registration of an open-ended fund company has been or is being complied with; or”.

(7) Section 182(1)(g)—

Repeal

“or (f)”

Substitute

“, (f), (fa) or (fb)”.

9. Section 193 amended (interpretation of Part IX)

(1) Section 193(1), definition of *misconduct*, paragraph (c)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 193(1), definition of *misconduct*, paragraph (d)—

Repeal

“public interest,”

Substitute

“public interest; or”.

(3) Section 193(1), definition of *misconduct*, after paragraph (d)—

Add

“(e) an act or omission that—

- (i) relates to the carrying on of any activity, other than a regulated activity, that an intermediary may carry on for an open-ended fund company under this Ordinance; and

(ii) in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.”

(4) Section 193(2)—

Repeal

“or (d)”

Substitute

“, (d) or (e)”.

(5) Section 193(3)—

Repeal

“paragraph (d)”

Substitute

“paragraphs (d) and (e)”.

(6) Section 193(3), after “set out in”—

Add

“any code or guideline published under section 112ZR.”.

10. Section 201 amended (general provisions relating to exercise of powers under Division 2 or 3)

Section 201(5)—

Repeal

“or 214”

Substitute

“, 214, 214A or 214B”.

11. Section 212 amended (winding-up orders and bankruptcy orders)

After section 212(1)—

Add

“(1A) If it appears to the Commission that it is desirable in the public interest that an open-ended fund company should be wound up, the Commission may present a petition for the company to be wound up under the OFC rules on the ground that it is just and equitable that the company should be so wound up, and those rules apply to such a petition as they apply in relation to a petition presented under them.”.

12. Section 213 amended (injunctions and other orders)

(1) After section 213(3)—

Add

“(3A) The Court of First Instance may also, on the application of the Commission, make any of the orders specified in subsection (3B) if—

- (a) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance;
 - (iii) any of the conditions imposed in respect of the registration of the company; or
 - (iv) any direction given by the Commission under or pursuant to this Ordinance; or

- (b) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance.
- (3B) The orders specified for the purposes of subsection (3A) are—
- (a) for an open-ended fund company without sub-funds—
 - (i) an order removing a director of the company;
 - (ii) an order removing an investment manager of the company;
 - (iii) an order removing a custodian of the company;
 - (iv) an order removing a sub-custodian of the company;
 - (v) an order requiring a part of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;
 - (vi) an order requiring all of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company to be distributed to shareholders of the company in accordance with the OFC rules; and
 - (vii) an order requiring the company to be wound up under the OFC rules; and

-
- (b) for an open-ended fund company with sub-funds—
- (i) any of the orders specified in paragraph (a);
 - (ii) an order requiring the investments made in respect of a part of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;
 - (iii) an order requiring all of the investments made in respect of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the sub-fund to be distributed to shareholders of the company in accordance with the OFC rules; and
 - (iv) an order requiring a sub-fund of the company to be wound up under the OFC rules.”.
- (2) Section 213(4), after “subsection (1)”—
Add
“or (3A)”.
- (3) Section 213(5), after “subsection (1)”—
Add
“or (3A)”.
- (4) Section 213(6), after “subsection (1)”—
Add
“or (3A)”.

- (5) Section 213(7), after “under subsection (1)”—

Add

“or (3A)”.

- (6) Section 213(7)(a), after “to (v)”—

Add

“or (3A)(a) or (b)”.

- (7) Section 213(7), Chinese text—

Repeal

“參與” (wherever appearing)

Substitute

“從事”.

- (8) Section 213(8), after “subsection (1)”—

Add

“or (3A)”.

- (9) Section 213(9), after “subsection (1)”—

Add

“, (3A)”.

- (10) After section 213(10)—

Add

“(11) In this section—

sub-fund (子基金)—see section 112R.”.

13. Sections 214A and 214B added

Part X, Division 2, after section 214—

Add

“214A. Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies

- (1) The Commission may by petition apply to the Court of First Instance for an order under this section if it appears to the Commission that at any time since the incorporation of an open-ended fund company, the business or affairs of the company have been conducted in a manner—
 - (a) oppressive to its shareholders or any part of its shareholders;
 - (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its shareholders or any part of its shareholders;
 - (c) resulting in its shareholders or any part of its shareholders not having been given all the information with respect to its business or affairs that they might reasonably expect; or
 - (d) unfairly prejudicial to its shareholders or any part of its shareholders.
- (2) If, on an application under subsection (1), the Court of First Instance is of the opinion that the business or affairs of an open-ended fund company have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or a failure to act, the Court may—
 - (a) make an order restraining the carrying out, or requiring the carrying out, of an act;
 - (b) make an order requiring the company to bring in its name any proceedings that the Court considers appropriate against any persons, and on any terms, specified in the order;

-
- (c) make an order appointing a receiver or manager of the whole or any part of the property or business of the company, specifying the powers and duties of the receiver or manager and fixing his or her remuneration;
 - (d) make an order that a person wholly or partly responsible for the business or affairs of the company having been so conducted must not, without the leave of the Court—
 - (i) be, or continue to be, a director, an investment manager, a liquidator, or a receiver or manager of the property or business, of the company or any other corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the company or any other corporation; or
 - (e) make any other order the Court considers appropriate, whether for regulating the conduct of the business or affairs of the company in the future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or by the company, or otherwise.
- (3) An order under subsection (2)(d) must specify the period for which it is to have effect and such a period must not exceed 15 years.
- (4) The Court of First Instance must, as soon as reasonably practicable after making an order under subsection (2)(d), file the order with the Registrar of Companies.

214B. Order under section 214A altering open-ended fund company's instrument of incorporation

- (1) If an order made under section 214A alters the instrument of incorporation of an open-ended fund company, despite any other provisions of this Ordinance but subject to the provisions of the order, the company does not have the power, without the leave of the Court of First Instance, to make any further alteration to the instrument that is inconsistent with the order.
- (2) If the instrument of incorporation of an open-ended fund company is altered by an order made under section 214A—
 - (a) the alteration has the same effect as if duly made by a resolution of the company; and
 - (b) this Ordinance applies to the instrument as altered accordingly.
- (3) An open-ended fund company must, within 14 days after an order altering its instrument of incorporation is made under section 214A, deliver an office copy of the order to the Registrar of Companies for registration under this Ordinance.
- (4) An open-ended fund company must, within 14 days after the leave of the Court of First Instance to alter its instrument of incorporation is given, deliver an office copy of the leave to the Registrar of Companies for registration under this Ordinance.
- (5) An open-ended fund company that contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

(6) In this section—
alter (改動) includes add to.”

14. Section 336 amended (register of interests in shares and short positions)

Section 336(9)—

Repeal

“Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall”

Substitute

“If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32),”.

15. Section 352 amended (register of directors’ and chief executives’ interests and short positions)

Section 352(10)—

Repeal

“Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall”

Substitute

“If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32),”.

16. Section 378 amended (preservation of secrecy, etc.)

After section 378(3)(b)—

Add

“(ba) to a person who is a liquidator appointed under the OFC rules;”.

17. Section 379 amended (avoidance of conflict of interests)

Section 379(2)(b), after “Court of First Instance under”—

Add

“the OFC rules;”.

18. Section 400 amended (service of notices, etc.)

(1) After section 400(1)(b)—

Add

“(ba) in the case of an open-ended fund company, it is—

- (i) delivered to any officer of the company by hand;
- (ii) left at, or sent by post to, the company’s registered office in Hong Kong;
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address;”.

(2) Section 400(1)(e), after “a company,”—

Add

“an open-ended fund company;”.

19. Schedule 1 amended (interpretation and general provisions)

Schedule 1, Part 1, section 1—

Add in alphabetical order

“*OFC rules* (《開放式基金型公司規則》) has the meaning given by section 112A of this Ordinance;

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of this Ordinance;

scheme property (計劃財產) has the meaning given by section 112A of this Ordinance;”.

20. Schedule 2 amended (Securities and Futures Commission)

(1) Schedule 2, Part 2, section 2(74), after “213(1)”—

Add

“or (3A)”.

(2) Schedule 2, Part 2, after section 2(75)—

Add

“(75A) to apply to the Court of First Instance, under section 214A(1) of this Ordinance;”.

21. Schedule 5 amended (regulated activities)

Schedule 5, Part 2, definition of *dealing in securities*, after paragraph (xi)—

Add

“(xia) being an open-ended fund company, issues any advertisement, invitation or document in respect of the shares in the company;”.

22. Schedule 8 amended (Securities and Futures Appeals Tribunal)

Schedule 8, Part 2, Division 1, after item 15—

Add

- | | | |
|-------|---------------------------------------|---|
| “15A. | Section 112D(1)
of this Ordinance | Refusal to register a proposed
company. |
| 15B. | Section 112D(6)
of this Ordinance | Imposition of any condition. |
| 15C. | Section 112F of
this Ordinance | Amendment or revocation of
any condition, or imposition of
any new condition. |
| 15D. | Section 112ZF(1)
of this Ordinance | Direction to a person. |
| 15E. | Section 112ZF(3)
of this Ordinance | Amendment of any direction. |
| 15F. | Section 112ZH(2)
of this Ordinance | Refusal to cancel registration. |
| 15G. | Section 112ZH(3)
of this Ordinance | Imposition of any condition. |
| 15H. | Section 112ZH(4)
of this Ordinance | Amendment or revocation of
any condition, or imposition of
any new condition. |
| 15I. | Section 112ZI(1)
of this Ordinance | Cancellation of registration. |
| 15J. | Section 112ZI(2)
of this Ordinance | Imposition of any condition. |
| 15K. | Section 112ZI(3)
of this Ordinance | Amendment or revocation of
any condition, or imposition of
any new condition. |
| 15L. | Section 112ZJ(3)
of this Ordinance | Imposition of any condition. |

-
- 15M. Section 112ZJ(6) of this Ordinance Amendment or revocation of any condition, or imposition of any new condition.
- 15N. Section 112ZO(6) of this Ordinance Imposition of any condition.
- 15O. Section 112ZO(7) of this Ordinance Amendment or revocation of a modification or waiver.
- 15P. Section 112ZO(8) of this Ordinance Amendment or revocation of any condition, or imposition of any new condition.”.
-

Part 3

Related Amendments

Division 1—Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

23. Section 168R amended (register of disqualification orders)

Section 168R(5), definition of *disqualification order*, paragraph (c), after “214(2)(d),”—

Add

“214A(2)(d),”.

Division 2—Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. 1)

24. Schedule 1 amended

Schedule 1, Form D.O. 1, item (1), after—

“

Section 214(2)(d) of SFO	
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”

Add

“

Section 214A(2)(d) of SFO	
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”.

Division 3—Amendments to Inland Revenue Ordinance (Cap. 112)

25. Section 2 amended (interpretation)

(1) Section 2(1), definition of *receiver*—

Repeal

“or liquidator”

Substitute

“, provisional liquidator or liquidator”.

- (2) Section 2(1)—

Add in alphabetical order

“*open-ended fund company* (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);”.

26. Section 57 amended (principal officer to act on behalf of a corporation or body of persons)

- (1) Section 57—

Repeal subsection (1)**Substitute**

- “(1) The following person is answerable for doing all the acts, matters or things that are required to be done under the provisions of this Ordinance by a corporation or body of persons—
- (a) for a corporation that is an open-ended fund company, any director or investment manager or the provisional liquidator or liquidator of the corporation;
 - (b) for any other corporation, the secretary, manager, any director or the provisional liquidator or liquidator of the corporation;
 - (c) for a body of persons, its principal officer.”.

- (2) Section 57(2)—

Repeal

everything before “is ordinarily”

Substitute

“(2) If no person specified in subsection (1)”.

(3) After section 57(2)—

Add

“(3) In this section—

investment manager (投資經理) means an investment manager within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571).”.

Division 4—Amendments to Stamp Duty Ordinance (Cap. 117)

27. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)

Section 19(1DA), after “Schedule 8”—

Add

“or Part 2 of Schedule 9”.

28. Section 30A added

After section 30—

Add

“30A. Sub-schemes under unit trust schemes

- (1) This section applies if the trust instrument of a unit trust scheme (*main scheme*) provides for the division of its trust property into separate parts.
- (2) The main scheme is to be regarded as not being a unit trust scheme for the purposes of this Ordinance.
- (3) Each separate part of the trust property (*sub-scheme*) is to be regarded as a unit trust scheme for the purposes of this Ordinance.

- (4) If subsection (3) applies, a reference in this Ordinance to a person interested in or entitled to a unit under a unit trust scheme is a reference to a person who owns a unit issued in respect of a sub-scheme.”.

29. Part IVA added

After Part IV—

Add

“Part IVA

Open-ended Fund Companies

37A. Interpretation of Part IVA

In this Part—

investment manager (投資經理) means an investment manager within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571);

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);

scheme property (計劃財產) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).

37B. Application of certain provisions relating to unit trust schemes to open-ended fund companies

Sections 19, 19A, 30, 47A and 47B apply in relation to an open-ended fund company as if—

- (a) a reference in those sections to a unit trust scheme were a reference to an open-ended fund company;
- (b) a reference in those sections to a unit under a unit trust scheme were a reference to a share of an open-ended fund company;
- (c) a reference in sections 19, 19A and 30 to a manager under a unit trust scheme were a reference to an investment manager of an open-ended fund company;
- (d) a reference in sections 19A and 30 to a trustee under a unit trust scheme were a reference to an open-ended fund company;
- (e) a reference in sections 19A and 30 to the trust property of a unit trust scheme were a reference to the scheme property of an open-ended fund company;
- (f) a reference in section 30 to a person interested in or entitled to a unit under a unit trust scheme were a reference to a shareholder of an open-ended fund company;
- (g) a reference in section 47A to a manager of a fund that is a unit trust scheme were a reference to an investment manager of an open-ended fund company; and
- (h) a reference in section 47A to a trustee of a fund that is a unit trust scheme were a reference to an open-ended fund company.

37C. Sub-funds of open-ended fund companies

- (1) This section applies if the instrument of incorporation of an open-ended fund company (*main company*) provides for the division of its scheme property into separate parts.
- (2) The main company is to be regarded as not being an open-ended fund company for the purposes of this Ordinance.
- (3) Each separate part of the scheme property (*sub-fund*) is to be regarded as an open-ended fund company for the purposes of this Ordinance.
- (4) If subsection (3) applies, a reference in section 37B(f) to a shareholder of an open-ended fund company is a reference to a person who owns a share issued in respect of a sub-fund.”.

30. Section 63 amended (regulations)

Section 63(c)—

Repeal

“Schedule 8”

Substitute

“Schedules 8 and 9”.

31. First Schedule amended

(1) First Schedule—

Repeal

“& 8]”

Substitute

“, 8 & 9]”.

(2) First Schedule, head 2(4), Note 2, after “Schedule 8”—

Add

“or Part 3 of Schedule 9”.

32. Schedule 8 amended (transactions and transfers relating to exchange traded funds)

Schedule 8—

Repeal

“Sch.],”

Substitute

“Sch. & Sch. 9]”.

33. Schedule 9 added

After Schedule 8—

Add

“Schedule 9

[ss. 19 & 63 &
1st Sch.]

Transactions and Transfers Relating to Authorized Open-ended Collective Investment Schemes

Part 1

Interpretation

1. In this Schedule—

allotment (分配)—

- (a) for a share or unit of an authorized open-ended collective investment scheme that is not a unit trust scheme, means the issue of the share or unit; and
- (b) for a unit of an authorized open-ended collective investment scheme that is a unit trust scheme, means the issue of the unit, and includes the sale of the unit effected by the managers under the scheme in the circumstances described in section 19(1A)(b)(ii);

authorized open-ended collective investment scheme (認可開放式集體投資計劃) means an open-ended collective investment scheme (as defined by section 1 of Part 1 of Schedule 8) authorized under section 104 of the Securities and Futures Ordinance (Cap. 571);

sale (售賣) and ***sale or purchase*** (售賣或購買) have the meaning given by section 19(16).

2. For the purposes of this Schedule, there is a redemption of a share or unit of an authorized open-ended collective investment scheme if the share or unit is cancelled or extinguished after—
 - (a) the share or unit is transferred to the scheme; or
 - (b) a person authorizes or requires the scheme to treat the person as no longer interested in the share or unit.

Part 2

Transactions to which Section 19(1) does not Apply

1. A sale or purchase of any Hong Kong stock that satisfies both of the following conditions—
 - (a) the sale or purchase is made in consideration of any allotment or redemption of a share or unit of an authorized open-ended collective investment scheme;
 - (b) the value of the Hong Kong stock is proportionate to the value of the share or unit.

Part 3

Transfers on which Stamp Duty under Head 2(4) in First Schedule is not Payable

1. A transfer executed for a sale or purchase of Hong Kong stock referred to in item 1 of Part 2 of this Schedule.
2. An instrument that is deemed under section 30(3) to be a transfer of a unit under a unit trust scheme by way of sale falling within head 2(4) in the First Schedule where the sale satisfies both of the conditions specified in item 1 of Part 2 of this Schedule.”.

Division 5—Amendments to Business Registration Ordinance (Cap. 310)

34. Section 2 amended (interpretation and application)

- (1) Section 2(1), definition of *incorporation form*, after “(Cap. 622)”—

Add

“or section 112C(1)(a) of the Securities and Futures Ordinance (Cap. 571)”.

- (2) Section 2(1), definition of *incorporation submission*—

Repeal

everything after “means”

Substitute

“—

- (a) a submission made for the purpose of forming a company under section 67 of the Companies Ordinance (Cap. 622); or
- (b) a submission made for the purpose of incorporating a company under section 112C of the Securities and Futures Ordinance (Cap. 571);”.
- (3) Section 2(1), definition of *place of business*, paragraph (a)—

Repeal

“; and”

Substitute a semicolon.

- (4) Section 2(1), definition of *place of business*, after paragraph (a)—

Add

“(ab) an open-ended fund company, its registered office; and”.

(5) Section 2(1)—

Add in alphabetical order

“*open-ended fund company* (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);”.

(6) Section 2(1A)(a)(ii)—

Repeal

“; or”

Substitute a semicolon.

(7) After section 2(1A)(a)—

Add

“(ab) an open-ended fund company; or”.

(8) Section 2(1A)(b), Chinese text, before “屬《公司條例》”—

Add

“任何公司如”.

35. Section 3 amended (persons answerable for doing all acts, etc. required to be done)

Section 3(3)—

Repeal

everything after “company,”

Substitute

“the following person is answerable for doing that act or thing—

- (a) for a company that is an open-ended fund company, any director or investment manager (within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571)) of the company;
- (b) for any other company, the secretary, manager or any director of the company.”.

36. Section 5A amended (simultaneous business registration applications of companies incorporated under Companies Ordinance)

- (1) Section 5A, heading, after “**Ordinance**”—

Add

“**or open-ended fund companies**”.

- (2) Section 5A(1)(b), after “be formed”—

Add

“, or the open-ended fund company to be incorporated,”.

- (3) Section 5A(2), after “company” (wherever appearing)—

Add

“or open-ended fund company”.

37. Section 6 amended (registration of business and issue of business registration certificate)

- (1) After section 6(4)—

Add

“(4AA) The Commissioner is also not required to register the business or branch of the business, or to issue a business registration certificate or branch registration certificate, if the application is made by an open-ended fund company for registration by a name that is not the name of the company.”.

(2) Section 6(4A)—

Repeal

“subsection (4)—”

Substitute

“subsections (4) and (4AA)—”.

(3) Section 6(4A)(b)—

Repeal

“subsection (4)(b) or (c)”

Substitute

“subsection (4)(b) or (c) or (4AA)”.

(4) Section 6(4D)—

Repeal

“subsection (4)(b) or (c)” (wherever appearing)

Substitute

“subsection (4)(b) or (c) or (4AA)”.

(5) Section 6(4F)—

Repeal

“subsection (4)(b) or (c)”

Substitute

“subsection (4)(b) or (c) or (4AA)”.

38. Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies)

(1) Section 7A(2)(a)—

Repeal

“section 6(4)”

Substitute

“section 6(4) and (4AA)”.

(2) After section 7A(3)(ab)—

Add

“(ac) an open-ended fund company;”.

39. Section 8 amended (information to be furnished)

(1) After section 8(2B)—

Add

“(2BA) If an open-ended fund company delivers to the Registrar under the OFC rules a notice of a change of its name or the address of its registered office, the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notice is registered or recorded under those rules.”.

(2) After section 8(5)—

Add

“(6) In this section—

OFc rules (《開放式基金型公司規則》) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).”.

40. Section 9 amended (exemption from payments of fees for small businesses)

After section 9(6)(a)—

Add

“(ab) any open-ended fund company;”.

41. Section 15 amended (offences)

Section 15(2A)—

Repeal

everything after “8(2B)”

Substitute

“or (2BA) are false, inaccurate or incomplete, the Commissioner may—

(a) for particulars transmitted in respect of an open-ended fund company, inform the Registrar and the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571) accordingly; or

(b) for particulars transmitted in respect of any other company, inform the Registrar accordingly.”.

Division 6—Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)

42. Regulation 3A amended (business particulars in relation to simultaneous business registration applications)

(1) Regulation 3A(3)(a)(iii)—

Repeal

“; and”

Substitute a semicolon.

- (2) After regulation 3A(3)(a)—

Add

“(ab) in the case of an open-ended fund company—

- (i) the name of the company;
- (ii) the address of the registered office of the company;
- (iii) the date of the incorporation of the company; and”.

Division 7—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)

43. **Schedule 1 amended (services to be provided by the trading fund)**

Schedule 1, after section 4—

Add

“4A. Administering and enforcing the provisions of the Securities and Futures Ordinance (Cap. 571) relating to open-ended fund companies, including facilitating the incorporation of open-ended fund companies and maintaining a register of open-ended fund companies.”.

Division 8—Amendments to Contracts (Rights of Third Parties) Ordinance (Cap. 623)

44. **Section 3 amended (application)**

- (1) Section 3(2)(f), Chinese text—

Repeal

“及”.

- (2) Section 3(2)(g)—

Repeal

“(Cap. 622).”

Substitute

“(Cap. 622);”.

- (3) After section 3(2)(g)—

Add

“(h) the instrument of incorporation of an open-ended fund company having effect as a contract under seal under section 112L of the Securities and Futures Ordinance (Cap. 571).”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (*SFO*) and other enactments, including the Inland Revenue Ordinance (Cap. 112) (*IRO*), the Stamp Duty Ordinance (Cap. 117) (*SDO*) and the Business Registration Ordinance (Cap. 310) (*BRO*), to provide for the incorporation of open-ended fund companies (*OFCs*) and the regulation of such companies and their business.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to SFO

3. Clause 6 adds a new Part IVA to the SFO. That Part is divided into 10 Divisions.
4. Division 1 contains preliminary provisions. New section 112A contains definitions used in new Part IVA. The terms “OFC rules”, “open-ended fund company”, “proposed company”, “scheme property”, “sub-custodian” and “sub-fund” are defined or explained in that section.
5. New section 112B makes it an offence for a person to carry on business as an OFC or hold out as an OFC when it is not one. It also provides for other related offences.
6. Division 2 contains provisions relating to the incorporation, registration, name and registered office of OFCs.

7. New section 112C provides for the incorporation of OFCs. To incorporate an OFC, an incorporation form and a copy of the instrument of incorporation of the proposed OFC are required to be delivered to the Registrar of Companies (*Registrar*) for registration. The Registrar will, if satisfied that the requirements for incorporation prescribed by the OFC rules are met with respect to the proposed OFC, register those documents and issue a certificate of incorporation in respect of the proposed OFC. However, before doing so, the Registrar must have first received notification from the Securities and Futures Commission (*SFC*) that it has registered the proposed OFC under new section 112D.
8. New section 112D provides for registration of proposed OFCs with the SFC before incorporation. It should be noted that the registration of a proposed OFC only takes effect on the day of issue of the certificate of incorporation in respect of the proposed OFC by the Registrar under new section 112C. Before registering a proposed OFC, the SFC must be satisfied that the requirements for registration specified in new section 112E will be met with respect to the proposed OFC on the day the registration takes effect.
9. New section 112E specifies the requirements for registration of proposed OFCs.
10. New section 112F empowers the SFC to amend or revoke conditions imposed in respect of the registration of OFCs and to impose new conditions.
11. New section 112G empowers the SFC to publish particulars of OFCs in any manner it considers appropriate.

12. New section 112H contains requirements relating to the names of OFCs. The English name of an OFC must end with “Open-ended Fund Company” or “OFC” while the Chinese name of an OFC must end with “開放式基金型公司”.
13. New section 112I requires an OFC to have a registered office in Hong Kong to which all communications and notices may be addressed.
14. Division 3 contains provisions relating to the capacity and powers of OFCs. New section 112J provides that an OFC has the capacity, rights, powers and privileges as are prescribed by the OFC rules.
15. New section 112K requires an OFC to have an instrument of incorporation and sets out the information to be contained in the instrument of incorporation.
16. New section 112L explains the effect and enforceability of the instrument of incorporation of an OFC.
17. Division 4 contains provisions relating to contracts made by or on behalf of OFCs. New section 112M sets out the execution requirements of deeds and other documents by OFCs.
18. New section 112N deals with contracts made in the name or on behalf of an OFC before its incorporation.
19. New section 112O deals with contracts made by an OFC after cancellation of its registration.

20. Division 5 contains provisions relating to the share capital of OFCs and shareholders' liability. New section 112P provides that shares in an OFC have no nominal value and that the amount of the paid-up share capital of an OFC is at all times equal to its net asset value.
21. New section 112Q provides that the liability of the shareholders of an OFC is limited to any amount unpaid on the shares held by the shareholders.
22. Division 6 contains provisions relating to sub-funds of OFCs. New section 112R provides that the instrument of incorporation of an OFC may provide for the division of its scheme property into separate parts and each such part is a sub-fund of the OFC.
23. New section 112S provides for the segregated liability of sub-funds of OFCs. It provides that the assets of a sub-fund of an OFC must not be used to discharge the liabilities of the OFC or any other sub-fund of the OFC, and any liability incurred on behalf of a sub-fund may only be discharged out of its assets. It also provides that a sub-fund is not a legal person but its assets may be subject to orders of the court as if it were a legal person.
24. Division 7 contains provisions relating to the directors, investment managers, custodians, sub-custodians and auditors of OFCs. New section 112T contains definitions used in that Division. The terms "misconduct" and "specified officer" are defined in that section.
25. New section 112U requires an OFC to have at least 2 directors. It also provides that directors of an OFC owe the OFC the same fiduciary and other duties that directors of a company

registered under the Companies Ordinance (Cap. 622) owe to that company.

26. New section 112V disqualifies bodies corporate from being appointed as directors of OFCs.
27. New section 112W disqualifies persons below the age of 18 years from being appointed as directors of OFCs.
28. New section 112X provides that undischarged bankrupts must not act as directors of OFCs or be concerned, or take part, in the management of OFCs unless they have obtained leave of the Court of First Instance (*CFI*).
29. New section 112Y provides that the acts of an OFC's director are valid even if the director's appointment is subsequently found to have been defective or void.
30. New section 112Z requires an OFC to have an investment manager who must be an intermediary licensed or registered for Type 9 regulated activity.
31. New section 112ZA requires an OFC to have a custodian to whom scheme property of the OFC must be entrusted for safe keeping.
32. New section 112ZB requires an OFC to appoint an auditor for each financial year of the OFC.
33. New section 112ZC provides that provisions in an OFC's instrument of incorporation or in contracts made by an OFC that exempt specified officers of the OFC from liabilities for misconduct are void. Indemnities provided by OFCs to specified officers against such liabilities are also void.

34. New section 112ZD provides for the power of the CFI to relieve a specified officer of an OFC from liability in any proceedings for misconduct against the officer.
35. New section 112ZE provides for the power of the CFI to relieve a specified officer of an OFC from liability for misconduct on an application by the officer.
36. Division 8 contains provisions relating to supervision of OFCs by the SFC. New section 112ZF empowers the SFC to give directions to OFCs in specified circumstances. The directions may include a direction to cease to issue or redeem shares in the OFCs.
37. New section 112ZG enables the SFC to apply to the CFI for an inquiry into a person's failure to comply with a direction given under new section 112ZF. It also enables the SFC to apply to the CFI for an order where a person will likely fail to comply with such a direction.
38. New section 112ZH empowers the SFC to cancel the registration of an OFC on an application by the OFC.
39. New section 112ZI empowers the SFC to cancel the registration of an OFC of its own accord in specified circumstances.
40. New section 112ZJ empowers the SFC to permit an OFC the registration of which has been cancelled to carry on business operations that are essential for closing down its business.
41. Division 9 contains provisions relating to rules made by the SFC. New section 112ZK empowers the SFC to make rules to provide for the carrying on of collective investments by means of OFCs and the regulation of OFCs. Rules made under that

section may provide for, among others, incorporation requirements, registration requirements and requirements relating to segregating the liabilities of sub-funds of an OFC.

42. New section 112ZL empowers the SFC to make rules to provide for, among others, the functions of the Registrar. Rules under that section can only be made with the consent of the Registrar.
43. New section 112ZM empowers the SFC to make rules to provide for the functions of the Official Receiver in relation to the winding up and dissolution of OFCs and sub-funds of OFCs. Rules under that section can only be made with the consent of the Official Receiver.
44. New section 112ZN provides that the OFC rules may prescribe offences. It also sets out the maximum penalties that may be prescribed for such offences.
45. New section 112ZO empowers the SFC to grant a modification or waiver in respect of any requirement of the OFC rules on an application by an OFC or an OFC's director, investment manager, etc.
46. New section 112ZP empowers the SFC to grant a modification or waiver in respect of any requirement of the OFC rules by rules.
47. Division 10 contains miscellaneous provisions. New section 112ZQ empowers the Financial Secretary to make regulations to provide for the charging of fees by the SFC, the Registrar and the Official Receiver in respect of things done or services provided by them.

48. New section 112ZR empowers the SFC to publish codes and guidelines to provide guidance in respect of matters relating to the incorporation, registration, management and operation of OFCs and the business of OFCs.
49. New section 112ZS provides for the effect of codes and guidelines published under new section 112ZR.
50. New section 112ZT makes it an offence to carry on any business of an OFC with intent to defraud its creditors.
51. Clauses 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17 and 18 contain consequential amendments to sections 36(1)(e), 56(3), 103(2) and (3), 180(2), 182(1), 193(1), (2) and (3), 201(5), 212, 213, 336(9), 352(10), 378(3), 379(2)(b) and 400(1) of the SFO. Clauses 19, 20 and 21 contain consequential amendments to section 1 of Part 1 of Schedule 1, section 2 of Part 2 of Schedule 2, and the definition of *dealing in securities* in Part 2 of Schedule 5 to the SFO.
52. Clause 13 adds new sections 214A and 214B to the SFO, which mirror the existing section 214 of the SFO. New section 214A provides for the SFC's power to apply to the CFI for an order if it appears to the SFC that the business or affairs of an OFC have been conducted in a manner unfairly prejudicial to the interests of its shareholders. New section 214B deals with the situation where an order made under new section 214A alters or adds to the instrument of incorporation of an OFC.
53. Clause 22 amends Division 1 of Part 2 of Schedule 8 to the SFO to include decisions made by the SFC under new Part IVA. A person aggrieved by any of those decisions may apply to the Securities and Futures Appeals Tribunal for a review of the decision under section 217 of the SFO.

Part 3—Related Amendments

54. Division 1 deals with an amendment to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
55. Clause 23 amends the definition of *disqualification order* in section 168R(5) of that Ordinance so that an order made under new section 214A(2)(d) of the SFO falls within that definition.
56. Division 2 deals with an amendment to the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I).
57. Clause 24 amends Form D.O. 1 in Schedule 1 to that Regulation to include a reference to new section 214A(2)(d) of the SFO. Under section 4(2) of that Regulation, a prescribed officer of the court is to furnish the Registrar with the particulars of a disqualification order in that Form.
58. Division 3 deals with amendments to the IRO.
59. Clause 25 amends section 2(1) of the IRO to include the definition of *open-ended fund company*. It also amends the definition of *receiver* in that section.
60. Clause 26 amends section 57 of the IRO to specify who is to be answerable for doing all the acts, matters or things that are required to be done under the IRO by an OFC.
61. Division 4 deals with amendments to the SDO.
62. Clauses 27, 30, 31 and 32 amend sections 19 and 63 of, and the First Schedule and Schedule 8 to, the SDO. Clause 33 adds a new Schedule 9 to the SDO. With these amendments, a contract note is not required to be executed or stamped for a

sale or purchase of any Hong Kong stock referred to in item 1 of Part 2 of new Schedule 9. Further, certain transfers that relate to such sale or purchase are exempt from stamp duty under head 2(4) in the First Schedule to the SDO.

63. Clause 28 adds a new section 30A to the SDO. New section 30A provides that if the trust instrument of a unit trust scheme (*main scheme*) provides for the division of its trust property into separate parts, each separate part of the trust property is to be regarded as a unit trust scheme for the purposes of the SDO and the main scheme is not to be regarded as a unit trust scheme for those purposes.
64. Clause 29 adds a new Part IVA (new sections 37A, 37B and 37C) to the SDO to make certain provisions of the SDO that relate to unit trust schemes applicable to OFCs. It also provides that if the instrument of incorporation of an OFC (*main company*) provides for the division of its scheme property into separate parts, each separate part of the scheme property is to be regarded as an OFC for the purposes of the SDO and the main company is not to be regarded as an OFC for those purposes.
65. Division 5 deals with amendments to the BRO.
66. Clause 34 includes the definition of *open-ended fund company* in section 2(1) of the BRO. It also amends certain definitions in that section to cover an OFC.
67. Clause 35 amends section 3(3) of the BRO to specify who is to be answerable for doing any act or thing that is required to be done under the BRO by an OFC.

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68. Clause 36 expands the scope of section 5A of the BRO to provide for simultaneous business registration applications of OFCs.
 69. Clause 37 amends section 6 of the BRO mainly to provide that the Commissioner of Inland Revenue (*Commissioner*) is not required to register the business or branch of the business, or to issue a business registration certificate or branch registration certificate, if the application is made by an OFC for registration by a name that is not the name of the OFC.
 70. Clause 38 amends section 7A of the BRO to deal with whether an OFC is entitled to be refunded the prescribed business registration fees, prescribed branch registration fees or levies paid in respect of a business or a branch of a business.
 71. Clause 39 amends section 8 of the BRO to require the Registrar to transmit certain particulars to the Commissioner if there is a change in the name, or the address of the registered office, of an OFC.
 72. Clause 40 amends section 9 of the BRO so that that section does not apply to an OFC.
 73. Clause 41 amends section 15 of the BRO to provide that if the Commissioner has reason to believe that any particulars transmitted under new section 8(2BA) of the BRO are false, inaccurate or incomplete, the Commissioner may inform the Registrar and the SFC accordingly.
 74. Division 6 deals with amendments to the Business Registration Regulations (Cap. 310 sub. leg. A).

75. Clause 42 amends regulation 3A of those Regulations to specify the particulars that the Registrar is required to transmit to the Commissioner under section 5C(5)(b) of the BRO in respect of an OFC for a simultaneous business registration application.
76. Division 7 deals with an amendment to the Resolution of the Legislative Council establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B).
77. Clause 43 adds a new section 4A to Schedule 1 to that Resolution. That Schedule sets out the services to be provided under the Companies Registry Trading Fund. The service mentioned in new section 4A is the service of administering and enforcing the provisions of the SFO relating to OFCs.
78. Division 8 deals with amendments to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).
79. Clause 44 amends section 3(2) of that Ordinance to exclude the instrument of incorporation of an OFC from the application of that Ordinance.