

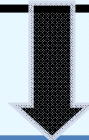
# **Subsidiary Legislation and Code Relating to the Open-ended Fund Company (“OFC”) Regime**

**5 June 2017**

**Financial Services and the Treasury Bureau  
Securities and Futures Commission**

# Implementation of OFC regulatory regime

**The Securities and Futures (Amendment) Ordinance 2016 (the “Amendment Ordinance”) was gazetted on 10 June 2016**



## **Under preparation:**

### Subsidiary legislation

- Securities and Futures (Open-ended Fund Companies) Rules to be made by the SFC (“OFC Rules”), and
- Fees rules to be made by the Financial Secretary

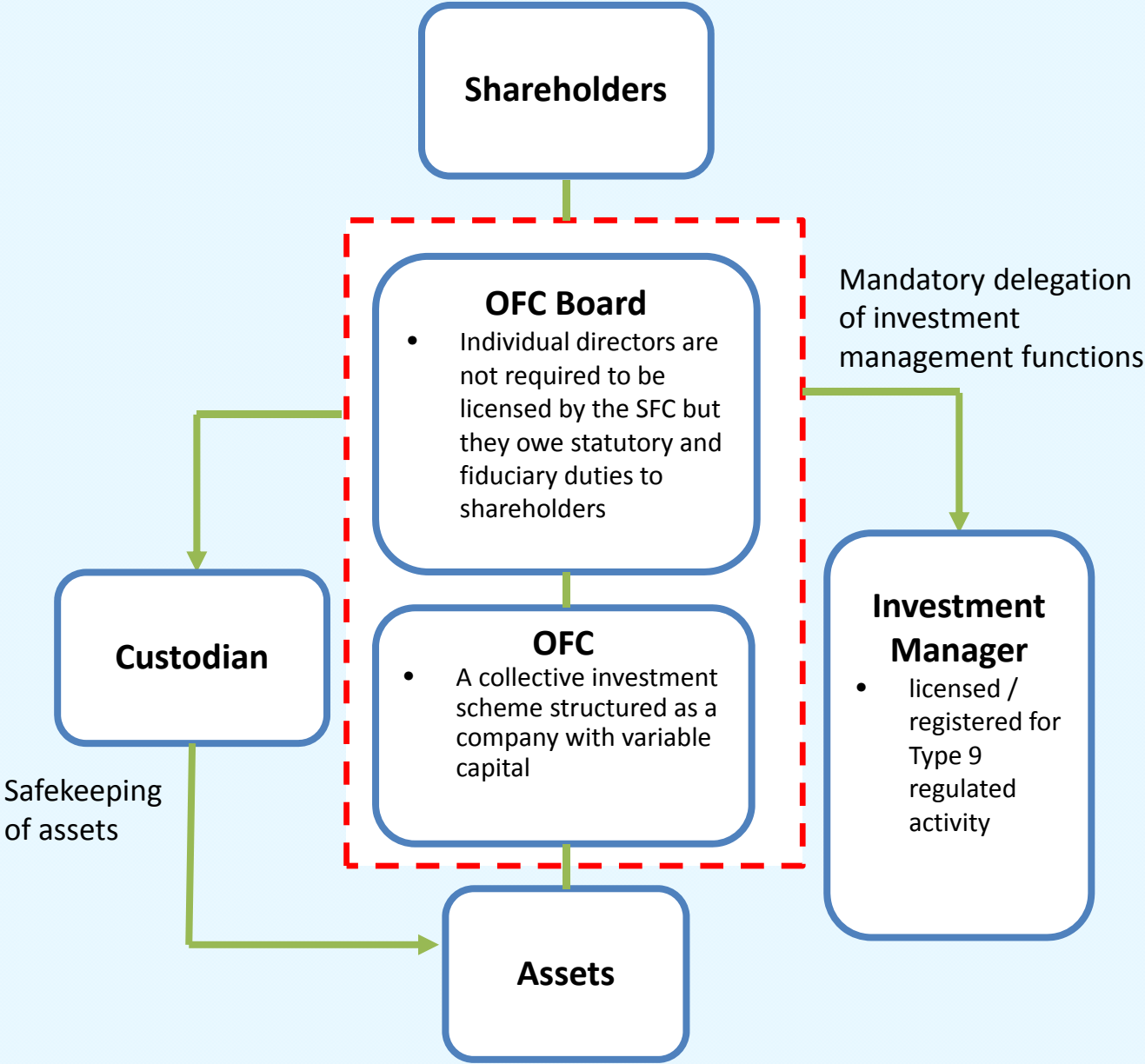
### SFC Code

- Code on Open-Ended Fund Companies (“OFC Code”)

# Background

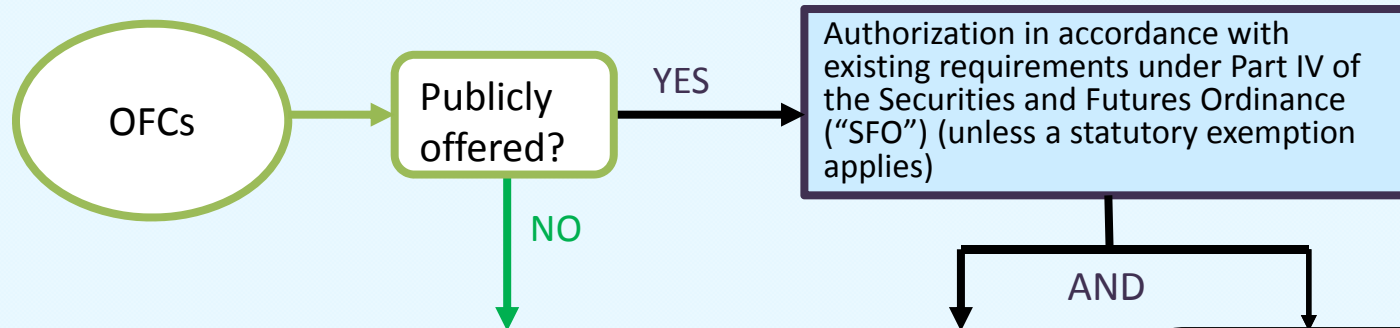
- OFC - a new form of investment fund vehicle
  - enhance Hong Kong's attractiveness as a location for the domiciliation and origination of publicly and privately offered funds
  - conducive to the development of our asset management industry
- Under the OFC regime:
  - the Securities and Futures Commission ("SFC"): primary regulator which will register the OFCs
  - the Companies Registry ("CR"): oversees OFC's incorporation and statutory corporate filings
  - the Official Receiver's Office ("ORO"): oversees OFC's winding up

# OFC structure



- A new corporate structure (in addition to unit trust form) for investment funds in Hong Kong
- Not subject to restrictions under Companies Ordinance (“CO”) on (1) capital reduction; (2) distribution out of capital

# General regulatory framework



## SFO

- Securities and Futures (Amendment) Ordinance 2016 gazetted on 10 June 2016
- New Part IVA created to provide legal framework for OFC regime

## OFC Rules

- Subsidiary legislation
- Relevant Companies Ordinance provisions and other provisions will be directly set out
- Companies (Winding Up and Miscellaneous Provisions) Ordinance provisions will be applied by reference with relevant necessary modifications

## OFC Code

- Non-statutory code to supplement the SFO and OFC Rules
- Provides guidelines relating to the registration and post-registration matters of OFCs

## SFC Products Handbook\*

- Code on Unit Trusts and Mutual Funds and the Overarching Principles in the SFC Products Handbook

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

# Proposed OFC Rules

## Key areas the proposed OFC Rules will cover:

- OFC's formation, capacity, and maintenance
- Appointment and cessation of appointment of key operators (i.e. directors, investment manager and custodian) of the OFC
- Functions of the CR
- Segregated liability feature of sub-funds of umbrella OFCs (protected cell)
- Disqualification orders and winding-up
- Offences

# Proposed OFC Code

## Key areas the proposed OFC Code will cover:

- General principles applicable to all OFCs and their key operators (for example, acting fairly, with due skill, care and diligence and ensuring compliance with regulatory requirements and constitutive documents)
- Elaborate on various basic registration and ongoing post-registration requirements applicable to OFCs and their key operators, such as:
  - corporate administration matters
  - detailed operational responsibilities
  - details as to financial reports
  - streamlined termination process
  - fund operations, investment and disclosure\*

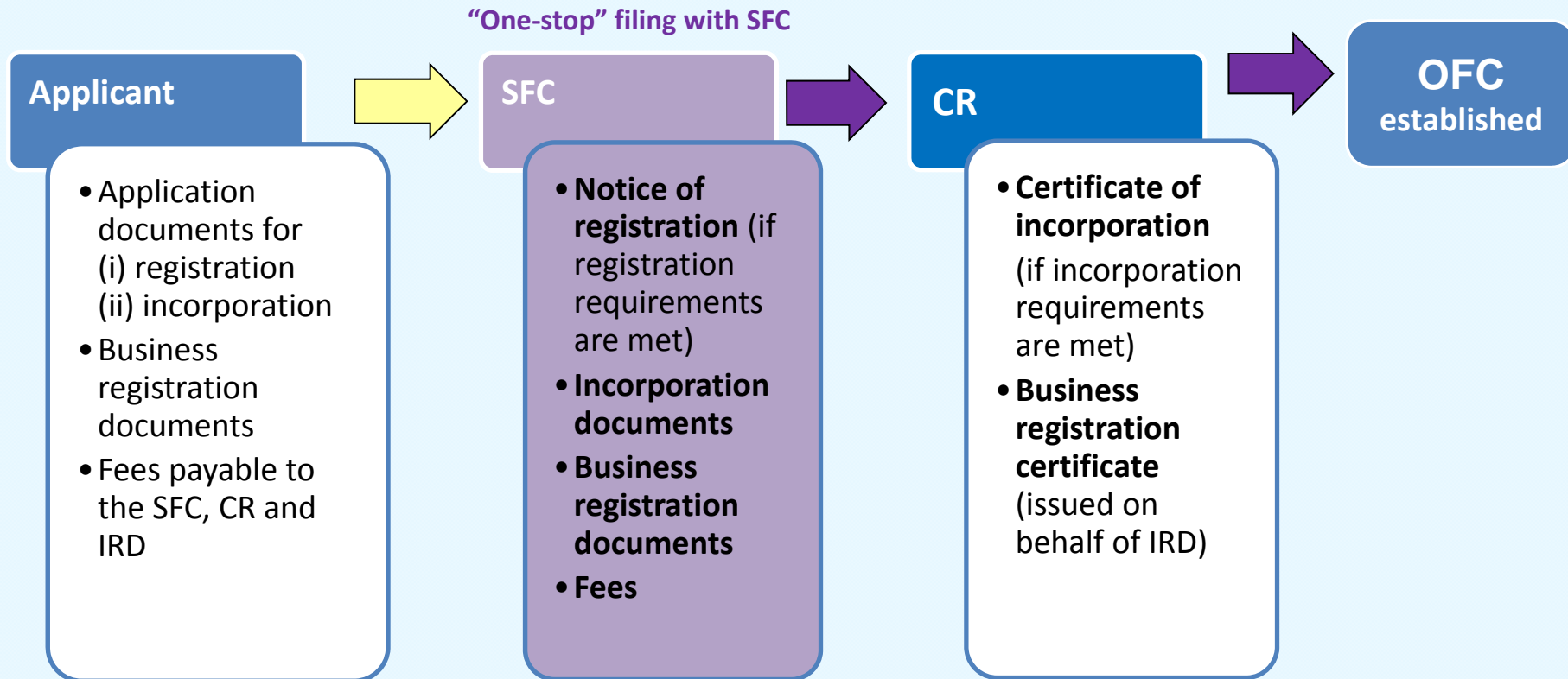
*(\*For privately offered OFCs only. For publicly offered OFCs, similar to other publicly offered funds, they will have to comply with the relevant requirements in the SFC Products Handbook.)*

## Proposed OFC Rules and OFC Code

- The proposed OFC Rules and OFC Code are prepared based on:
  - feedback obtained from the public consultation conducted on the legal and regulatory framework for OFCs
  - international regulatory standards and practices
  - relevant principles of the International Organization of Securities Commissions (IOSCO)
  - relevant provisions in the Companies Ordinance and Companies (Winding Up and Miscellaneous Provisions) Ordinance
- Pursuant to the Amendment Ordinance, SFC may apply investigatory, supervisory and enforcement powers where there is a breach of the OFC Rules or OFC Code
- The proposed OFC Rules also include relevant specific offences



# “One-stop” establishment process of an OFC



- In addition to registration, SFC’s authorization is required for publicly offered OFCs in accordance with existing requirements under Part IV of the SFO unless a statutory exemption applies
- Any name change post-establishment of an OFC will also be reviewed and approved by the SFC only under “one-stop” approach
- Filings the subject matter of which require SFC’s approval: OFC will submit to SFC, SFC will pass to CR after approval
- Other corporate filings: OFC will submit to CR directly

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Registration takes effect on date of issuance of certificate of incorporation

# Fees

- SFO section 112ZQ: Financial Secretary may make regulations for charging or collecting of fees by the SFC, the CR and the ORO for services provided under the SFO and the OFC Rules.
  - **SFC:**
    - Publicly offered OFCs – no new fees will apply, pay existing application and authorization fees and post-authorization annual fees per existing fees rules applicable to SFC-authorized publicly offered funds.
    - Privately offered OFCs – minimal basic registration fees, and fees for changes that require the SFC's approval. No annual fees.
  - **CR and ORO:**
    - Cost-recovery basis
    - CR: 43 fees relevant to formation and maintenance of OFCs
    - ORO: 31 fees in relation to its functions for winding-up, same as current ones as applicable to the winding-up of companies.

## Way Forward

Action	Target date
Issue public consultation paper	June 2017
After completion of the public consultation exercise, to table at Legco for negative vetting: <ul style="list-style-type: none"><li>- Finalized OFC Rules</li><li>- Finalized Fees Rules</li><li>- Commencement notice for the Amendment Ordinance</li></ul>	Q1 2018
Targeted commencement of OFC regime	2018

**Thank you**