

L.N. 98 of 2018

Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

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Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

(Made by the Secretary for Financial Services and the Treasury under section 112ZQ(1) and (2) of the Securities and Futures Ordinance (Cap. 571))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which the Securities and Futures (Amendment) Ordinance 2016 (16 of 2016) comes into operation.

2. Interpretation

(1) In this Regulation—

Cap. 32 (第32章) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

proposed company (擬成立公司) has the meaning given by section 112A of the Ordinance;

Registrar (處長) means the Registrar of Companies;

Rules (《規則》) means the Securities and Futures (Open-ended Fund Companies) Rules;

sub-fund (子基金)—

- (a) in relation to a proposed company the instrument of incorporation of which provides for the division of its property into separate parts—means each of the separate parts; and
- (b) in relation to an open-ended fund company—has the meaning given by section 112R of the Ordinance.

- (2) In Schedule 3, a reference to section 284 of Cap. 32—
- (a) in relation to the winding up of an open-ended fund company under Part 11 of the Rules (***Part 11***)—is a reference to a provision of Part 11 that is equivalent to that section, subject to the necessary modifications and modifications specified in Division 2 of Part 11 (***subject provision***); and
 - (b) in relation to the winding up of a sub-fund under Part 11—is a reference to the subject provision subject to the modifications specified in Division 3 of Part 11.
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Part 2

Fees Payable to Commission

- 3. Fees for certain applications made in relation to proposed companies**
- (1) A fee specified in column 3 of Part 1 of Schedule 1 is payable to the Commission for an application (*specified application*) described, opposite the fee, in column 2 of that Part.
 - (2) Subsection (1) does not apply to a specified application if—
 - (a) at the time the specified application is made, an application is also made to the Commission under section 104 of the Ordinance for the proposed company concerned; or
 - (b) an application has been made under that section for the company and is pending at the time the specified application is made.
- 4. Fees for certain applications made in relation to open-ended fund companies**
- (1) A fee specified in column 3 of Part 2 of Schedule 1 is payable to the Commission for an application described, opposite the fee, in column 2 of that Part.
 - (2) Subsection (1) does not apply to an application if at the time the application is made, the open-ended fund company concerned is authorized under section 104 of the Ordinance.

5. Time for payment

A fee payable under section 3 or 4 for an application is to be paid when the application is made.

6. Waiver of fees

If, in a particular case, the Commission is of the opinion that the payment of a fee under section 3 or 4 would be inappropriate or unduly burdensome, the Commission may waive, in whole or in part, the fee.

Part 3

Fees Payable to Registrar

7. Fees for inspecting or obtaining documents and information

A fee specified in column 3 of Part 2 of Schedule 2 is payable to the Registrar for the matter described, opposite the fee, in column 2 of that Part.

8. Miscellaneous fees payable to Registrar

A fee specified in column 3 of Schedule 3 is payable to the Registrar for the matter described, opposite the fee, in column 2 of that Schedule.

Schedule 1

[ss. 3 & 4]

Fees Payable to Commission

Part 1

Fees for Proposed Companies

Column 1 Item	Column 2 Description	Column 3 Fee
1.	An application under section 112D(1) of the Ordinance to register a proposed company which could have one or more sub-funds	\$10,000, plus \$1,250 for each sub-fund
2.	An application under section 112D(1) of the Ordinance to register any other proposed company	\$5,000

Part 2

Fees for Open-ended Fund Companies

Column 1 Item	Column 2 Description	Column 3 Fee
1.	An application for an approval under rule 9(2) of the Rules to change the name of an open-ended fund company	\$300

Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

Schedule 1—Part 2

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Column 1	Column 2	Column 3
Item	Description	Fee
2.	An application for an approval under rule 101(3) of the Rules to appoint a person to be a director	\$300
3.	An application for an approval under rule 114(3) of the Rules to appoint a person to be a custodian	\$300
4.	An application for an approval under rule 125(3) of the Rules to appoint a person to be an investment manager	\$300
5.	An application for an approval under rule 160(1) of the Rules to establish one or more sub-funds	\$1,250 for each sub-fund
6.	An application for an approval under rule 160(3) of the Rules to terminate one or more sub-funds	\$300 for each sub-fund
7.	An application for an approval under rule 161 of the Rules to change the name of one or more sub-funds	\$300 for each sub-fund
8.	An application under section 112ZH of the Ordinance to cancel the registration of an open-ended fund company	\$300
9.	An application under section 112ZO of the Ordinance for the granting of a modification or waiver in relation to a person specified in section 112ZO(2) of the Ordinance in respect of a requirement of the Rules	\$6,000

Schedule 2

[s. 7]

Fees Payable to Registrar for Inspecting or Obtaining Documents and Information

Part 1

Interpretation of Schedule 2

1. In this Schedule—

OFC register (開放式基金型公司登記冊) has the meaning given by rule 2 of the Rules;

on-site user (到場使用者) means a person inspecting or obtaining, at the specified place, any document or information contained in the OFC register;

principal account (主要帳戶) means the first account that a registered online user registers with the Registrar under a registration arrangement;

registered online user (登記用戶) means a person who has entered into a registration arrangement with the Registrar;

registration arrangement (登記安排) means an arrangement under which a person may register one or more accounts with the Registrar through which that person may use online medium for inspecting and obtaining documents and information contained in the OFC register;

specified place (指明地點) means the office of the Registrar at which the OFC register is made available for inspection under rule 41 of the Rules;

subsequent account (其後帳戶) means any account, other than the principal account, that a registered online user registers with the Registrar under a registration arrangement;

unregistered online user (無帳戶使用者) means a person, other than a registered online user, using an online medium for inspecting or obtaining documents and information contained in the OFC register.

Part 2

Fees for Inspecting or Obtaining Documents and Information Relating to Open-ended Fund Companies

O—Fee payable by an on-site user

R—Fee payable by a registered online user

U—Fee payable by an unregistered online user

Column 1 Item	Column 2 Description	Column 3 Fee
1.	Under rule 41(3) of the Rules, for obtaining, by way of downloading through online medium, an image record of—	
	(a) an incorporation form	R : \$16 U : \$18
	(b) an instrument of incorporation	R : \$21 U : \$23

Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

Schedule 2—Part 2

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Column 1 Item	Column 2 Description	Column 3 Fee
	(c) an account made up by a liquidator in respect of an open-ended fund company, or a sub-fund, being wound up under Part 11 of the Rules	R : \$21 U : \$23
	(d) any other document	R : \$9 U : \$10
2.	Under rule 41(3) of the Rules, for obtaining, at the specified place, a copy of an image record of—	
	(a) an incorporation form	O : \$30
	(b) an instrument of incorporation	O : \$35
	(c) an account made up by a liquidator in respect of an open-ended fund company, or a sub-fund, being wound up under Part 11 of the Rules	O : \$35
	(d) any other document.....	O : \$20
3.	Under rule 41(2) and (3) of the Rules, for online inspection of, and obtaining, an image record of—	
	(a) an incorporation form	R : \$21 U : \$23
	(b) an instrument of incorporation.....	R : \$26 U : \$29

Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

Schedule 2—Part 2

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Column 1 Item	Column 2 Description	Column 3 Fee
	(c) an account made up by a liquidator in respect of an open-ended fund company, or a sub-fund, being wound up under Part 11 of the Rules	R : \$26 U : \$29
	(d) any other document	R : \$12 U : \$13
4.	Under rule 41(2) of the Rules, for inspecting information contained in the index of directors kept under rule 109(1) of the Rules—	
	(a) for each inspection of the list of directors of an open-ended fund company	O : \$11 R : \$11 U : \$11
	(b) for each inspection of the particulars of a director of an open-ended fund company	O : \$11 R : \$11 U : \$11
	(c) for each inspection of all the directorships held by a person in any open-ended fund companies	O : \$22 R : \$22 U : \$22

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Schedule 2—Part 2

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Column 1	Column 2	Column 3
Item	Description	Fee
5.	Under rule 41(3) of the Rules, for obtaining a copy of a record containing the current particulars of an open-ended fund company, per company	O : \$22 R : \$22 U : \$22
6.	For registering an account with the Registrar for inspecting and obtaining documents and information contained in the OFC register per year—	
	(a) for a principal account	\$500
	(b) for each subsequent account	\$100

Schedule 3

[ss. 2 & 8]

Miscellaneous Fees Payable to Registrar

Column 1 Item	Column 2 Description	Column 3 Fee
1.	Lodging an incorporation form and a copy of the instrument of incorporation delivered under section 112C of the Ordinance	\$479
2.	Incorporating an open-ended fund company under Part IVA of the Ordinance	\$2,555
3.	Lodging a notice of change of company name delivered under rule 9(4) of the Rules	\$160
4.	Issuing a certificate of change of name under rule 9(7) of the Rules	\$1,245
5.	Certifying under rule 41(3) of the Rules a copy of any document or information (including an extract of a document) contained in the OFC register	\$130
6.	Registering a notice delivered under rule 174(1) or (3) of the Rules	\$40
7.	Inspecting under section 284 of Cap. 32 a liquidator's statement sent to the Registrar in respect of the winding up of an open-ended fund company or a sub-fund under Part 11 of the Rules	\$26

Securities and Futures (Open-ended Fund Companies) (Fees) Regulation

Schedule 3

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Column 1	Column 2	Column 3
Item	Description	Fee
8.	Obtaining under section 284 of Cap. 32 a copy of a liquidator's statement, or a part of the statement, sent to the Registrar in respect of the winding up of an open-ended fund company or a sub-fund under Part 11 of the Rules—	
	(a) if the copy is made by photographic means and its size does not exceed 210 mm x 297 mm	\$13 per page (or portion of a page)
	(b) if the copy is made by photographic means and its size exceeds 210 mm x 297 mm	\$13, plus an additional fee not exceeding \$5 that is specified by the Registrar, per page (or portion of a page)
	(c) if the copy is made by any other means—	
	(i) for a copy that is certified by the Registrar	\$8 per page
	(ii) for any other copy	\$4 per page

James Henry LAU
Secretary for Financial Services
and the Treasury

14 May 2018

Explanatory Note

This Regulation is made by the Secretary for Financial Services and the Treasury under section 112ZQ(1) and (2) of the Securities and Futures Ordinance (Cap. 571) (**Ordinance**). The purpose of this Regulation is to provide for fees payable to the Securities and Futures Commission (**Commission**) and the Registrar of Companies (**Registrar**) in respect of a proposed company, or an open-ended fund company, as defined by section 112A of the Ordinance, and to provide for related matters.

2. Schedule 1 specifies the fees payable to the Commission for the following applications—
 - (a) application for registration of a proposed company under section 112D(1) of the Ordinance;
 - (b) application for the Commission's approval to change the name of an open-ended fund company;
 - (c) application for the Commission's approval to appoint a person to be a director, custodian or investment manager, of an open-ended fund company;
 - (d) application for the Commission's approval to establish, terminate, or change the name of a sub-fund of an open-ended fund company;
 - (e) application for cancellation of the registration of an open-ended fund company;
 - (f) application for the granting of a modification or waiver by the Commission in respect of a requirement under the Securities and Futures (Open-ended Fund Companies) Rules (**Rules**).

3. Schedule 2 specifies the fees payable to the Registrar for inspecting or obtaining documents and information contained in the register maintained by the Registrar under rule 24(2) of the Rules (*OFC register*).
4. Schedule 3 specifies the fees payable to the Registrar for the following matters—
 - (a) lodging an incorporation form and a copy of the instrument of incorporation delivered under section 112C of the Ordinance;
 - (b) incorporating an open-ended fund company under Part IVA of the Ordinance;
 - (c) lodging a notice of change of name of an open-ended fund company;
 - (d) issuing a certificate of change of name of an open-ended fund company;
 - (e) certifying a copy of any document or information (including an extract of a document) contained in the OFC register;
 - (f) registering a notice concerning the appointment of a receiver or manager of the property of an open-ended fund company or the entering into possession of the property of an open-ended fund company by a person as mortgagee;
 - (g) inspecting a liquidator's statement and obtaining a copy of the statement (or a part of the statement).