

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1269/17-18  
(These minutes have been seen  
by the Administration and the  
Securities and Futures Commission)

Ref : CB1/SS/12/17/1

**Subcommittee on Three Pieces of Subsidiary Legislation Related to the  
Open-ended Fund Company Regime and Gazetted on 18 May 2018**

**Minutes of the first meeting  
held on Friday, 8 June 2018, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)  
Hon James TO Kun-sun  
Hon WONG Ting-kwong, GBS, JP  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon Holden CHOW Ho-ding

**Public Officers  
attending** : **For item II**

Financial Services and the Treasury Bureau

Miss Carrie CHANG  
Principal Assistant Secretary (Financial Services)1

Miss Renita AU  
Assistant Secretary (Financial Services)(1)1

Department of Justice

Ms Carmen CHAN  
Senior Government Counsel

Miss Annet LAI  
Government Counsel

Securities and Futures Commission

Ms Grace CHAN  
Director (Investment Products)

Ms Fiona TSE  
Senior Manager (Investment Products)

Ms Chloe WONG  
Manager (Investment Products)

Ms Mary AHERN  
Consultant (Legal Services Division)

Companies Registry

Mrs Karen HO  
Consultant (Company Law)

Ms Angelina MOK  
Deputy Registry Manager (Registration)

Official Receiver's Office

Mr Jason CHU  
Chief Treasury Accountant (Financial Services) (Acting)

Mr Alvin SIN  
Assistant Principal Solicitor (Advisory & Court Work) 1

**Clerk in Attendance :** Ms Angel SHEK  
Chief Council Secretary (1)1

**Staff in attendance :** Mr Bonny LOO  
Assistant Legal Adviser 4

Mr Jason KONG  
Senior Council Secretary (1)1

Miss Mandy POON  
Legislative Assistant (1)1

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**I. Election of Chairman**

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship.

2. Mr WONG Ting-kwong nominated Mr CHEUNG Kwok-kwan and the nomination was seconded by Mr Holden CHOW. Mr CHEUNG accepted the nomination. There being no other nominations, Mr CHEUNG was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II. Meeting with the Administration**

|                                  |  |
|----------------------------------|--|
| (L.N. 96 of 2018                 | — Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice      |
| L.N. 97 of 2018                  | — Securities and Futures (Open-ended Fund Companies) Rules                     |
| L.N. 98 of 2018                  | — Securities and Futures (Open-ended Fund Companies) (Fees) Regulation         |
| File Ref: ASST/3/1/6C            | — Legislative Council Brief  |
| LC Paper No. LS61/17-18          | — Legal Service Division Report  |
| LC Paper No. CB(1)1076/17-18(01) | — Assistant Legal Adviser's letter dated 24 May 2018 to the Administration     |
| LC Paper No. CB(1)1076/17-18(02) | — Administration's reply to Assistant Legal Adviser's letter dated 24 May 2018 |

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LC Paper No. CB(1)1076/17-18(03) — Background brief prepared by the Legislative Council Secretariat)

Discussion

4. The Principal Assistant Secretary (Financial Services)<sup>1</sup> briefed members on the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice, Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules") and Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (collectively referred to as "the three pieces of subsidiary legislation"), which were related to the implementation of the open-ended fund company ("OFC") regime in Hong Kong

5. The Subcommittee deliberated (index of proceedings attached at the **Annex**).

*(At 12:42 pm, the Chairman directed that the meeting be extended for five minutes beyond the appointed ending time.)*

Follow-up actions to be taken by the Administration

- Admin 6. The Administration was requested to take the following actions:
- (a) provide information on the major additional requirements to be imposed on the investment manager of an OFC under the OFC regime compared to the general requirements on fund managers who undertook the investment management functions of other collective investment schemes;
  - (b) provide information on the major differences between OFCs and conventional companies in respect of the voluntary winding-up and court winding-up procedures;
  - (c) explain with examples the circumstances, if any, in which the powers of the Securities and Futures Commission ("SFC") might override the terms and conditions laid down in the constitutive or offering documents of an OFC or the resolutions of the OFC board, including whether SFC might seek remedies for a resolution passed by the OFC board which was oppressive or unfairly prejudicial to certain shareholders of the company;
  - (d) advise whether it was permissible to include certain provisions in an OFC's constitutive or offering documents to allow the management

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of the company to exercise compulsory redemption of the company's shares;

- (e) explain with examples the justifications for abrogating the common law privilege against self-incrimination under rule 48(7) of the OFC Rules for the purpose of facilitating the investigation by the Registrar of Companies into the affairs of an OFC; and
- (f) explain (i) the justifications for requiring privately-offered OFCs to be registered with SFC given that such OFCs usually involved only small numbers of investors or small-scale offers; and (ii) the benefits of establishing a privately-offered fund in the form of a company instead of a unit trust.

*(Post-meeting note: The Administration's written response (LC Paper No. CB(1)1102/17-18(02)) was issued on 12 June 2018.)*

### **III. Any other business**

#### Legislative timetable

7. The Chairman suggested and members agreed that the Chairman should move a motion at the Council meeting of 13 June or 20 June 2018 to extend the scrutiny period of the three pieces of subsidiary legislation to the Council meeting of 11 July 2018.

*(Post-meeting note: The motion moved by the Chairman to extend the scrutiny period to the Council meeting of 11 July 2018 was passed at the Council meeting of 20 June 2018.)*

#### Date of next meeting

8. The Chairman informed members that the next meeting would be held on Tuesday, 12 June 2018, at 4:30 pm.

9. There being no other business, the meeting ended at 12:45 pm.

**Subcommittee on Three Pieces of Subsidiary Legislation Related to the  
Open-ended Fund Company Regime and Gazetted on 18 May 2018**

**Proceedings of the first meeting  
on Friday, 8 June 2018, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

| <b>Time marker</b>   | <b>Speaker</b>   | <b>Subject(s)</b>   | <b>Action required</b> |
|--|--|---|------------------------|
| <b><i>Agenda Item I — Election of Chairman</i></b>             |  |   |                        |
| 000420 –<br>000555   | Mr James TO<br>Mr WONG Ting-kwong<br>Mr Holden CHOW<br>Mr CHEUNG Kwok-kwan                                   | Election of Chairman  |                        |
| <b><i>Agenda Item II — Meeting with the Administration</i></b> |  |   |                        |
| 000556 –<br>000744   | Chairman   | Opening remarks   |                        |
| 000745 –<br>001159   | Chairman<br>Administration   | Briefing by the Administration on the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice, Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules") and Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (collectively referred to as "the three pieces of subsidiary legislation").  |                        |
| 001200 –<br>001655   | Chairman<br>Mr Kenneth LEUNG<br>Securities and Futures Commission ("SFC")<br>Assistant Legal Adviser ("ALA") | Mr LEUNG enquired whether each sub-fund of an open-ended fund company ("OFC") could be wound up separately. The Administration responded in the affirmative and advised that the relevant provisions were laid down in rule 188 of the OFC Rules.   |                        |
| 001656 –<br>002707   | Chairman<br>Mr James TO<br>Administration<br>SFC   | Discussion on (a) how the regulatory requirements for OFCs differed from the existing regulatory requirements for conventional limited companies, listed companies, and private/public funds established in the form of a unit trust; and (b) major additional requirements to be imposed on the investment manager of an OFC compared to the general requirements on other fund managers.  |                        |
| 002708 –<br>003203   | Chairman<br>Mr Christopher<br>CHEUNG<br>SFC  | Mr CHEUNG expressed worry that the requirement for appointment of the directors of an OFC to be approved by SFC might adversely affect the timing of launching an OFC in the market.<br><br>SFC advised that it was envisaged that the processing time in handling applications for registration and authorization of publicly-offered OFCs would be broadly in line with the existing practice for other SFC-authorized publicly-offered |                        |

| Time marker        | Speaker  | Subject(s)  | Action required |
|--------------------|--|---|-----------------|
|                    |  | investment funds. For privately-offered OFCs, it was generally expected that the processing time would take less than one month.  |                 |
| 003204 –<br>004500 | Chairman<br>Mr Kenneth LEUNG<br>SFC<br>Mr James TO | <p>Discussion on the reasons for requiring privately-offered OFCs to be registered with SFC.</p> <p>Mr LEUNG and Mr TO enquired about the following:</p> <ul style="list-style-type: none"> <li>(a) whether the offering document of an OFC would need to be updated upon variation of its issued share capital;</li> <li>(b) whether an OFC might buy back shares from shareholders and hold treasury stock; and</li> <li>(c) the regulatory/disclosure requirements concerning the transfer of OFC shares from a shareholder to another shareholder/person.</li> </ul> <p>Mr LEUNG was concerned that frequent updating of an OFC's offering document might create undue compliance burden.</p> <p>SFC advised that:</p> <ul style="list-style-type: none"> <li>(a) if, at any time after the issue of an OFC's offering document, the issuer became aware that there had been a significant change affecting any matter contained in the offering document, the issuer should, as soon as practicable, update the offering document;</li> <li>(b) rule 66 of the OFC Rules provided that the shares of an OFC that had been redeemed or bought back by or otherwise transferred to the company were to be regarded as cancelled. In other words, an OFC could not hold treasury stock; and</li> <li>(c) for the transfer of shares between an OFC's shareholders (or from a shareholder to another person), which would be a private transaction between these parties, the disclosure between them was expected to rest with the shareholder transferring the shares, with regard to the relevant contract laws.</li> </ul> |                 |
| 004501 –<br>005424 | Chairman<br>Mr James TO<br>SFC                     | Mr TO enquired about how an OFC's investment functions could be properly maintained, and whether trading of the OFC's shares had to be suspended, in the case of a succession gap arising from the resignation/removal of the OFC directors/investment manager/custodian, taking into account the time required for SFC's approval of new appointments of these key operators.  |                 |





| Time marker     | Speaker   | Subject(s)   | Action required  |
|-----------------|---|--|--|
|                 |   | <p>including whether SFC might seek remedies for a resolution passed by the OFC board which was oppressive or unfairly prejudicial to certain shareholders of the company; and</p> <p>(b) advise whether it was permissible to include certain provisions in an OFC's constitutive or offering document to allow the management of the company to exercise compulsory redemption of the company's shares.</p> <p>At Mr LEUNG's request, the Administration agreed to report to the Panel on Financial Affairs, when appropriate, on the progress of implementation of the OFC regime, including the number of OFCs established in Hong Kong.</p>   | <p>refers)</p> <p>Admin (paragraph 6(d) of the minutes refers)</p> |
| 013053 – 015117 | <p>Chairman<br/>Mr James TO<br/>Mr Kenneth LEUNG<br/>Administration<br/>SFC<br/>ALA</p> | <p>Discussion on paragraphs (g) and (h) of ALA's letter dated 24 May 2018 to the Administration (LC Paper No. CB(1)1076/17-18(01)) concerning the common law privilege against self-incrimination (in relation to the power of enquiry of the Registrar of Companies in respect of documents provided to him/her under the new Part IVA of Cap. 571) ("the privilege") and the Administration's written response to the letter (LC Paper No. CB(1)1076/17-18(02)).</p> <p>Mr TO expressed concern about the justifications for abrogating the privilege by rule 48(7) for the purpose of facilitating the investigation by the Registrar of Companies into the affairs of an OFC, and requested the Administration to provide supplementary information to explain the justifications.</p> | <p>Admin (paragraph 6(e) of the minutes refers)</p>                |
| 015118 – 020035 | <p>Chairman<br/>Mr James TO<br/>Administration<br/>SFC</p>                              | <p>Members agreed that there was no need to invite public views on the three pieces of subsidiary legislation.</p> <p>Mr TO queried the need for requiring privately-offered OFCs to be registered with SFC, given that OFCs usually involved small numbers of investors or small-scale offers, and privately-offered open-ended investment funds set up in the form of a unit trust were not subject to similar requirements. He requested the Administration to provide supplementary information to explain the justifications for the said registration requirement and the benefits of establishing a privately-offered fund in the form of an OFC instead of a unit trust.</p>   | <p>Admin (paragraph 6(f) of the minutes refers)</p>                |
| 020036 – 020359 | <p>Chairman<br/>Mr Kenneth LEUNG<br/>SFC</p>  | <p>Mr LEUNG asked about SFC's performance pledge in processing applications for registration and incorporation of OFCs. SFC advised that it was envisaged that the processing time in handling applications for registration and authorization of SFC-authorized publicly-offered OFCs would be broadly in line with the existing practice for other</p>   |  |

| Time marker  | Speaker                      | Subject(s)   | Action required |
|--|------------------------------|--|-----------------|
|  |                              | <p>SFC-authorized publicly-offered investment funds. SFC would consider putting in place a performance pledge on the processing time having regard to the experience obtained from implementation of the OFC regime.</p> <p>Discussion on the fees chargeable by SFC for OFCs.</p> <p>Extension of meeting</p> |                 |
| <b><i>Agenda Item III — Any other business</i></b> |                              |  |                 |
| 020400 –<br>020456                                 | Chairman<br>Mr Kenneth LEUNG | <p>Members agreed to seek extension of the scrutiny period of the three pieces of subsidiary legislation to the Council meeting of 11 July 2018.</p> <p>Date of next meeting</p>   |                 |