

**立法會**  
***Legislative Council***

LC Paper No. LS116/20-21

**Further Report by Legal Service Division on  
Securities and Futures (Amendment) Bill 2021**

Members may recall from LC Paper No. LS88/20-21 dated 8 July 2021 and issued to Members vide LC Paper No. CB(2)1278/20-21 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of the Bill. At the meeting of the House Committee on 9 July 2021, Members decided not to form a Bills Committee to study the Bill. This paper sets out LSD's further observations on the Bill.

2. To recap, the Bill seeks to amend the Securities and Futures Ordinance (Cap. 571), the subsidiary legislation made under Cap. 571 and other enactments to introduce a mechanism for the re-domiciliation of fund corporations incorporated outside Hong Kong so as to become open-ended fund companies ("OFCs") under Cap. 571, and to provide for related matters.

3. LSD has sought clarifications from the Financial Services and the Treasury Bureau ("the Bureau") on certain legal aspects of the Bill. LSD's enquiries and the Bureau's response are summarized below.

Clause 8 of the Bill

4. Under the existing section 112ZK(4)(g) of Cap. 571, the Securities and Futures Commission ("Commission") may make rules to provide for the power of the Court of First Instance ("CFI") to make an order to disqualify a person from acting in any capacity in relation to OFCs or the scheme property of OFCs, or from acting in any capacity in the promotion or incorporation of proposed companies. Clause 8 of the Bill seeks to extend the power of the Commission to make rules to empower CFI to make an order to disqualify a person from acting in any capacity in the process for a non-Hong Kong fund corporation to become a re-domiciled OFC.

5. In response to LSD's enquiry, the Bureau has replied that the circumstances under which CFI may make a disqualification order under the proposed section 112ZK(4)(g) would be similar to those in which CFI may make a disqualification order against a person acting in relation to the promotion or formation of a company under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (e.g. where a person is convicted of an indictable offence in connection with the promotion, formation, management or liquidation of a company, or any other indictable offence his conviction for which necessarily

involves a finding that he acted fraudulently or dishonestly). According to the Bureau, an order may be made for disqualifying a person in Hong Kong from acting in relation to the re-domiciliation of a non-Hong Kong fund corporation where, for example, the person has been convicted of an indictable offence in connection with the formation of a company or an OFC or any other offence which involves fraud, etc.

### Commencement Date

6. The Bill, if passed, would come into operation on 1 November 2021. In response to LSD's enquiry, the Bureau has explained that 1 November 2021 is proposed to be the commencement date of the Bill after taking into account the readiness of the Companies Registry's information system to be enhanced for the purpose of introducing fund re-domiciliation mechanisms.

7. LSD has completed its scrutiny of the Bill. No difficulties relating to the legal and drafting aspects of the Bill have been identified. Subject to Members' views on the above matters, the Bill is ready for resumption of Second Reading debate.

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