

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1290/17-18  
(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 second meeting  
held on Tuesday, 12 June 2018, at 4:30 pm  
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 Christopher CHEUNG Wah-fung, SBS, JP  
Hon Holden CHOW Ho-ding
- Member absent** : Hon Kenneth LEUNG
- 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

Action

**I. Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)1102/17-18(01) — List of follow-up actions arising from the discussion at meeting on 8 June 2018

LC Paper No. CB(1)1102/17-18(02) — Administration's response to the issues raised at the meeting on 8 June 2018)

Relevant papers

(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

Action

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

Discussion

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

2. The Chairman concluded that the Subcommittee had completed scrutiny of the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice, the Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules") and the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation.

Follow-up actions to be taken by the Administration

Admin 3. The Administration was requested to provide supplementary information to clarify:

- (a) the policy intent of requiring privately-offered open-ended fund companies to be registered with the Securities and Futures Commission and subject to additional requirements (e.g. additional filing requirements) compared to those for conventional companies; and
- (b) the application of, and interaction among, rules 46, 48, 49 and 195 of the OFC Rules, including (i) the scope of the enquiry/investigation powers of the Registrar of Companies ("R of C"), such as whether R of C could exercise power to enquire with a person other than the subject person of enquiry to provide the necessary record, document, information or explanation to an enquiry under rule 46; and (ii) the admissibility of any record, document, information or explanation obtained under rule 46 in criminal proceedings relating to an offence for false statement under rule 195.

*(Post-meeting note: The Administration's written response (LC Paper No. CB(1)1137/17-18(02)) was issued on 19 June 2018.)*

Action

**II. Any other business**

Legislative timetable

4. The Chairman remarked that, as agreed at the last meeting, he would move a motion at the Council meeting of 13 June or 20 June 2018 to extend the scrutiny period of the subsidiary legislation to the Council meeting of 11 July 2018. On this basis, the Chairman would report the Subcommittee's deliberations to the House Committee on 29 June 2018, and the deadline for giving notice of a motion to amend the subsidiary legislation would be 4 July 2018.

*(Post-meeting note: The motion to extend the scrutiny period of the subsidiary legislation was passed at the Council meeting of 20 June 2018.)*

5. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1  
Legislative Council Secretariat  
19 July 2018

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

**Proceedings of the second meeting  
on Tuesday, 12 June 2018, at 4:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I — Meeting with the Administration</i>			
000349 – 000604	Chairman	Opening remarks	
000605 – 002449	Chairman Administration Mr James TO Securities and Futures Commission ("SFC")	SFC briefed members on its response to the issues raised at the last meeting (LC Paper No. CB(1)1102/17-18(02)) ("the follow-up paper").	
002450 – 003954	Chairman Mr James TO SFC	<p>Discussion on paragraphs 23 to 27 of the follow-up paper concerning the requirement for privately-offered open-ended fund companies ("OFCs") to be registered with SFC.</p> <p>Mr TO considered the registration requirement not proportionate to the policy intent of investor protection, in particular given that privately-offered open-ended investment funds set up in the form of unit trust were not subject to similar registration requirements at present. He requested the Administration to provide supplementary information to clarify the policy intent of the registration requirement.</p>	Admin (paragraph 3(a) of the minutes refers)
003955 – 005607	Chairman Mr James TO Administration Assistant Legal Adviser ("ALA")	<p>Discussion on paragraphs 18 to 22 of the follow-up paper concerning the common law privilege against self-incrimination under the Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules") (in relation to the power of enquiry of the Registrar of Companies ("R of C") in respect of records, documents, information or explanation provided to him/her pursuant to the new Part IVA of the Securities and Futures Ordinance (Cap. 571)).</p> <p>Mr TO sought clarification on:</p> <p>(a) whether R of C could exercise power to enquire with a person other than the subject person of an enquiry to provide the necessary record, document, information or explanation to an enquiry under rule 46 of the OFC Rules; and</p> <p>(b) whether any self-incriminating record, document, information or explanation provided to R of C pursuant</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>to rule 46 would be admissible in criminal proceedings relating to an offence for false statement under rule 195.</p> <p>ALA advised and the Administration concurred that:</p> <p>(a) rule 46 provided that, for the purpose of enquiring into whether an offence for false statement under rule 195 was committed, R of C might require a person to produce any record or document, or any information or explanation in respect of the record or document; and the meaning of "a person" above was not confined to the subject person of the enquiry; and</p> <p>(b) according to rule 49(2), self-incriminating evidence obtained under rule 46 might only be admissible in criminal proceedings relating to an offence under rule 48(4), (5) or (6) (e.g. providing false or misleading information in purported compliance with a requirement imposed under rule 46), Part V of the Crimes Ordinance (Cap. 200) (e.g. false sworn or unsworn statements), or for perjury. In other words, such evidence was not admissible in criminal proceedings relating to an offence for false statement under rule 195.</p> <p>The Administration was requested to provide supplementary information to clarify the application of, and interaction among, rules 46, 48, 49 and 195 of the OFC Rules.</p>	<p>Admin (paragraph 3(b) of the minutes refers)</p>
005608 – 010509	Chairman Mr James TO SFC	<p>Discussion on paragraphs 12 to 17 of the follow-up paper concerning (a) SFC's power to override an OFC board's decisions or seek remedies if it appeared that the business and affairs of the OFC had been conducted in a manner oppressive or unfairly prejudicial to its shareholders or any part of its shareholders; and (b) compulsory redemption of OFC shares.</p> <p>In response to Mr TO's enquiry, SFC clarified that SFC might petition to the Court of First Instance under section 214A of Cap. 571 where the business or affairs of an OFC had been conducted in a manner which was oppressive or unfairly prejudicial to shareholders, and it would be for the Court to decide on the appropriate court order(s) to make in the circumstances, including court orders in relation to resolutions passed by the OFC's shareholders. SFC also clarified that the circumstances where compulsory redemption of shares held by an investor of an investment fund might occur typically included the holding of such shares by the investor might result in adverse consequences, such as tax consequences, on the fund or other investors of the fund.</p>	

Time marker	Speaker	Subject(s)	Action required
010510 – 011350	Mr James TO SFC Chairman ALA Administration	<p>Discussion on paragraphs 6 to 11 of the follow-up paper concerning the winding up of OFCs.</p> <p>Members noted that the meaning of "unregistered company" given in section 326 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) did not include a partnership, association or company which consisted of less than eight members and was not formed or established outside Hong Kong, and the court winding-up process would not be applicable at this stage to OFCs which were not "unregistered companies" under Cap. 32, pending further legislative amendments to Cap. 571 to lay down the necessary enabling provisions.</p> <p>ALA sought clarification on how an OFC with less than eight members could be wound up in the interim after commencement of the OFC regime. The Administration advised that in this case, the OFC in question might resort to the voluntary winding-up process under Part 11 of the OFC Rules or the mechanism of streamlined termination provided in the Code on Open-ended Fund Companies pursuant to section 112ZH of Cap. 571.</p>	
<i>Examination of the provisions of the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice (L.N. 96 of 2018)</i>			
011351 – 011507	Chairman Administration	<p><b><u>Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice</u></b></p> <p>Members did not raise any question on the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice.</p>	
<i>Examination of the provisions of the Securities and Futures (Open-ended Fund Companies) Rules (L.N. 97 of 2018)</i>			
011508 – 012234	Chairman Administration ALA SFC Mr Holden CHOW	<p><b><u>Securities and Futures (Open-ended Fund Companies) Rules</u></b></p> <p><b>Part 1 — Preliminary</b></p> <p><i>Rules 1 and 2</i></p> <p><b>Part 2 — Formation of Open-ended Fund Company and Related Matters</b></p> <p><b><u>Division 1 — Incorporation and Registration, etc.</u></b></p> <p><i>Rules 3 to 8</i></p>	



Time marker	Speaker	Subject(s)	Action required
		<p><u>Division 2 — Change of Name of Open-ended Fund Company</u></p> <p><i>Rule 9</i></p> <p>Members did not raise any question on the rules above.</p> <p><u>Division 3 — Capacity and Powers of Open-ended Fund Company</u></p> <p><i>Rules 10 to 12</i></p> <p>ALA sought explanation on the two different Chinese renditions of "matter" in rule 12.</p> <p>SFC responded that rule 12 mirrored section 120 of the Companies Ordinance (Cap. 622), and it was unlikely that the different Chinese renditions would cause confusion.</p> <p>Members raised no further enquiry on the above issue.</p> <p><u>Division 4 — Instrument of Incorporation</u></p> <p><i>Rules 13 to 15</i></p> <p>In response to Mr CHOW's enquiry, SFC advised that as stipulated in rule 13, the instrument of incorporation (i.e. the constitutive document) of an OFC must include a statement that the object of the company was the operation of the company as a collective investment scheme.</p> <p><u>Division 5 — Communications and Documents etc.</u></p> <p><i>Rules 16 to 18</i></p> <p><u>Division 6 — Registered Office</u></p> <p><i>Rules 19 and 20</i></p> <p>Members did not raise any question on divisions 5 and 6.</p>	
012235 – 012744	Chairman Administration ALA SFC	<p><b>Part 3 — Registrar's Functions and OFC Register</b></p> <p><u>Division 1 — Registrar's Functions</u></p> <p><i>Rules 21 to 23</i></p> <p><u>Division 2 — OFC Register</u></p> <p><i>Rules 24 to 27</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Division 3 — Registration of Document</u></p> <p><i>Rules 28 to 34</i></p> <p><u>Division 4 — Registrar's Powers in Relation to Keeping OFC Register</u></p> <p><i>Rules 35 to 40</i></p> <p><u>Division 5 — Inspection of OFC Register</u></p> <p><i>Rules 41 to 43</i></p> <p><u>Division 6 — Miscellaneous</u></p> <p><i>Rules 44 and 45</i></p> <p>Members did not ask any question on the rules above.</p> <p><u>Division 7 — Enquiry by Registrar</u></p> <p><i>Rules 46 to 55</i></p> <p>ALA pointed out that under rule 55(2), subject to any reasonable conditions R of C <i>may</i> impose, R of C <i>must</i> permit certain persons to inspect records or documents of which R of C had taken possession. In the Chinese text, while 可 (may) was used in relation to 施加 (impose), 須 (must) appeared to have been omitted in relation to 准許 (permit). He was concerned that the Chinese text as written might not accurately reflect the apparent meaning of the English text.</p> <p>The Administration took the view that the Chinese text, which followed a similar provision in Cap. 622, when read as a whole, was clear and would not give readers the impression that R of C might permit inspection but was not obliged to do so. ALA disagreed.</p> <p>Members raised no further enquiry on the above issue.</p>	
012745 – 013018	Chairman Administration	<p><b>Part 4 — Share Capital</b></p> <p><u>Division 1 — Nature of Shares, Rights etc.</u></p> <p><i>Rules 56 to 59</i></p> <p><u>Division 2 — Transfer of Shares</u></p> <p><i>Rules 60 to 66</i></p>	

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		<p><u>Division 3 — Register of Shareholders</u></p> <p><i>Rules 67 to 72</i></p> <p><b>Part 5 — Meetings and Resolutions</b></p> <p><u>Division 1 — General Meetings</u></p> <p><i>Rules 73 to 77</i></p> <p><u>Division 2 — Notice of Meetings</u></p> <p><i>Rules 78 to 83</i></p> <p><u>Division 3 — Procedure at Meetings and Resolutions</u></p> <p><i>Rules 84 to 95</i></p> <p><u>Division 4 — Records of Resolutions and Meetings</u></p> <p><i>Rules 96 to 98</i></p> <p><b>Part 6 — Operators</b></p> <p><u>Division 1 — Preliminary</u></p> <p><i>Rule 99</i></p> <p><u>Division 2 — Directors</u></p> <p><i>Rules 100 to 113</i></p> <p><u>Division 3 — Custodians and Sub-custodians</u></p> <p><i>Rules 114 to 124</i></p> <p><u>Division 4 — Investment Manager</u></p> <p><i>Rules 125 to 127</i></p> <p><u>Division 5 — Auditor</u></p> <p><i>Rules 128 to 147</i></p> <p>Members did not ask any question on parts 4 to 6.</p>	
013019 – 013457	Chairman Administration ALA SFC Mr Holden CHOW	<p><b>Part 7 — Financial Statements and Financial Reports</b></p> <p><u>Division 1 — Financial Year</u></p> <p><i>Rules 148 to 150</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Division 2 — Financial Statements and Reports</u></p> <p><i>Rules 151 and 152</i></p> <p>No question was raised on the rules above.</p> <p><u>Division 3 — Auditor's Reports and Accounting Records</u></p> <p><i>Rules 153 to 157</i></p> <p>In relation to rule 155, ALA sought clarification on the reasons for not rendering a knowing or reckless omission of a statement required to be contained in an auditor's report under rule 154(2)(a) (i.e. the auditor's opinion that adequate accounting records had not been kept by an OFC) an offence.</p> <p>SFC advised that as any omission of a relevant statement in the auditor's report would already be subject to the disciplinary sanctions by the Hong Kong Institute of Certified Public Accountants, it was not considered necessary also to make the omission a criminal offence.</p>	
013458 – 013626	Chairman Administration Mr Holden CHOW SFC	<p><b>Part 8 — Sub-funds — Requirements and Other Matters</b></p> <p><i>Rules 158 to 161</i></p> <p>Members raised no query.</p> <p><b>Part 9 — Arrangements and Compromises</b></p> <p><i>Rules 162 to 170</i></p> <p>In response to Mr CHOW's enquiry, SFC affirmed that the rules relating to arrangements and compromises were modelled on relevant provisions in Cap. 622.</p>	
013627 – 015117	Chairman Administration Mr Holden CHOW SFC ALA	<p><b>Part 10 — Receivers and Managers</b></p> <p><u>Division 1 — Requirements for Appointment of Receivers and Managers, etc.</u></p> <p><i>Rules 171 to 173</i></p> <p><u>Division 2 — Notice of Appointment and Cessation of Appointment</u></p> <p><i>Rules 174 and 175</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><b>Part 11 — Winding Up and Dissolution of Open-ended Fund Companies</b></p> <p><u>Division 1 — Voluntary Winding Up of Open-ended Fund Companies</u></p> <p><i>Rules 176 and 177</i></p> <p><u>Division 2 — Modifications for Purposes of Division 1</u></p> <p><i>Rules 178 to 187</i></p> <p>Members did not raise any question on the rules above.</p> <p><u>Division 3 — Winding Up of Sub-funds</u></p> <p><i>Rule 188</i></p> <p>Discussion on the protected cell regime of OFCs.</p> <p>ALA enquired whether all sub-funds of an umbrella OFC could be wound up in one go.</p> <p>SFC responded that while each sub-fund of an umbrella OFC might be wound up separately, the umbrella OFC could be wound up together with all its sub-funds in one go, so long as the liabilities of individual sub-funds were segregated in accordance with the protected cell regime for OFCs under section 112S of Cap. 571 as amended in the winding-up process.</p> <p><u>Division 4 — Miscellaneous</u></p> <p><i>Rules 189 to 191</i></p> <p><u>Division 5 — Dissolution of Open-ended Fund Company on Cancellation of Registration</u></p> <p><i>Rules 192 and 193</i></p> <p>No question was raised on the rules above.</p>	
015118 – 015209	Chairman Administration	<p><b>Part 12 — Miscellaneous</b></p> <p><i>Rules 194 to 196</i></p> <p><b>Schedule</b></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Examination of the provisions of the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (L.N. 98 of 2018)</i>			
015210 – 015654	Chairman Administration ALA	<p><b><u>Securities and Futures (Open-ended Fund Companies) (Fees) Regulation</u></b></p> <p><b>Part 1 — Preliminary</b></p> <p><i>Sections 1 and 2</i></p> <p><b>Part 2 — Fees Payable to Commission</b></p> <p><i>Sections 3 to 6</i></p> <p>Members did not ask any questions on parts 1 and 2.</p> <p><b>Part 3 — Fees Payable to Registrar</b></p> <p><i>Sections 7 and 8</i></p> <p>In response to ALA's enquiries, the Administration advised that the revenue generated from the fees payable to R of C in relation to OFCs would be appropriated to the Companies Registry Trading Fund. The power of R of C to administer and enforce the relevant provisions of Cap. 571 relating to OFCs was laid down in section 45 of the Securities and Futures (Amendment) Ordinance 2016 (which added a new section 4A to Schedule 1 to the Resolution of the Legislative Council establishing the Companies Registry Trading Fund (Cap. 430B)).</p> <p><b>Schedule 1 — Fees Payable to Commission</b></p> <p><b>Schedule 2 — Fees Payable to Registrar for Inspecting or Obtaining Documents and Information</b></p> <p><b>Schedule 3 — Miscellaneous Fees Payable to Registrar</b></p> <p>No question was raised on the three schedules.</p>	
<b>Agenda Item II — Any other business</b>			
015655 – 015822	Chairman	Legislative timetable and concluding remarks	