

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 9 July 2021**

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

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Securities and Futures Ordinance (Cap. 571), subsidiary legislation made under Cap. 571 and other enactments to:

 - (a) 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
 - (b) provide for related matters.
- 2. Public Consultation**

The Securities and Futures Commission conducted a public consultation on proposed enhancements to the OFC regime in 2019. A majority of the respondents supported the introduction of a re-domiciliation mechanism for OFCs.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 1 February 2021 and members generally supported the legislative proposals to allow foreign investment funds to re-domicile to Hong Kong as OFCs.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a statutory regime for non-Hong Kong fund corporations to be registered as OFCs in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 7 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Reference: ASST/3/1/10C(2020)Pt.1) issued by the Financial Services Branch of the Financial Services and the Treasury Bureau ("FSTB") on 29 June 2021 for further details.

Object of the Bill

2. The Bill seeks to amend the Securities and Futures Ordinance (Cap. 571), 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.

Background

3. Under the current OFC regime established under Cap. 571¹, an investment fund may be established in Hong Kong in the form of a company. However, there is no statutory mechanism to facilitate the re-domiciliation of overseas corporate funds to Hong Kong using the OFC structure.

4. According to paragraphs 4 and 5 of the LegCo Brief, 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. A task force led by FSTB, comprising members from the Hong Kong Monetary Authority, the Securities and Futures Commission ("SFC") and the Inland Revenue Department, has come up with the legislative proposals on re-domiciliation under the OFC regime with the objective of creating a fund re-domiciliation mechanism for non-Hong Kong funds set up in corporate form to re-locate to Hong Kong.

Provisions of the Bill

5. The Bill contains 38 clauses (in five parts). The key provisions of the Bill are summarized in the ensuing paragraphs.

Proposed amendments to Cap. 571 (Part 2 of the Bill)

Re-domiciliation

6. Clause 7 of the Bill seeks to add a new Division 8A (containing the proposed new sections 112ZJA to 112ZJE) to Part IVA of Cap. 571 to establish

¹ The current OFC regime was introduced by the Securities and Futures (Amendment) Ordinance 2016 (Ord. No. 16 of 2016) which came into operation on 30 July 2018.

a re-domiciliation mechanism for a non-Hong Kong fund corporation to be registered in Hong Kong as an OFC. Relevant details concerning the proposed mechanism are summarized below:

- (a) on an application by a non-Hong Kong fund corporation, SFC may register the corporation as an OFC if the registration requirements currently applicable to newly established OFCs under Cap. 571² are met, and notify the Registrar of Companies ("the Registrar") in writing of the registration (proposed new section 112ZJB);
- (b) SFC may refuse to register a non-Hong Kong fund corporation if, among others, SFC is not satisfied that the registration is in the interest of the investing public (proposed new section 112ZJB(4));
- (c) after being notified by SFC of the registration of the corporation as an OFC, the Registrar may, on application by the corporation, issue a certificate of re-domiciliation to the corporation certifying that it has become an OFC (proposed new section 112ZJC);
- (d) on the date of issue of the certificate of re-domiciliation to the corporation ("re-domiciliation date"), the corporation would become, and would continue as a body corporate as, a re-domiciled OFC to which Cap. 571 would apply (proposed new section 112ZJD(1));
- (e) the proposed new section 112ZJD(2) provides that the re-domiciliation would not:
 - (i) create a new legal identity or prejudice or affect the identity or continuity of the non-Hong Kong fund corporation as a corporation registered in its place of incorporation;
 - (ii) affect any contract made, resolution passed or any other thing done by or in relation to the corporation;
 - (iii) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by or to the corporation;
or
 - (iv) render defective any legal proceedings commenced or continued by or against the corporation;

² The registration requirements specified in section 112E of Cap. 571 include the requirements relating to the name, registered office, directors, investment manager and custodian of an OFC and other requirements for registration prescribed by the OFC rules made under section 112ZK, 112ZL or 112ZM of Cap. 571.

- (f) with effect from the re-domiciliation date, all property of the corporation would become the property of the re-domiciled OFC and, for tax purposes, the re-domiciliation would not amount to a transfer of assets of the corporation or a change in the beneficial ownership of those assets, such that no stamp duty implications would arise (proposed new section 112ZJD(4)); and
- (g) within 60 days after the re-domiciliation date, the corporation would have to submit to SFC a document evidencing its deregistration in its place of incorporation (proposed new section 112ZJE(2)).

SFC's power to make rules

7. Under clause 8 of the Bill, SFC would be empowered to make rules to provide for the requirements for issuing a certificate of re-domiciliation and registration of non-Hong Kong fund corporations, and the power of the Court of First Instance 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.

8. Under clause 9 of the Bill, SFC may, with the consent of the Registrar, make rules to provide for the registration by the Registrar of documents delivered by or on behalf of non-Hong Kong fund corporations.

Review of specified decisions made by SFC

9. By virtue of Schedule 8 to Cap. 571 as amended by clause 11 of the Bill, a person aggrieved by SFC's decision to refuse to register a non-Hong Kong fund corporation or to impose any condition on its registration under the proposed new section 112ZJB(1) or 112ZJB(5) would be able to apply to the Securities and Futures Appeals Tribunal for a review of the decision.

Proposed amendments to the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571AQ) (Part 3 of the Bill)

10. Part 3 of the Bill seeks to make various amendments to Cap. 571AQ including those summarized below.

11. Clauses 16 and 27 of the Bill seek to add a new Division 1A to Part 2 of, and a new Schedule 2 to, Cap. 571AQ to provide for:

- (a) the procedures and the information, documentation and fee(s) required for making an application for registration with SFC before re-domiciliation (proposed new rule 8A) and for a certificate of re-domiciliation from the Registrar (proposed rule 8B); and

- (b) the content and signing requirements of the application form for a certificate of re-domiciliation ("re-domiciliation form") (proposed new rules 8C, 8D and 8E, and proposed Schedule 2).

12. Other clauses in Part 3 of the Bill include related and consequential amendments to various provisions of Cap. 571AQ and minor textual amendments.

Proposed amendments to the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (Cap. 571AR) (Part 4 of the Bill)

13. Part 4 of the Bill seeks to amend Cap. 571AR to specify the fees payable to SFC for certain applications made in relation to the re-domiciliation of non-Hong Kong fund corporations and the fees payable to the Registrar in relation to the inspection or lodgment of a re-domiciliation form or the issuance of a certificate of re-domiciliation.

Related and consequential amendments (Part 5 of the Bill)

14. Part 5 of the Bill seeks to make related and consequential amendments to various enactments including the Specification of Public Offices Notice (Cap. 1C) and the Business Registration Ordinance (Cap. 310) in connection with the re-domiciliation of non-Hong Kong fund corporations.

Commencement

15. The Bill, if passed, would come into operation on 1 November 2021.

Public Consultation

16. According to paragraph 24 of the LegCo Brief, SFC conducted a public consultation on proposed enhancements to the OFC regime in 2019. A majority of the respondents supported the introduction of a re-domiciliation mechanism for OFCs. According to FSTB, the feedback received has been taken into consideration when preparing the Bill.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 1 February 2021 on the legislative proposals to allow foreign investment funds to re-domicile to Hong Kong as OFCs. Members generally supported the legislative proposals and discussed various issues including benefits of the proposed re-domiciliation mechanism for Hong Kong, criteria for considering re-domiciliation applications, and measures to attract foreign funds to set up in or re-locate to Hong Kong.

Conclusion

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a statutory regime for non-Hong Kong fund corporations to be registered as OFCs in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

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