

## LEGISLATIVE COUNCIL BRIEF

### **Securities and Futures (Amendment) Bill 2021 Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 22 June 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that the Securities and Futures (Amendment) Bill 2021 and the Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 (“the Bills”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to establish mechanisms for existing non-Hong Kong investment funds to be registered as Open-ended Fund Companies (“OFCs”) or Limited Partnership Funds (“LPFs”).

#### **JUSTIFICATIONS**

##### **Development of Hong Kong’s asset and wealth management industry**

2. We have witnessed in recent years robust growth in wealth creation in Asia, increase in portfolio allocation to the Asian markets, and deepening financial market liberalisation in Mainland China. All these are beneficial to Hong Kong’s development as a premier asset and wealth management centre in the region. The Government has been stepping up efforts to sharpen Hong Kong’s competitive edge on this front. One of our key policy tools is to encourage fund formation and operation in Hong Kong by diversifying and enhancing our fund structures with a view to developing Hong Kong into a preferred fund domicile.

## Existing fund regimes

3. As a result of the efforts of the Government and financial regulators in establishing the OFC<sup>1</sup> and LPF<sup>2</sup> regimes, through the amendment of the Securities and Futures Ordinance (Cap. 571) (“SFO”) and the enactment of the Limited Partnership Fund Ordinance (Cap. 637) (“LPFO”) in July 2018 and August 2020 respectively, an investment fund may now be established in Hong Kong in the form of a company or a limited partnership, in addition to the long established form of a unit trust. Nevertheless, the existing OFC and LPF regimes have yet to provide for a re-domiciliation mechanism to attract more funds established elsewhere to be based in Hong Kong.

## Latest market development

4. Currently, most funds active in Hong Kong are offshore funds (i.e. with their central management and control exercised outside Hong Kong). In view of the latest regulatory developments in traditional offshore fund jurisdictions<sup>3</sup> which are rendering it increasingly costly to set up and maintain offshore funds, the industry anticipates that more investment funds would consider moving “onshore” to where their substantial activities are conducted. Hong Kong would be a logical choice for many

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<sup>1</sup> OFC is a corporate form of public/private investment funds under the regulation of the Securities and Futures Commission (“SFC”). An OFC has the flexibility to issue and cancel shares for investors’ subscription and redemption in the funds. As at 28 June 2021, 15 OFCs have been set up.

<sup>2</sup> LPF regime is a registration regime for investment funds under the Companies Registry (“CR”)’s administration. Limited partnership is a common constitution form for private funds such as private equity funds. In a limited partnership, the general partner (i.e. operating person) with unlimited liability in respect of the debts and obligations of the fund and the limited partner(s), who are essentially investors, with limited liability will have freedom of contract in respect of the operation of the partnership. Most LPFs are privately-offered investment funds targeted at professional investors unless SFC’s authorisation for public offering is obtained. As at 28 June 2021, 283 LPFs have been set up.

<sup>3</sup> For example, traditional offshore fund jurisdictions have introduced economic substance requirements to meet the obligations under the Organisation for Economic Co-operation and Development’s Base Erosion and Profit Shifting initiative since 2019. Specifically, business entities which are registered in these jurisdictions and carrying out geographically mobile activities will need to perform their core income generating activities in these jurisdictions by employing an adequate number of qualified employees and incurring an adequate amount of operating expenditure in these jurisdictions. If the entities do not comply with the requirements, these jurisdictions will be required to spontaneously exchange relevant information about the entities with the jurisdictions of residence of the immediate parent, ultimate parent, and ultimate beneficial owner of the entities.

fund managers given our strong community of investors and professional service providers, proximity to Mainland China and active initial public offering market for conducting fundraising, deal sourcing and investment management activities. The industry has been calling for an early introduction of a fund re-domiciliation mechanism for attracting existing non-Hong Kong funds to be established and operate in Hong Kong.

5. A task force led by the Financial Services and the Treasury Bureau, comprising members from the Hong Kong Monetary Authority, the SFC and the Inland Revenue Department (“IRD”), has come up with the legislative proposals on re-domiciliation under the OFC and LPF regimes as set out in paragraphs 9 to 15 below. In doing so, the task force has taken into account the local market landscape, overseas regulatory experience<sup>4</sup>, as well as international market and regulatory trends. The objective is to create a commercially viable fund re-domiciliation mechanism with legal and tax certainty for non-Hong Kong funds set up in corporate or limited partnership form to re-locate to Hong Kong, with a view to enhancing the attractiveness of the OFC and LPF regimes and the competitiveness of Hong Kong as an international asset and wealth management hub. It will also bring more jobs and business opportunities to the local fund and professional services industries.

## **THE PROPOSALS**

6. The key features of the proposed fund re-domiciliation mechanisms are set out in paragraphs 9 to 15 below.

7. Under the proposed mechanisms, a fund set up in corporate or limited partnership form under the law of a jurisdiction outside Hong Kong is eligible to be registered as an OFC or LPF in Hong Kong respectively, if it meets the same set of eligibility requirements for a new fund to be registered as an OFC<sup>5</sup> or an LPF<sup>6</sup> respectively. Upon re-domiciliation,

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<sup>4</sup> Examples include Ireland, Singapore and the Cayman Islands.

<sup>5</sup> As set out in section 112E of the SFO, including requirements relating to the directors, investment manager and custodian of an OFC.

<sup>6</sup> As set out in section 7 of the LPFO. For example, the fund has one general partner and at least one limited partner, the fund is constituted by a limited partnership agreement, the fund has an office in Hong Kong to which communications and notices may be sent, etc.

the fund would have the same rights and obligations as any other newly established OFCs or LPFs in Hong Kong<sup>7</sup>.

8. The proposed mechanisms provide for the preservation of the continuity of the fund, including contracts made and property acquired, upon re-domiciliation. The proposed mechanisms do not operate to create a new legal entity (which will necessitate dissolution procedures of the original fund).

### **Re-domiciliation mechanism for OFC**

9. For registration of a non-Hong Kong fund corporation as an OFC in Hong Kong, an application should be made to the SFC with the applicable fee. With reference to the existing requirements of setting up a new OFC and overseas experience, we propose the application to be accompanied, *inter alia*, by the following documents:

- (a) the constitutive document of the corporation;
- (b) a certificate issued by the corporation's board of directors to confirm, *inter alia*:
  - (i) that the proposed re-domiciliation is not prohibited by and has been approved in accordance with the corporation's constitutive document;
  - (ii) that the intended deregistration of the corporation in the place of incorporation is not prohibited under the law of that place or by the corporation's constitutive document and any consent to the intended deregistration required under any contract has been obtained;
  - (iii) the solvency of the corporation and each of its sub-funds (if any);
  - (iv) the absence of any petition for winding-up, liquidation, receivership or compromise in respect of the corporation or any of its sub-funds (if any); and

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<sup>7</sup> The proposed mechanisms would not: (a) affect any contract made, resolution passed or any other thing done by or in relation to the fund; (b) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by or on behalf of the fund; or (c) render defective any legal proceedings commenced or continued by, or on behalf of or against the fund.

- (v) service of notice of the proposed re-domiciliation on all of its creditors.

10. If satisfied with the application, the SFC may register the non-Hong Kong fund corporation, and notify the Registrar of Companies (“RoC”), who may issue a certificate of re-domiciliation to the corporation whereupon the registration by the SFC will come into effect. The re-domiciled OFCs will be included in the register of OFCs maintained by the RoC and available on the SFC’s website for public inspection.

11. After the issue of the certificate of re-domiciliation, the corporation concerned will be required to deregister in its place of incorporation and provide to the SFC to its satisfaction evidence of such deregistration within 60 days, failing which its registration with the SFC may be cancelled unless an approval for extension is granted.

### **Re-domiciliation mechanism for LPF**

12. To register a non-Hong Kong fund set up in limited partnership form as an LPF in Hong Kong, an application should be made to the RoC with the applicable fees. The information required in the application is similar to what is required for a new fund’s application under the LPF regime<sup>8</sup>. The application should be submitted by a Hong Kong law firm, or a solicitor admitted to practise in Hong Kong, on behalf of the fund. Modelling on the re-domiciliation mechanisms in other jurisdictions, we propose to also require the application to, *inter alia*, include a statement confirming that:

- (a) any consent to the proposed registration as an LPF and the intended deregistration of the fund in its place of establishment required by any contract entered into by or on behalf of the fund has been obtained or waived;
- (b) the intended deregistration of the fund in its place of establishment is not prohibited under the law of that place or by any agreement entered into among the partners in the fund; and

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<sup>8</sup> As set out in Schedule 1 to the LPFO. The required information includes the proposed name of the fund, investment scope and principal place of business, details of the general partner, investment manager, responsible person (for carrying out anti-money laundering and counter-terrorist financing measures), etc.

- (c) the proposed general partner understands that if the fund is registered as an LPF, the RoC may strike the name of the fund off the LPF Register if the fund is not deregistered in its place of establishment within 60 days after re-domiciliation or the period as may be extended by the RoC.

13. If satisfied that the application for registration meets the specified requirements, the RoC may register the fund as an LPF and issue a certificate of registration as proof of registration. The re-domiciled LPFs will be included in the LPF Register maintained by the RoC and made available for public inspection.

14. After the issue of the certificate of registration, the fund concerned will be required to be deregistered in its place of establishment within 60 days, failing which the RoC may strike the name of the fund off the LPF Register unless an approval for extension is granted.

### **Appeal mechanisms**

15. We aim to provide a mechanism for the aggrieved parties to appeal against the SFC's or RoC's decisions with reference to the existing practice under the OFC or LPF regime respectively. If any person is aggrieved by the SFC's or RoC's decision to refuse to register a re-domiciled OFC or LPF, the person may appeal to the Securities and Futures Appeals Tribunal or the Court of First Instance respectively against the decision.

### **Simultaneous business registration of LPF**

16. Separately, we would also ride on this legislative exercise to introduce amendments to the Business Registration Ordinance (Cap. 310) ("BRO") and Business Registration Regulations (Cap. 310A) to provide for simultaneous business registration applications of LPFs (i.e. applicants would be able to apply for LPF registration and business registration simultaneously). Similar arrangements have been in place for OFC applications.

## OTHER MATTERS

### Tax and stamp duty treatment

17. We intend to apply the same profits tax<sup>9</sup> and stamp duty<sup>10</sup> arrangements to re-domiciled funds as newly formed OFCs or LPFs. The re-domiciliation of a fund as an OFC or an LPF does not amount to a transfer of assets of the fund or a change in the beneficial ownership of the assets of the fund. It follows that the re-domiciliation process would not give rise to any stamp duty implications. Such an arrangement aligns with the tax treatment of the existing mechanism for funds registered under the Limited Partnerships Ordinance (Cap. 37) to migrate to the LPF regime under the LPFO.

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<sup>9</sup> Like other funds operating in Hong Kong, a privately-offered OFC or an LPF meeting the definition of “fund” under section 20AM of the Inland Revenue Ordinance (Cap. 112) and subject to certain exemption conditions set out in the provisions of Cap. 112 can enjoy a profits tax exemption on transactions in qualifying assets specified in Schedule 16C to Cap. 112 and transactions incidental to the carrying out of qualifying transactions. A publicly-offered OFC can enjoy a profits tax exemption in the same manner as other SFC-authorized funds.

<sup>10</sup> A share in an OFC is within the definition of Hong Kong stock under section 2 of the Stamp Duty Ordinance (Cap. 117). Stamp duty will not be payable on an allotment or redemption of shares in an OFC. Nevertheless, transfers of shares in an OFC will be subject to stamp duty. If the shares in an OFC are listed or traded on the Stock Exchange of Hong Kong, the OFC will constitute an exchange traded fund and the transfer of its shares will be exempt from stamp duty. Contributions or distribution of dutiable assets in consideration of any allotment or redemption of shares in an OFC would be subject to stamp duty. However, if the OFC is an open-ended collective investment scheme authorised by the SFC, transfers of Hong Kong stock involved in such an in-kind allotment or redemption process will be exempt from stamp duty. In the case of an umbrella OFC, each of the sub-funds will be regarded as a separate OFC. Therefore, both the conversion of interest from one sub-fund to another and transfer of dutiable assets between different sub-funds will be subject to stamp duty.

An interest in an LPF is not a share, stock, debenture, loan stock, fund, bond or note issued by the LPF, nor is it a unit under a unit trust scheme. It does not fall within the definition of “stock” under section 2 of the Stamp Duty Ordinance (Cap. 117). Accordingly, an instrument under which an interest in an LPF is contributed/transferred/withdrawn is not chargeable with stamp duty. Meanwhile, an LPF may accept capital contributions in cash or in kind as provided in its limited partnership agreement. In-kind capital contributions in relation to the transfer of dutiable assets (such as Hong Kong stock or immovable property) would be subject to stamp duty. The distribution of profits and assets of LPF to the limited partner(s) will also be permitted in accordance with the terms of the limited partnership agreement. A transfer of dutiable assets of an LPF to a limited partner would be subject to stamp duty.

## **OTHER OPTIONS**

18. We must introduce the Bills to put in place statutory fund re-domiciliation mechanisms in order to provide a suitable legal vehicle for existing non-Hong Kong funds to re-locate to Hong Kong. The legal continuity of re-domiciled funds made possible by the re-domiciliation mechanisms under the Bills (which obviate the need to set up a new fund afresh) is considered vital by the industry when choosing the new domicile of a fund. This cannot be achieved by administrative measures. There is no other option.

## **THE BILLS**

19. The main provisions of the Securities and Futures (Amendment) Bill 2021 are as follows –

- (a) clause 1 sets out the short title and provides for commencement;
- (b) clause 7 adds a new Division 8A (new sections 112ZJA to 112ZJE) to Part IVA of the SFO to provide for re-domiciliation of non-Hong Kong fund corporations;
- (c) the new section 112ZJA of the SFO provides for the definitions of expressions used in the new Division 8A;
- (d) the new section 112ZJB of the SFO enables a non-Hong Kong fund corporation to apply for registration with the SFC;
- (e) the new section 112ZJC of the SFO empowers the RoC to issue a certificate of re-domiciliation;
- (f) the new section 112ZJD of the SFO provides that the non-Hong Kong fund corporation becomes an OFC on the date of issue of the certificate of re-domiciliation and explains the effect of the re-domiciliation;
- (g) the new section 112ZJE of the SFO provides that after the re-domiciliation date, the non-Hong Kong fund corporation must be deregistered in the jurisdiction in which it was originally incorporated or domiciled.



20. The main provisions of the Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 are as follows –

- (a) clause 1 sets out the short title and provides for commencement.
- (b) Part 2 contains amendments to the LPFO relating to re-domiciliation of non-Hong Kong funds. In particular, clause 10 adds a new Part 7A (new sections 82A to 82F) to the LPFO.
- (c) the new section 82A of the LPFO provides for the definitions of expressions used in the new Part 7A of the LPFO.
- (d) the new section 82B of the LPFO enables a general partner in a non-Hong Kong fund to apply for registration of the fund as an LPF;
- (e) the new section 82C of the LPFO empowers the RoC to register such a non-Hong Kong fund and issue a certificate of registration;
- (f) the new section 82D of the LPFO provides that, on registration, the non-Hong Kong fund continues in existence as an LPF and explains the effect of the registration;
- (g) the new section 82E of the LPFO provides that the non-Hong Kong fund must be deregistered in the jurisdiction in which it was originally established;
- (h) the new section 82F of the LPFO provides for the business registration or notification to be made after registration as an LPF;
- (i) Part 3 of the Bill contains amendments to the BRO, Business Registration Regulations and LPFO relating to simultaneous business registration applications of LPFs. In particular, clause 16 adds a new section 5BA to the BRO to provide for the requirement of simultaneous business registration applications of LPFs.

## **LEGISLATIVE TIMETABLE**

21. The legislative timetable will be –

Publication in the Gazette	2 July 2021
First Reading and commencement of Second Reading debate	7 July 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **IMPLICATIONS OF THE PROPOSALS**

22. The Bills are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the existing provisions of the SFO, LPFO and BRO. There are no environmental, productivity, family or gender implications, and no sustainability implications other than the economic implications set out in paragraph 23 below.

23. On economic implications, the proposed fund re-domiciliation regime would help attract existing non-Hong Kong funds to set up and operate in Hong Kong. This can create new business opportunities for the asset and wealth management sector and generate demand for related professional services including legal, accounting and fund administration services. This would help consolidate Hong Kong's status as an international asset and wealth management centre and enhance our status as an international financial centre.

## **PUBLIC CONSULTATION**

24. In a public consultation conducted by the SFC for the purpose of enhancing the OFC regime in 2019, a majority of the respondents supported the introduction of a re-domiciliation mechanism for OFCs. The same sentiment regarding LPF re-domiciliation was conveyed to the Government in the industry consultation on introducing the LPF regime conducted in July 2019. In drawing up the proposals as set out in

paragraphs 9 to 15 above, we have taken into consideration the feedback received.

25. We briefed the LegCo Panel on Financial Affairs on the proposals on 1 February 2021. Members were generally in support of our proposals.

## **PUBLICITY**

26. We will issue a press release on the gazettal of the Bills. We will also arrange a spokesperson to answer media enquiries.

## **ENQUIRIES**

27. Enquiries relating to this brief can be directed to Ms Estrella Cheung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2054.

**Financial Services Branch**  
**Financial Services and the Treasury Bureau**  
**29 June 2021**

**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;
  - (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—

- (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
  - (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;
  - (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;
  - (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.”

**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—
- 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;
  - 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
  - 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.
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Registrar of Companies	Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ).”.
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**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.



## Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021

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## A BILL

## To

Amend the Limited Partnership Fund Ordinance to introduce a mechanism for the re-domiciliation of funds set up outside Hong Kong in the form of limited partnerships so as to become limited partnership funds under that Ordinance; to amend the Business Registration Ordinance and the Business Registration Regulations to provide for simultaneous business registration applications on registration of limited partnership funds; 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 Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021.
- (2) Subject to subsection (3), this Ordinance comes into operation on 1 November 2021.
- (3) Part 3 comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

##### 2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

## Part 2

### Amendments to Limited Partnership Fund Ordinance (Cap. 637) relating to Re-domiciliation of Funds Set up outside Hong Kong

3. **Section 2 amended (interpretation)**

Section 2—

**Add in alphabetical order**

“*certificate of registration* (註冊證明書), in relation to a limited partnership fund, means the certificate of registration issued to the fund under section 13(1), 80(3)(a) or 82C(3);”.

4. **Section 5 amended (references to general partner)**

After section 5(x)—

**Add**

- “(xa) section 82E(2);
- “(xb) section 82F(1) and (2);”.

5. **Section 7 amended (eligibility)**

Section 7(2)(b)(ii)—

**Repeal**

“under section 13”.

6. **Section 14 amended (appeal against Registrar’s decision to refuse registration)**

Section 14(1), after “fund”—

**Add**

“under section 12, 80 or 82C”.

7. **Section 41 amended (Registrar to issue certificate of change of name)**

(1) Section 41(5)—

**Repeal**

“proceedings by”

**Substitute**

“proceedings commenced or continued by, on behalf of”.

(2) Section 41(5)—

**Repeal**

“continued by or” (wherever appearing)

**Substitute**

“continued by, on behalf of or”.

8. **Section 44 amended (Registrar may change limited partnership fund’s name in case of failure to comply with direction)**

(1) Section 44(6)—

**Repeal**

“proceedings by”

**Substitute**

“proceedings commenced or continued by, on behalf of”.

(2) Section 44(6)—

**Repeal**

“continued by or” (wherever appearing)

**Substitute**

“continued by, on behalf of or”.

9. **Section 65 amended (Registrar may send inquiry letter to general partner)**

(1) Section 65(2)(d)—

**Repeal**

“and”.

(2) Section 65(2)(e)—

**Repeal**

“under section 13”.

(3) Section 65(2)(e)(ii)—

**Repeal**

“companies.”

**Substitute**

“companies; and”.

(4) After section 65(2)(e)—

**Add**

“(f) if the fund is registered under section 82C—section 82E is not complied with in relation to the fund.”.

10. **Part 7A added**

After Part 7—

**Add**

**“Part 7A**

**Re-domiciliation of Fund Set up in Form of Non-Hong Kong Limited Partnership**

**82A. Interpretation of Part 7A**

(1) In this Part—

*application date* (申請日期), in relation to a non-Hong Kong fund, means the date on which an application under section 82B is made in respect of the fund;

*deregister* (撤銷註冊) means to cease the establishment in a place of establishment;

*establishment* (設立) means having a registration, permission or authorization (however described) under the law of a jurisdiction outside Hong Kong that gives effect to or evidences the formation or domicile of a non-Hong Kong fund in the jurisdiction, and *established* (設立) is to be construed accordingly;

*non-Hong Kong fund* (非香港基金) means a fund that is set up in the form of a non-Hong Kong limited partnership as at the application date;

*original partnership* (原合夥), in relation to a non-Hong Kong fund, means the partnership in the form of which the fund is set up;

*place of establishment* (設立地), in relation to a non-Hong Kong fund, means a jurisdiction outside Hong Kong in which the fund is established as at the application date;

*registration date* (註冊日期), in relation to a non-Hong Kong fund registered as a limited partnership fund, means the

registration date specified on the certificate of registration issued under section 82C(3).

(2) If—

- (a) a requirement prescribed in this Ordinance applies in relation to the place of establishment of a non-Hong Kong fund; and
- (b) there is more than one place of establishment in respect of the fund,

the requirement applies in relation to each place of establishment.

**82B. Application for registration of non-Hong Kong fund as limited partnership fund**

- (1) A non-Hong Kong fund is eligible to be registered as a limited partnership fund if it meets the eligibility requirements in section 7.
- (2) An application for the registration of a non-Hong Kong fund as a limited partnership fund must be made to the Registrar by a general partner in the non-Hong Kong fund who is named in the application as the person proposed to be the general partner in the limited partnership fund (*proposed general partner*).
- (3) The application must—
  - (a) be in the specified form;
  - (b) be delivered in the specified manner;
  - (c) contain—
    - (i) the name or names of the non-Hong Kong fund as at the application date;

- (ii) the place of establishment of the non-Hong Kong fund;
  - (iii) a statement mentioned in subsection (4); and
  - (iv) the information specified in Schedule 1;
- (d) be submitted on behalf of the proposed general partner by a Hong Kong firm or a solicitor; and
  - (e) be accompanied by—
    - (i) the specified fee payable for lodging the application; and
    - (ii) the specified fee payable for the registration.

(4) For the purposes of subsection (3)(c)(iii), the statement is a statement that—

- (a) any consent to or approval for the proposed registration as a limited partnership fund required by any contract entered into or undertaking given by or on behalf of the non-Hong Kong fund has been obtained or waived;
- (b) any consent to or approval for the intended deregistration of the non-Hong Kong fund in its place of establishment required by any contract entered into or undertaking given by or on behalf of the fund has been obtained or waived;
- (c) the intended deregistration of the non-Hong Kong fund in its place of establishment is not prohibited under the law of that place or by any agreement entered into among the partners in the fund; and
- (d) the proposed general partner understands that if the non-Hong Kong fund is registered as a limited partnership fund, the Registrar may strike the name of the fund off the LPF Register if the fund is not

deregistered in its place of establishment within 60 days (or the period extended under section 82E(2)) after the registration date.

(5) In this section—

*Hong Kong firm* (香港律師行) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

**82C. Registration of non-Hong Kong fund as limited partnership fund**

- (1) The Registrar may, on application, register a non-Hong Kong fund as a limited partnership fund.
- (2) The Registrar must not register a non-Hong Kong fund as a limited partnership fund unless the Registrar is satisfied that—
  - (a) on its registration, the fund meets the eligibility requirements in section 7; and
  - (b) the application meets the requirements in section 82B(3).
- (3) On registering a non-Hong Kong fund as a limited partnership fund, the Registrar must issue a certificate of registration to the fund.
- (4) The certificate of registration is conclusive evidence that the fund is a limited partnership fund.

**82D. Effect of registration of non-Hong Kong fund as limited partnership fund**

- (1) If a non-Hong Kong fund is registered as a limited partnership fund—

- (a) the registration does not cause the original partnership to be dissolved;
- (b) the original partnership continues in existence as a limited partnership fund; and
- (c) with effect from the registration date, the original partnership is taken to be a limited partnership fund registered under section 12 and this Ordinance applies accordingly to the original partnership (registered as a limited partnership fund).

(2) The registration of a non-Hong Kong fund as a limited partnership fund does not operate to—

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the non-Hong Kong fund as a partnership established in its place of establishment;
- (c) affect any contract made, resolution passed or any other thing done by or in relation to the non-Hong Kong fund;
- (d) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by, to or on behalf of the non-Hong Kong fund; or
- (e) render defective any legal proceedings commenced or continued by, on behalf of or against the non-Hong Kong fund.

(3) To avoid doubt, on and after the registration date, any legal proceedings that could have been commenced or continued by, on behalf of or against the non-Hong Kong fund may be commenced or continued by, on behalf of or against the limited partnership fund.

(4) To avoid doubt—

- (a) with effect from the registration date, all property of the original partnership is the property of the limited partnership fund; and
- (b) for tax purposes, the registration of the non-Hong Kong fund as a limited partnership fund does not amount to—
  - (i) a transfer of assets of the fund; or
  - (ii) a change in the beneficial ownership of the assets of the fund.

**82E. Deregistration in place of establishment**

- (1) If a non-Hong Kong fund is registered as a limited partnership fund, the fund must be deregistered in its place of establishment within 60 days after the registration date.
- (2) On application by the general partner in the limited partnership fund, the Registrar may extend the 60-day period mentioned in subsection (1) subject to any condition that the Registrar considers appropriate.

**82F. Business registration**

- (1) If, immediately before a non-Hong Kong fund is registered as a limited partnership fund, the original partnership does not hold a valid business registration certificate, the general partner in the limited partnership fund must, within 1 month after the registration date, apply for a business registration certificate for the limited partnership fund.
- (2) If, immediately before a non-Hong Kong fund is registered as a limited partnership fund, the original partnership holds a valid business registration certificate,

the general partner in the limited partnership fund must, within 1 month after the registration date, notify the Commissioner of Inland Revenue of—

- (a) the registration;
- (b) the name in which the limited partnership fund is registered; and
- (c) the details of the general partner in the limited partnership fund.

(3) In this section—

*valid business registration certificate* (有效商業登記證) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310).”

**11. Section 95 amended (Registrar not responsible for verifying information)**

Section 95(1), after “section 11”—

**Add**

“, 79 or 82B”.

**12. Schedule 1 amended (information required in application for registration as limited partnership fund)**

(1) Schedule 1—

**Repeal**

“& 99]”

**Substitute**

“, 82B & 99]”.

(2) Schedule 1, item 15(b)(ii)—

**Repeal**



“under section 13”.

- (3) Schedule 1, item 18, after “section 11(2)(d)”—

**Add**

“or 82B(3)(d)”.

**13. Schedule 3 amended (fees)**

Schedule 3, after item 14—

**Add**

“15. For lodging an application for the registration of a non-Hong Kong fund (as defined by section 82A(1)) as a limited partnership fund under section 82B(3)(e)(i) 479

16. For registering a non-Hong Kong fund (as defined by section 82A(1)) as a limited partnership fund under section 82B(3)(e)(ii) 2,555”.

**Part 3**

**Amendments relating to Simultaneous Business  
Registration Applications of Limited Partnership Funds**

**Division 1—Amendments to Business Registration  
Ordinance (Cap. 310)**

**14. Section 2 amended (interpretation and application)**

- (1) Section 2(1), definition of *simultaneous business registration application*—

**Repeal**

“or 5B(2)”

**Substitute**

“, 5B(2) or 5BA(2)”.

- (2) Section 2(1)—

**Add in alphabetical order**

“*LPF registration application* (有限合夥基金註冊申請) means an application for registration under section 11, 79 or 82B of the Limited Partnership Fund Ordinance (Cap. 637);

*LPF registration form* (有限合夥基金註冊表格) means an LPF registration application in the specified form referred to in section 11(2)(a), 79(3)(a) or 82B(3)(a) of the Limited Partnership Fund Ordinance (Cap. 637);”.

- (3) Section 2(1C)(a)—

**Repeal**

“and”.

(4) Section 2(1C)(b)—

**Repeal**

“application.”

**Substitute**

“application; and”.

(5) After section 2(1C)(b)—

**Add**

“(c) a person who makes an LPF registration application.”.

**15. Section 4 amended (official secrecy)**

Section 4(3B)—

**Repeal**

“or company”

**Substitute**

“, company registration application or LPF”.

**16. Section 5BA added**

After section 5B—

**Add**

**“5BA. Simultaneous business registration applications of limited partnership funds**

- (1) At the time an LPF registration application is made, the person making the application must—
  - (a) pay to the Commissioner the prescribed business registration fee and levy; and
  - (b) deliver a notice in a form specified under section 5D(1)—

(i) to submit the particulars prescribed in regulations made under section 14; and

(ii) to make an election under section 6(5C)(c) if the person intends to do so.

(2) If subsection (1) is complied with in relation to a limited partnership fund, a business registration application is deemed to have been made in respect of the fund.

(3) Subsections (1) and (2) do not apply in relation to an LPF registration application—

(a) if—

(i) the application is made under section 79 of the Limited Partnership Fund Ordinance (Cap. 637); and

(ii) section 82(2) of that Ordinance applies; or

(b) if—

(i) the application is made under section 82B of that Ordinance; and

(ii) section 82F(2) of that Ordinance applies.

(4) If subsections (1) and (2) do not apply in relation to an LPF registration application because of subsection (3), when the person making the application delivers the LPF registration form to the Registrar, the person must deliver a notice in a form specified under section 5D(1) to indicate that—

(a) if subsection (3)(a) applies—the specified partnership referred to in section 82(2) of the Limited Partnership Fund Ordinance (Cap. 637) holds a valid business registration certificate at the time of making the application; or

(b) if subsection (3)(b) applies—the original partnership referred to in section 82F(2) of that Ordinance holds a valid business registration certificate at the time of making the application.”.

**17. Section 5C amended (Registrar to perform certain functions in relation to simultaneous business registration applications)**

(1) Section 5C(1)(a)—

**Repeal**

“and 5B(1)(a)”

**Substitute**

“, 5B(1)(a) and 5BA(1)(a)”.

(2) Section 5C(1)(a)—

**Repeal**

“or (4)”

**Substitute**

“, (4) or (5)”.

(3) Section 5C(1)(b)—

**Repeal**

“and 5B(1)(b) and (3)”

**Substitute**

“, 5B(1)(b) and (3) and 5BA(1)(b) and (4)”.

(4) Section 5C(1)(c), Chinese text—

**Repeal**

“編給”

**Substitute**

“編配”.

(5) Section 5C(5)(a)—

**Repeal**

“and 5B(1)(b) and (3)”

**Substitute**

“, 5B(1)(b) and (3) and 5BA(1)(b) and (4)”.

**18. Section 5D amended (notices in specified form)**

(1) Section 5D(1)—

**Repeal**

“or 5B(1)(b) or (3)”

**Substitute**

“, 5B(1)(b) or (3) or 5BA(1)(b) or (4)”.

(2) Section 5D(2)—

**Repeal**

“or 5B(1)(b) or (3)”

**Substitute**

“, 5B(1)(b) or (3) or 5BA(1)(b) or (4)”.

(3) Section 5D(2)—

**Repeal**

“or non-Hong Kong company”

**Substitute**

“, non-Hong Kong company registration form or LPF”.

(4) Section 5D(3)—

**Repeal**

“or non-Hong Kong company”

**Substitute**

“, non-Hong Kong company registration form or LPF”.

**19. Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies)**

After section 7A(4)—

**Add**

“(5) If the Registrar refuses an LPF registration application made on or after the day on which Part 3 of the Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021 ( of 2021) comes into operation, the Commissioner must as soon as practicable refund to the person who made the application the prescribed business registration fee and levy paid under section 5BA(1)(a).”.

**20. Section 8 amended (information to be furnished)**

(1) After section 8(1B)—

**Add**

“(1C) In respect of a simultaneous business registration application relating to an LPF registration application—

- (a) the relevant limited partnership fund must, within 1 month beginning on the date on which it commences to carry on the relevant business, submit to the Commissioner in writing the particulars prescribed in regulations made under section 14; and
- (b) if there is any change in those particulars (or in the particulars submitted under section 5BA(1)(b)(i) in respect of the fund), the fund must, within 1 month beginning on the date on which the change occurs, notify the Commissioner of it in writing.”.

(2) After section 8(2C)—

**Add**

“(2D) If—

- (a) a notification of a change of name of a limited partnership fund is filed under section 40(2) of the Limited Partnership Fund Ordinance (Cap. 637);
- (b) a notification of the withdrawal, removal or replacement of the general partner in a limited partnership fund is filed under section 25(2) of that Ordinance;
- (c) a notification of a change in any of the following particulars (if applicable) in respect of the general partner in a limited partnership fund is filed under section 25(2) of that Ordinance—
  - (i) the name;
  - (ii) the number of the identity card (as defined by section 1A(1) of the Registration of Persons Ordinance (Cap. 177));
  - (iii) the number of the passport;
  - (iv) the business registration number; or
- (d) a notification of a change in the address of the registered office, or in the principal place of business, of a limited partnership fund is filed under section 25(2) of that Ordinance,

the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notification is registered or recorded under that Ordinance, and if the fund is subject to subsection (1), it is to be treated on the registration or recording as having

notified the Commissioner of the change under that subsection.

- (2E) If there is a replacement of a limited partnership fund's name under section 44 of the Limited Partnership Fund Ordinance (Cap. 637), the Registrar must transmit the particulars to the Commissioner as soon as practicable after the replacement, and if the fund is subject to subsection (1), it is to be treated on the replacement as having notified the Commissioner of the replacement under that subsection."

**21. Section 15 amended (offences)**

- (1) Section 15(2A)—

**Repeal**

"or (2BA)"

**Substitute**

", (2BA), (2D) or (2E)".

- (2) Section 15(2A)(b), after "company"—

**Add**

"or a limited partnership fund".

**22. Section 16 amended (exemptions)**

- (1) Section 16(2)—

**Repeal**

"or 5B(1)(a)"

**Substitute**

", 5B(1)(a) or 5BA(1)(a)".

- (2) Section 16(2)(a), after "company"—

**Add**

", limited partnership fund".

- (3) Section 16(2)(b), after "company"—

**Add**

"or limited partnership fund".

**23. Schedule 1 amended**

- (1) Schedule 1, section 1, after "5B"—

**Add**

", 5BA".

- (2) Schedule 1, English text, section 2(b)(i)—

**Repeal**

"or".

- (3) Schedule 1, section 2(b)(ii)(B)—

**Repeal**

"date;"

**Substitute**

"date; or".

- (4) Schedule 1, after section 2(b)(ii)—

**Add**

"(iii) in the case of a fee payable under section 5BA(1)(a), the date on which the related LPF registration application is made;"

**24. Schedule 2 amended**

- (1) Schedule 2, section 1, after "5B"—

**Add**

- “, 5BA”.
- (2) Schedule 2, English text, section 3(b)(i)—  
**Repeal**  
“or”.
- (3) Schedule 2, Chinese text, section 3(b)(i)—  
**Repeal**  
“費用根據第 5A(1)(a)條須繳付”  
**Substitute**  
“屬第 5A(1)(a)條規定繳付的徵費”.
- (4) Schedule 2, section 3(b)(ii)(B)—  
**Repeal**  
“date;”  
**Substitute**  
“date; or”.
- (5) Schedule 2, Chinese text, section 3(b)(ii)—  
**Repeal**  
“費用根據第 5B(1)(a)條須繳付”  
**Substitute**  
“屬第 5B(1)(a)條規定繳付的徵費”.
- (6) Schedule 2, after section 3(b)(ii)—  
**Add**  
“(iii) in the case of a levy payable under section 5BA(1)(a),  
the date on which the related LPF registration  
application is made;”.

## Division 2—Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)

25. **Regulation 3A amended (business particulars in relation to  
simultaneous business registration applications)**
- (1) After regulation 3A(1)—  
**Add**  
“(1A) The particular to be submitted, under section  
5BA(1)(b)(i) of the Ordinance, at the time an LPF  
registration application is made is—  
(a) if the general partner in the limited partnership  
fund is a natural person—the person’s residential  
address; or  
(b) if the general partner in the limited partnership  
fund is not a natural person—the address of the  
general partner’s registered office or principal  
place of business.”.
- (2) Regulation 3A(2), Chinese text—  
**Repeal**  
“按本條例第 8(1A)(a)條規定於公司開業日期後”  
**Substitute**  
“根據本條例第 8(1A)(a)條在自公司開業日期起計”.
- (3) After regulation 3A(2)—  
**Add**  
“(2A) The particulars to be submitted, under section 8(1C)(a)  
of the Ordinance, within 1 month beginning on the date  
of commencement of a limited partnership fund’s  
business are as follows—

- (a) the description and nature of the business;
  - (b) the date of the commencement of the business.”.
- (4) Regulation 3A(3)(ab)(iii)—
- Repeal**  
“; and”
- Substitute a semicolon.**
- (5) Regulation 3A(3)(b)(vii)—
- Repeal**  
“Part).”
- Substitute**  
“Part); and”.
- (6) After regulation 3A(3)(b)—
- Add**
- “(c) in the case of a limited partnership fund—
- (i) the name of the fund;
  - (ii) the address of the registered office of the fund;
  - (iii) the date of the registration of the fund under the Limited Partnership Fund Ordinance (Cap. 637);
  - (iv) the following particulars (if applicable) in respect of the general partner in the fund—
    - (A) the name;
    - (B) the number of the identity card (as defined by section 1A(1) of the Registration of Persons Ordinance (Cap. 177));
    - (C) the number of the passport;
    - (D) the business registration number.”.

**26. Regulation 4 amended (the register)**

- (1) Regulation 4(1), (1A) and (1B), Chinese text—

**Repeal**

“編給”

**Substitute**

“編配”.

- (2) After regulation 4(1B)—

**Add**

“(1C) If section 5BA(1) and (2) of the Ordinance applies, as soon as practicable after receipt by the Registrar of an LPF registration application, the Commissioner must assign an identifying number to the related simultaneous business registration application.”.

- (3) Regulation 4(2)(b)—

**Repeal**

“or (1B).”

**Substitute**

“, (1B) or (1C).”.

- (4) Regulation 4(4A)—

**Repeal**

“or (1B)”

**Substitute**

“, (1B) or (1C)”.

**Division 3—Amendments to Limited Partnership Fund  
Ordinance (Cap. 637)**

**27. Section 5 amended (references to general partner)**

(1) Section 5(x)—

**Repeal**

“82(1) and (2)”

**Substitute**

“82(2)”.

(2) Section 5(xb)—

**Repeal**

“82F(1) and (2)”

**Substitute**

“82F(2)”.

**28. Section 82 amended (business registration)**

Section 82—

**Repeal subsection (1).**

**29. Section 82F amended (business registration)**

Section 82F—

**Repeal subsection (1).**

**Explanatory Memorandum**

The main objects of this Bill are to amend the Limited Partnership Fund Ordinance (Cap. 637) (*LPFO*) to introduce a mechanism for the re-domiciliation of funds set up outside Hong Kong in the form of limited partnerships (*non-Hong Kong funds*) so as to become limited partnership funds under the LPFO, and to amend the Business Registration Ordinance (Cap. 310) (*BRO*) and the Business Registration Regulations (Cap. 310 sub. leg. A) (*BRR*) to provide for simultaneous business registration applications on registration of limited partnership funds.

**Part 1—Preliminary**

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

**Part 2—Amendments to LPFO relating to Re-domiciliation of Funds  
Set up outside Hong Kong**

3. Part 2 of the Bill contains amendments to the LPFO relating to the re-domiciliation of non-Hong Kong funds. In particular, clause 10 adds a new Part 7A (consisting of new sections 82A to 82F) to the LPFO.

4. The new section 82A of the LPFO provides for the definitions of expressions used in the new Part 7A of the LPFO.

5. The new section 82B of the LPFO enables a general partner in a non-Hong Kong fund to apply for the registration of the fund as a limited partnership fund. The new section 82C of the LPFO empowers the Registrar of Companies (*Registrar*) to register such a non-Hong Kong fund as a limited partnership fund and issue a certificate of registration.



6. The new section 82D of the LPFO provides that, on registration, the non-Hong Kong fund continues in existence as a limited partnership fund and explains the effect of the registration. The new section 82E of the LPFO requires the non-Hong Kong fund to be deregistered in the jurisdiction in which it was originally established.
7. The new section 82F of the LPFO provides for the business registration or notification to be made after registration as a limited partnership fund.
8. Other clauses in Part 2 of the Bill make amendments to various provisions of the LPFO, which are related or consequential to the addition of the new Part 7A of the LPFO or minor amendments. In particular—
  - (a) clause 9 amends section 65 of the LPFO to allow the Registrar to send an inquiry letter if the requirement under the new section 82E of the LPFO regarding deregistration is not complied with; and
  - (b) clause 13 amends Schedule 3 to the LPFO to prescribe the fees payable in connection with the registration of a non-Hong Kong fund.

**Part 3—Amendments relating to Simultaneous Business Registration Applications of Limited Partnership Funds**

9. Part 3 of the Bill contains amendments to the BRO, BRR and LPFO relating to simultaneous business registration applications of limited partnership funds.
10. Division 1 of Part 3 of the Bill contains amendments to the BRO. In particular, clause 14 amends section 2 of the BRO, including by adding the definitions of *LPF registration application* and *LPF registration form*.

11. Clause 16 adds a new section 5BA to the BRO to provide for the requirement of simultaneous business registration applications of limited partnership funds. Generally speaking, a person who makes an LPF registration application must pay the prescribed business registration fee and levy and submit relevant particulars at the time of the application. By doing so, a business registration application is deemed to have been made.
12. Clause 20 amends section 8 of the BRO to prescribe the information in respect of a limited partnership fund required to be submitted to the Commissioner of Inland Revenue (*Commissioner*) by the fund or transmitted to the Commissioner by the Registrar.
13. Division 2 of Part 3 of the Bill contains amendments to the BRR. In particular, clause 25 amends regulation 3A of the BRR to prescribe the business particulars in respect of a limited partnership fund required to be submitted or transmitted to the Commissioner.
14. Division 3 of Part 3 of the Bill contains amendments to the LPFO. In particular, clauses 28 and 29 repeal sections 82(1) and 82F(1) of the LPFO respectively in view of the introduction of simultaneous business registration applications of limited partnership funds.