

Securities and Futures (Amendment) Bill 2021

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A BILL

To

Amend the Securities and Futures Ordinance and subsidiary legislation made under that Ordinance to introduce a mechanism for the re-domiciliation of fund corporations incorporated outside Hong Kong so as to become open-ended fund companies under that Ordinance; and to provide for related matters.

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 2021.
- (2) This Ordinance comes into operation on 1 November 2021.

2. Enactments amended

The enactments specified in Parts 2 to 5 are amended as set out in those Parts.

Part 2

Amendments to Securities and Futures Ordinance (Cap. 571)

3. Section 112A amended (interpretation of Part IVA)

(1) Section 112A, definition of *open-ended fund company*—

Repeal

everything after “holds”

Substitute

“—

(a) a certificate of incorporation issued under section 112C; or

(b) a certificate of re-domiciliation;”.

(2) Section 112A—

Add in alphabetical order

“*certificate of re-domiciliation* (遷冊證明書) means a certificate issued under section 112ZJC(3)(b);

non-Hong Kong fund corporation (非香港基金法團) has the meaning given by section 112ZJA(1);

re-domiciled OFC (經遷冊公司) means an open-ended fund company that has become such a company under Division 8A;”.

4. Section 112E amended (requirements for registration)

Section 112E, after “section 112D(4)”—

Add

“or 112ZJB(3)”.

5. Section 112H amended (name of open-ended fund company)

Section 112H(1)(a)—

Repeal

everything after “in”

Substitute

“—

- (i) for a company incorporated under section 112C—its certificate of incorporation; or
- (ii) for a re-domiciled OFC—its certificate of re-domiciliation; or”.

6. Section 112U amended (directors)

Section 112U(2)—

Repeal

everything after “in”

Substitute

“—

- (a) for a company incorporated under section 112C—the incorporation form delivered to the Registrar of Companies under section 112C(1)(a); or
- (b) for a re-domiciled OFC—the re-domiciliation form delivered to the Registrar of Companies under section 112ZJC(1)(a).”.

7. Part IVA, Division 8A added

Part IVA, after Division 8—

Add

“Division 8A—Re-domiciliation**112ZJA. Interpretation of Division 8A of Part IVA**

(1) In this Division—

application date (申請日期), in relation to a non-Hong Kong fund corporation, means the date on which an application under section 112ZJB(1) is made by the corporation;

deregister (撤銷註冊), in relation to a non-Hong Kong fund corporation, means to cease to have a registration under the law of its place of incorporation relating to the incorporation or domicile of the corporation in that place;

intended OFC (籌劃中公司), in relation to a non-Hong Kong fund corporation, means the re-domiciled OFC that the corporation is intended to become on the re-domiciliation date;

non-Hong Kong fund corporation (非香港基金法團) means a collective investment scheme constituted as a corporation that is incorporated outside Hong Kong as at the application date;

place of incorporation (成立地), in relation to a non-Hong Kong fund corporation, means—

- (a) the jurisdiction outside Hong Kong in which the corporation is incorporated and under the law of which the corporation is registered as at the application date; or
- (b) if the corporation has, after its incorporation, transferred its domicile to a jurisdiction outside Hong Kong, and is registered under the law of that jurisdiction as at the application date—that jurisdiction;

re-domiciliation date (遷冊日期) means the date on which the certificate of re-domiciliation is issued.

- (2) In this Division, a reference to registration under the law of a jurisdiction outside Hong Kong includes any permission or authorization (however described) of a similar nature under the law of that jurisdiction.

112ZJB. Registration with Commission before re-domiciliation

- (1) On an application by a non-Hong Kong fund corporation, the Commission may register the corporation 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 Commission must refuse to register a non-Hong Kong fund corporation under subsection (1) unless it is satisfied that the requirements for registration specified in section 112E will, on the re-domiciliation date, be met in relation to the intended OFC.
- (4) Without limiting any other ground on which the Commission may refuse to register a non-Hong Kong fund corporation under subsection (1), the Commission may refuse to so register the corporation if it is not satisfied that the registration is in the interest of the investing public.
- (5) On registering a non-Hong Kong fund corporation under subsection (1), the Commission may impose any condition that it considers appropriate.

- (6) The Commission must, as soon as reasonably practicable after registering a non-Hong Kong fund corporation under subsection (1), notify the Registrar of Companies in writing of the registration.
- (7) The Commission must, as soon as reasonably practicable after refusing to register a non-Hong Kong fund corporation under subsection (1), notify the corporation in writing of the refusal and the reasons for it.
- (8) A registration under subsection (1) takes effect on the re-domiciliation date.
- (9) Once a registration under subsection (1) has taken effect—
 - (a) the registration is taken to be a registration under section 112D(1) that has taken effect; and
 - (b) a condition imposed under subsection (5) is taken to be a condition imposed under section 112D(6).

112ZJC. Issue of certificate of re-domiciliation by Registrar of Companies

- (1) A non-Hong Kong fund corporation may apply for a certificate of re-domiciliation by delivering to the Registrar of Companies for registration—
 - (a) a re-domiciliation form prescribed by the OFC rules; and
 - (b) a copy of the instrument of incorporation of the intended OFC 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 issuing a certificate of re-domiciliation prescribed by the OFC rules are met in relation to the non-Hong Kong fund corporation, the Registrar—
- (a) must register the documents delivered under subsection (1); and
 - (b) must issue a certificate of re-domiciliation to the corporation certifying that it has become an open-ended fund company.
- (4) The Registrar of Companies must not take any action under subsection (3) unless the Registrar has been notified of the registration of the non-Hong Kong fund corporation under section 112ZJB(6).

112ZJD. Effect of re-domiciliation

- (1) On the re-domiciliation date of a non-Hong Kong fund corporation—
- (a) the corporation becomes, and continues as a body corporate as, a re-domiciled OFC; and
 - (b) this Ordinance applies accordingly to the re-domiciled OFC.
- (2) Subsection (1) does not operate to—
- (a) create a new legal entity;

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- (b) prejudice or affect the identity or continuity of the non-Hong Kong fund corporation as a corporation registered in its place of incorporation;
 - (c) affect any contract made, resolution passed or any other thing done by or in relation to the corporation;
 - (d) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by or to the corporation; or
 - (e) render defective any legal proceedings commenced or continued by or against the corporation.
- (3) To avoid doubt, on and after the re-domiciliation date, any legal proceedings that could have been commenced or continued by or against the non-Hong Kong fund corporation may be commenced or continued by or against the re-domiciled OFC.
- (4) To avoid doubt—
- (a) with effect from the re-domiciliation date, all property of the non-Hong Kong fund corporation is the property of the re-domiciled OFC; and
 - (b) for tax purposes, the operation of this section does not amount to—
 - (i) a transfer of assets of the corporation; or
 - (ii) a change in the beneficial ownership of those assets.

- (5) If the non-Hong Kong fund corporation is registered as a registered non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622) immediately before its re-domiciliation date—
 - (a) the registration ceases to have effect on the re-domiciliation date; and
 - (b) the re-domiciled OFC is not to be regarded as a non-Hong Kong company (as defined by section 2(1) of that Ordinance).

112ZJE. Deregistration in place of incorporation

- (1) As soon as practicable after the re-domiciliation date of a non-Hong Kong fund corporation, the corporation, which has become a re-domiciled OFC, must take all reasonable steps to procure its deregistration in its place of incorporation.
- (2) Within 60 days after the re-domiciliation date, the non-Hong Kong fund corporation—
 - (a) must be deregistered in its place of incorporation; and
 - (b) must submit to the Commission a document evidencing the deregistration to the satisfaction of the Commission.
- (3) On an application by the non-Hong Kong fund corporation, the Commission may extend the 60-day period mentioned in subsection (2) subject to any condition that the Commission considers appropriate.”.

8. Section 112ZK amended (Commission’s power to make rules)

(1) After section 112ZK(2)(a)—

Add

“(ab) the requirements for issuing a certificate of re-domiciliation;”.

(2) Section 112ZK(2)(b), after “companies”—

Add

“or non-Hong Kong fund corporations”.

(3) Section 112ZK(4)(g)—

Repeal the semicolon

Substitute

“or in the process for a non-Hong Kong fund corporation to become a re-domiciled OFC;”.

9. Section 112ZL amended (rules made with consent of Registrar of Companies)

Section 112ZL(2)(a), after “proposed companies”—

Add

“, non-Hong Kong fund corporations”.

10. Section 214A amended (remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies)

Section 214A(1)—

Repeal

“incorporation”

Substitute

“date of incorporation (or the re-domiciliation date as defined by section 112ZJA(1))”.

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

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

Add

“15MA. Section 112ZJB(1) Refusal to register a non-
of this Ordinance Hong Kong fund
corporation.

15MB. Section 112ZJB(5) Imposition of any
of this Ordinance condition.”.

Part 3

Amendments to Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ)

12. Rule 2 amended (interpretation)

(1) Rule 2—

Renumber the rule as rule 2(1).

(2) After rule 2(1)—

Add

“(2) In these Rules, in relation to a re-domiciled OFC, a reference to the date of incorporation is a reference to the re-domiciliation date.

(3) The words and expressions used in these Rules and defined in section 112A or 112ZJA of the Ordinance have the same meaning as in that section.”.

13. Rule 4 amended (requirements for incorporation of open-ended fund company—section 112C of Ordinance)

Rule 4(1)(c), Chinese text, before “稅務”—

Add

“符合”.

14. Rule 5 amended (content of incorporation form)

(1) Rule 5, after “section 112C(1)(a)”—

Add

“of the Ordinance”.

(2) Rule 5(a), (b), (c) and (d)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

15. Rule 6 amended (signing of incorporation form)

Rule 6, Note—

Repeal

everything after “company”

Substitute

“incorporated under section 112C of the Ordinance—see section 112U(2)(a) of the Ordinance.”.

16. Part 2, Division 1A added

Part 2, after Division 1—

Add

“Division 1A—Re-domiciliation

8A. Application for registration with Commission before re-domiciliation—section 112ZJB(1) of Ordinance

- (1) An application under section 112ZJB(1) of the Ordinance (*application*) must contain—
 - (a) the name of the non-Hong Kong fund corporation (*corporation*) at the time of the application;
 - (b) the place of incorporation of the corporation;
 - (c) the proposed name of the intended OFC;
 - (d) the name and any other particulars required by the Commission in respect of each person who is to be—

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- (i) a director of the intended OFC;
 - (ii) an investment manager of the intended OFC; or
 - (iii) a custodian of the intended OFC; and
 - (e) the address of the place which is to be the registered office of the intended OFC.
- (2) The application must be accompanied by—
- (a) the intended OFC's instrument of incorporation that—
 - (i) the corporation proposes to adopt; and
 - (ii) has been signed by each person who is to be a director of the intended OFC,together with an undertaking made by the corporation that the instrument will not be amended before the re-domiciliation date without the prior approval of the Commission;
 - (b) a certified and authenticated copy of the certificate of incorporation or registration issued to the corporation under the law of its place of incorporation;
 - (c) if the corporation has one or more non-Hong Kong sub-funds—in relation to the sub-fund or each of the sub-funds—
 - (i) a certified and authenticated copy of the certificate of registration of the sub-fund issued under the law of the corporation's place of incorporation; or

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- (ii) any other document evidencing the establishment of the sub-fund under the law of that place acceptable to the Commission;
 - (d) a certified and authenticated copy of the instrument of incorporation or equivalent constitutive document of the corporation;
 - (e) a certificate issued in compliance with the requirement in subrule (4) to the effect that as at the date of the certificate—
 - (i) the corporation—
 - (A) has only 1 place of incorporation, being the one referred to in subrule (1)(b);
 - (B) has a registration relating to its incorporation or domicile under the law of its place of incorporation; and
 - (C) does not have such a registration under the law of any other jurisdiction;
 - (ii) if the corporation has one or more non-Hong Kong sub-funds—the sub-fund or each of the sub-funds is registered or established in the corporation's place of incorporation;
 - (iii) no petition or other similar proceedings to wind up or liquidate the corporation have been notified to the corporation and remain outstanding in any place;

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- (iv) no order has been notified to the corporation, and no resolution has been passed, to wind up or liquidate the corporation in any place;
 - (v) no appointment of a receiver, liquidator or person acting in a similar capacity has been notified to the corporation, and no person is acting as such a receiver, liquidator or person in any place with respect to the corporation or any part of its property;
 - (vi) the corporation is not operating or carrying on business under any scheme, order, compromise or other similar arrangement relating to the insolvency of the corporation entered into or made by the corporation with any person in any place;
 - (vii) the corporation has served notice of its proposal to become a re-domiciled OFC (*proposed re-domiciliation*) on all of its creditors;
 - (viii) any consent to or approval for the proposed re-domiciliation required by any contract entered into or undertaking given by the corporation has been obtained or waived;
 - (ix) the proposed re-domiciliation is not prohibited by, and has been approved in accordance with, the instrument of incorporation or equivalent constitutive document of the corporation;

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- (x) any consent to or approval for the intended deregistration of the corporation in its place of incorporation required by any contract entered into or undertaking given by the corporation has been obtained or waived; and
 - (xi) the intended deregistration of the corporation in its place of incorporation is not prohibited under the law of that place or by the instrument of incorporation or equivalent constitutive document of the corporation;
- (f) a certificate issued in compliance with the requirement in subrule (4) to the effect that—
- (i) the board of directors of the corporation has made a full inquiry into the affairs of the corporation; and
 - (ii) it has formed an opinion that the corporation will be able to pay its debts in full within 12 months beginning on the date of the application,
together with a statement of assets and liabilities (including contingent liabilities) of the corporation as at the latest practicable date, which must be within 3 months before the date of the certificate; and
- (g) the applicable fee (if any).
- (3) If the corporation has one or more non-Hong Kong sub-funds, a reference to the corporation in subrule (2)(e)(iii), (iv), (v) or (vi) or (f) includes the sub-fund or each of the sub-funds.

- (4) For the purposes of subrule (2)(e) or (f), the requirement is that the certificate is—
- (a) issued by the board of directors of the corporation within 5 weeks before the date of the application; and
 - (b) signed by a director of the corporation, and certified by the director as having been approved by resolution of the board of directors of the corporation.
- (5) If any document mentioned in subrule (2) is not in English or Chinese, the document must be accompanied by a certified translation of the document in English.
- (6) In this rule—
- authenticated*** (認證) means authenticated in the manner specified by the Commission;
- certified*** (核證) means certified in the manner specified by the Commission;
- non-Hong Kong sub-fund*** (非香港子基金), in relation to a non-Hong Kong fund corporation the instrument of incorporation (or equivalent constitutive document) of which provides for the division of its relevant property into separate parts, means each such separate part;
- relevant property*** (有關財產), in relation to a non-Hong Kong fund corporation, means the property under the collective investment scheme that is constituted as the corporation.

8B. Application for certificate of re-domiciliation—section 112ZJC of Ordinance

- (1) A non-Hong Kong fund corporation that applies for a certificate of re-domiciliation under section 112ZJC of the Ordinance must deliver, in the manner specified in subrule (2), to the Registrar the following fees and documents, together with the documents specified in section 112ZJC(1) of the Ordinance (*prescribed documents*)—
 - (a) the applicable fee (if any) for lodging the prescribed documents;
 - (b) the applicable fee (if any) for issuing a certificate of re-domiciliation;
 - (c) a notice in the form specified by the Commissioner of Inland Revenue under section 5D(1) of the Business Registration Ordinance (Cap. 310); and
 - (d) the prescribed business registration fee and levy.
- (2) For the purposes of subrule (1), delivery to the Registrar is to be done by way of delivery to the Commission.
- (3) On registering a non-Hong Kong fund corporation under section 112ZJB(1) of the Ordinance, the Commission must, as soon as reasonably practicable, send to the Registrar the documents, fees and levy referred to in subrule (1).
- (4) In this rule—
levy (徵費) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310);

prescribed business registration fee (訂明的商業登記費) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310).

8C. Content of re-domiciliation form

The re-domiciliation form mentioned in section 112ZJC(1)(a) of the Ordinance must contain, in relation to the intended OFC—

- (a) the particulars specified in section 1 of Schedule 2;
- (b) for each person who is to be a director (whether or not a non-resident director) of the intended OFC—the particulars and statement specified in sections 2 and 3 of Schedule 2;
- (c) for each person who is to be a non-resident director (*principal*) of the intended OFC—the particulars specified in section 4 of Schedule 2 in relation to each person who is to be a process agent of the principal;
- (d) the statements specified in section 6 of Schedule 2; and
- (e) the statement of compliance mentioned in rule 8E.

8D. Signing of re-domiciliation form

The re-domiciliation form of a non-Hong Kong fund corporation must be signed by any one of the first directors of the intended OFC.

Note—

As to the first directors of a re-domiciled OFC—see section 112U(2)(b) of the Ordinance.

8E. Statement of compliance

- (1) The statement of compliance referred to in rule 8C(e) is a statement certifying that—
 - (a) all the requirements prescribed by Part IVA of the Ordinance and these Rules for the non-Hong Kong fund corporation to become a re-domiciled OFC (except for section 112ZJE of the Ordinance) (*relevant requirements*) have been complied with; and
 - (b) the information, statements and particulars contained in the re-domiciliation form are accurate and consistent with those in the intended OFC's instrument of incorporation.
- (2) The Registrar may accept the statement of compliance as sufficient evidence that the relevant requirements are met.”.

17. Rule 14 amended (alteration of instrument of incorporation)

Rule 14(2)(b), after “section 112K(3)”—

Add

“of the Ordinance”.

18. Rule 19 amended (registered office)

Rule 19, after “Ordinance”—

Add

“or the re-domiciliation form registered under section 112ZJC(3) of the Ordinance”.

19. Rule 28 amended (unsatisfactory document)

After rule 28(1)(a)—

Add

“(ab) the document is neither in English nor in Chinese and is not accompanied by a translation of it in English that is certified in the manner specified by the Commission;”.

20. Rule 67 amended (register of shareholders)

(1) After rule 67(3)—

Add

“(3A) An open-ended fund company that is a re-domiciled OFC must, within 2 months after the re-domiciliation date, enter in the register of shareholders, in respect of each shareholder as at that date, the particulars required under subrules (2) and (3).”.

(2) Rule 67(7), after “(1),”—

Add

“(3A),”.

21. Rule 101 amended (appointment of directors)

(1) Rule 101—

Repeal subrule (1).

(2) Rule 101(2)—

Repeal

“subsequent appointment of a director”

Substitute

“appointment of a director (other than a first director)”.

(3) At the end of rule 101(2)—

Add

“**Note—**

As to the first directors of an open-ended fund company—see section 112U(2) of the Ordinance.”.

22. Rule 114 amended (appointment of custodian)

Rule 114(1), after “section 112D”—

Add

“or 112ZJB”.

23. Rule 125 amended (appointment of investment manager)

Rule 125(1), after “section 112D”—

Add

“or 112ZJB”.

24. Rule 150 amended (primary accounting reference date)

Rule 150—

Repeal subrule (3)

Substitute

“(3) In this rule—

relevant date (有關日期) means the last day of the month in which the first anniversary of the open-ended fund company’s date of incorporation falls.”.

25. Rule 160 amended (new sub-funds and termination of sub-funds)

(1) Rule 160, Chinese text, heading—

Repeal

“子基金的終止”

Substitute

“終止子基金”。

- (2) After rule 160(2)—

Add

“(2A) Subrule (1) also does not apply to a sub-fund of a re-domiciled OFC in existence on the re-domiciliation date of the re-domiciled OFC.”.

26. Schedule amended (content of incorporation form)

- (1) The Schedule—

Renumber the Schedule as Schedule 1.

- (2) Schedule 1, Chinese text, section 4(a), before “法律”—

Add

“有關”。

- (3) Schedule 1, Chinese text, section 4(b)—

Repeal

everything before “代理人在”

Substitute

“(b) 如該代理人是一名個人——該”。

- (4) Schedule 1, Chinese text, section 4(c)—

Repeal

everything before “該”

Substitute

“(c) 如該代理人是公司——”。

- (5) Schedule 1, Chinese text, section 4(d)—

Repeal

everything before “該”

Substitute

“(d) 如該代理人是合夥——”。

- (6) Schedule 1, Chinese text, section 5(1), definition of **姓氏**—

Repeal

everything after “surname)”

Substitute

“的涵義如下：如某人通常以有別於其姓氏的稱銜，而為人所認識，則就該人而言，**姓氏**指該稱銜。”。

- (7) Schedule 1, Chinese text, section 5(2)—

Repeal paragraphs (b) and (c)**Substitute**

“(b) 如某人通常以有別於其姓氏的稱銜，而為人所認識，並且在採用或繼承該稱銜之前，以另一姓名而為人所認識——就該人而言，不包括該另一姓名；
及

(c) 如某已婚女士在婚前，以某姓名或姓氏而為人所認識——就該女士而言，不包括該姓名或姓氏。”。

27. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[r. 8C]

Content of Re-domiciliation Form

Part 1

Particulars of Non-Hong Kong Fund Corporation and Intended OFC

1. Particulars relating to non-Hong Kong fund corporation and intended OFC

The particulars specified for the purposes of rule 8C(a) are—

- (a) the following particulars of the non-Hong Kong fund corporation—
 - (i) its name;
 - (ii) its place of incorporation; and
 - (iii) whether it is registered as a registered non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622); and
- (b) the following particulars of the intended OFC—
 - (i) its proposed name; and
 - (ii) the address of its registered office.

Part 2

Particulars and Statement of Proposed Directors and Process Agents

2. Particulars of directors

The particulars specified for the purposes of rule 8C(b) are—

- (a) the person's present forename and surname, former forename or surname (if any), and aliases (if any);
- (b) the person's usual residential address; and
- (c) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person.

3. Statement relating to directors

The statement specified for the purposes of rule 8C(b) is a statement by the person that the person—

- (a) has consented to be a director of the intended OFC; and
- (b) has attained the age of 18 years.

4. Particulars of process agent of non-resident director

The particulars specified for the purposes of rule 8C(c) are—

- (a) the name of the process agent;

- (b) if the process agent is an individual—the process agent’s usual residential address in Hong Kong;
- (c) if the process agent is a company—the address of the company’s registered office in Hong Kong; and
- (d) if the process agent is a partnership—the principal place of business of the partnership in Hong Kong.

5. Interpretation of this Part

(1) In this Part—

forename (名字) includes a Christian or given name;

residential address (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this Part, to have no other permanent address; and
- (b) does not include a post office box number;

surname (姓氏), for a person usually known by a title different from the person’s surname, means that title.

(2) In this Part, a reference to a former forename or surname does not include—

- (a) in relation to a person—
 - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
 - (ii) a forename or surname that has been changed or ceased to be used for at least 20 years;

- (b) in relation to a person usually known by a title different from the person's surname—the name by which the person was known before the adoption of or succession to the title; or
- (c) in relation to a married woman—a name or surname by which she was known before her marriage.

Part 3

Statements relating to Instrument of Incorporation

6. Statements relating to instrument of incorporation

The statements specified for rule 8C(d) are—

- (a) a statement that the intended OFC's instrument of incorporation has been signed by every person who is to be a director of the intended OFC as from the re-domiciliation date of the intended OFC; and
 - (b) a statement that the contents of the copy of the intended OFC's instrument of incorporation, with or without the part showing the signature and the date of signing as they appear on the original document, are the same as those of the instrument of incorporation.”.
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Part 4

Amendments to Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (Cap. 571 sub. leg. AR)

28. Section 2 amended (interpretation)

- (1) Section 2(1), Chinese text, definition of *擬成立公司*—

Repeal

“義。”

Substitute

“義；”。

- (2) Section 2(1)—

Add in alphabetical order

“*intended OFC* (籌劃中公司) has the meaning given by section 112ZJA(1) of the Ordinance;

non-Hong Kong fund corporation (非香港基金法團) has the meaning given by section 112ZJA(1) of the Ordinance;”。

29. Section 3 amended (fees for certain applications made in relation to proposed companies)

- (1) Section 3(2)(a), Chinese text—

Repeal

everything after “亦”

Substitute

“有另一申請根據本條例第104條，就有關擬成立公司向證監會提出；或”。

(2) Section 3(2)(b)—

Repeal

“company”

Substitute

“proposed company concerned”.

30. Section 3A added

After section 3—

Add

“3A. Fees for certain applications made in relation to non-Hong Kong fund corporations

- (1) A fee specified in column 3 of Part 1A 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 intended OFC concerned;
 - (b) an application has been made under that section for the non-Hong Kong fund corporation concerned and is pending at the time the specified application is made; or
 - (c) an authorization is granted under that section for the non-Hong Kong fund corporation concerned.”.

31. Schedule 1 amended (fees payable to Commission)

(1) Schedule 1—

Repeal

“[ss. 3”

Substitute

“[ss. 3, 3A”.

(2) Schedule 1, after Part 1—

Add**“Part 1A****Fees for Non-Hong Kong Fund Corporations**

Column 1 Item	Column 2 Description	Column 3 Fee
1.	An application under section 112ZJB(1) of the Ordinance to register a non-Hong Kong fund corporation where the intended OFC has or could have one or more sub-funds	\$10,000 plus \$1,250 for each sub- fund
2.	An application under section 112ZJB(1) of the Ordinance to register a non-Hong Kong fund corporation in any case other than that described in item 1	\$5,000”.

32. Schedule 2 amended (fees payable to Registrar for inspecting or obtaining documents and information)

- (1) Schedule 2, Part 2, after item 1(a)—

Add

“(ab) a re-domiciliation form..... R : \$16
U : \$18”.

- (2) Schedule 2, Part 2, after item 2(a)—

Add

“(ab) a re-domiciliation form..... O : \$30”.

- (3) Schedule 2, Part 2, after item 3(a)—

Add

“(ab) a re-domiciliation form..... R : \$21
U : \$23”.

33. Schedule 3 amended (miscellaneous fees payable to Registrar)

- (1) Schedule 3, Chinese text, item 1—

Repeal

“法團成立表格及法團成立文書的文本”

Substitute

“法團成立文書的文本及法團成立表格”.

- (2) Schedule 3, item 2—

Repeal

“Part IVA”

Substitute

“section 112C”.

(3) Schedule 3, after item 2—

Add

- | | | |
|------|---|-----------|
| “2A. | Lodging a re-domiciliation form and a copy of the instrument of incorporation delivered under section 112ZJC of the Ordinance | \$479 |
| 2B. | Issuing a certificate of re-domiciliation under section 112ZJC of the Ordinance | \$2,555”. |
-

Part 5

Related and Consequential Amendments

Division 1—Amendment to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

34. Schedule amended (specification of public offices)

The Schedule, after the entry relating to the Registrar of Companies specified for the purposes of the Registered Trustees Incorporation Ordinance (Cap. 306)—

Add

“Registrar of Companies	Securities and Futures Ordinance (Cap. 571), Part IVA.
Registrar of Companies	Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ).”.

Division 2—Amendments to Business Registration Ordinance (Cap. 310)

35. Section 2 amended (interpretation and application)

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

Repeal

“a company under section 112C”

Substitute

“an open-ended fund company under Part IVA”.

(2) Section 2(1)—

Add in alphabetical order

“*incorporate* (成立為法團), in relation to an open-ended fund company, includes to become such a company under Division 8A of Part IVA of the Securities and Futures Ordinance (Cap. 571);

re-domiciliation form (遷冊表格) means the re-domiciliation form referred to in section 112ZJC(1)(a) of the Securities and Futures Ordinance (Cap. 571);”.

36. Section 5D amended (notices in specified form)

Section 5D(2) and (3), after “incorporation form”—

Add

“, re-domiciliation form”.

Division 3—Amendment to Business Registration Regulations (Cap. 310 sub. leg. A)

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

Regulation 3A(3)(ab)(iii)—

Repeal

“company; and”

Substitute

“company or the re-domiciliation date (as defined by section 112ZJA(1) of the Securities and Futures Ordinance (Cap. 571)); and”.

Division 4—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)

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

Schedule 1, section 4A, after “incorporation of”—

Add

“, and re-domiciliation in respect of,”.

Explanatory Memorandum

The main object of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (*Ordinance*) and subsidiary legislation made under the Ordinance to introduce a mechanism for the re-domiciliation of fund corporations incorporated outside Hong Kong (*non-Hong Kong fund corporations*) so as to become open-ended fund companies under the Ordinance.

Part 1—Preliminary

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

Part 2—Amendments to Ordinance

3. Part IVA of the Ordinance deals with open-ended fund companies. Clause 7 adds a new Division 8A (consisting of new sections 112ZJA to 112ZJE) to that Part to provide for the re-domiciliation of non-Hong Kong fund corporations.
4. The new section 112ZJA of the Ordinance provides for the definitions of expressions used in the new Division 8A of Part IVA of the Ordinance.
5. The new section 112ZJB of the Ordinance enables a non-Hong Kong fund corporation to apply for registration with the Securities and Futures Commission (*Commission*). The registration takes effect when a certificate of re-domiciliation is issued by the Registrar of Companies (*Registrar*) to the corporation under the new section 112ZJC of the Ordinance, and is taken to be a registration under section 112D(1) of the Ordinance.

6. The new section 112ZJD of the Ordinance provides that the non-Hong Kong fund corporation becomes an open-ended fund company on the date of issue of the certificate of re-domiciliation (*re-domiciliation date*) and explains the effect of the re-domiciliation. The new section 112ZJE of the Ordinance requires the non-Hong Kong fund corporation to be deregistered, after the re-domiciliation date, in the jurisdiction in which it was originally incorporated or domiciled.
7. Other clauses in Part 2 of the Bill make amendments to Part IVA and section 214A of, and Schedule 8 to, the Ordinance which are related or consequential to the addition of the new Division 8A of Part IVA of the Ordinance, including—
 - (a) by adding relevant definitions to section 112A of the Ordinance (clause 3); and
 - (b) by amending Schedule 8 to the Ordinance to make certain decisions of the Commission made under or pursuant to that Division subject to review by the Securities and Futures Appeals Tribunal (clause 11).

Part 3—Amendments to Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ) (*Rules*)

8. Part 3 of the Bill amends the Rules to set out the procedures for the re-domiciliation of non-Hong Kong fund corporations.
9. Clause 16 adds a new Division 1A (consisting of new rules 8A to 8E) to Part 2 of the Rules. The new rules 8A and 8B stipulate how to make an application for registration with the Commission and an application for issue of a certificate of

re-domiciliation by the Registrar respectively. The new rules 8C to 8E deal with the re-domiciliation form mentioned in the new section 112ZJC(1)(a) of the Ordinance. Clause 27 adds a new Schedule 2 to the Rules which provides for the content of the re-domiciliation form.

10. Other clauses in Part 3 of the Bill contain amendments to various provisions of the Rules which are relating to the re-domiciliation of non-Hong Kong fund corporations or are minor textual amendments.

Part 4—Amendments to Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (Cap. 571 sub. leg. AR)

11. Part 4 of the Bill contains provisions to amend the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (Cap. 571 sub. leg. AR) to prescribe the fees payable for the re-domiciliation of non-Hong Kong fund corporations or for inspecting or obtaining an image record, or a copy of an image record, of re-domiciliation forms.

Part 5—Related and Consequential Amendments

12. Clause 34 amends the Schedule to the Specification of Public Offices Notice (Cap. 1 sub. leg. C) so that the Registrar may delegate the powers and duties under Part IVA of the Ordinance and the Rules in accordance with section 43 of the Interpretation and General Clauses Ordinance (Cap. 1).

13. Clauses 35 and 36 contain amendments to the Business Registration Ordinance (Cap. 310). Clause 37 contains an amendment to the Business Registration Regulations (Cap. 310 sub. leg. A). Those amendments relate to business registration applications to be made in connection with the re-domiciliation of non-Hong Kong fund corporations.

14. Clause 38 amends Schedule 1 to the Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B) so that the services to be provided under the Companies Registry Trading Fund will cover facilitation of re-domiciliation in respect of open-ended fund companies.