



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Open-ended Fund Companies (OFC) – the Corporate Fund Regime in Hong Kong

**Investment Products Division
September 2021**

Contents

- I. Introduction**
- II. Benefits of OFCs**
- III. Recent developments**
- IV. OFC grant scheme**
- V. Re-domiciliation mechanism for overseas corporate funds**
- VI. Establishment of an OFC**
- VII. Auditors and accounting matters**
- VIII. Q & A – Practical tips and common misconceptions**
- IX. Further information**

I. Introduction

- **SFC's initiatives – asset management industry**
 - To develop Hong Kong into a full-service fund management, domicile and administration centre
 - To expand the investor base and attractiveness of Hong Kong-domiciled funds
 - As at 30 June 2021:
 - Number of Hong Kong-domiciled SFC-authorized funds was 838, representing an increase of 23% over the last 5 years
 - Total net asset value of Hong Kong-domiciled SFC-authorized funds was US\$200 billion, representing an increase of 62% over the last 5 years

II. Benefits of OFCs

■ Tax incentives

— Private OFCs:

- Enjoy profits tax exemption since roll out of the regime in July 2018
 - First time profits tax exemption given to onshore funds
- Enhanced profits tax exemption under new unified profits tax regime for funds commenced on 1 April 2019
 - Profits tax exemption available for onshore (including OFCs) and offshore funds alike
 - Non-closely held requirement for OFCs removed

— Public OFCs:

- Enjoy same profits tax exemption as other SFC-authorized public funds

II. Benefits of OFCs

- **Facilitate the distribution of Hong Kong funds internationally – corporate structure familiar to overseas investors**
- **Cost-savings over offshore structure**
 - Saves management time and costs – deal with one jurisdiction only
 - Avoid extra offshore layer of service providers and fees – increased compliance costs as a result of OECD’s economic substance requirement
 - Public OFCs: No new fees – only the existing fees for public funds
 - Private OFCs: Basic registration and post-registration fees on per change basis
- **Fast set-up and administrative convenience**
 - “One-stop” application, streamlined regulation for private OFCs
 - No annual returns, mandatory AGM nor annual fees

II. Benefits of OFCs

■ **Mutual recognition of funds**

- OFCs eligible under the scope of MRF arrangements with various overseas regulatory authorities:
 - FINMA (Switzerland), AMF (France), FCA (UK), CSSF (Lux) and AFM (Netherlands) (and SEC (Thailand) when implemented)

■ **Greater Bay Area (GBA) Wealth Management Connect Scheme**

- Hong Kong-domiciled SFC-authorized funds (including SFC-authorized OFCs) are eligible under the GBA Wealth Management Connect scheme

■ **Investor protection and confidence**

- Sound financial infrastructure and robust regulatory framework adhering to international standards

III. Recent developments

- **Since introduction of OFC structure in Jul 2018, the following enhancements have been made to the OFC regime:**
 - Removal of all investment restrictions for private OFCs (Sep 2020)
 - Intermediary licensed or registered for Type 1 regulated activity eligible to act as custodian of private OFCs (Sep 2020)
 - Re-domiciliation of overseas corporate funds to Hong Kong as OFCs (relevant Bill introduced into LegCo in Jul 2021, proposed to come into operation in Nov 2021)
- **Introduction of limited partnership funds (LPF) structure (Aug 2020)**
- **Launch of Government grant scheme for OFCs and REITs (May 2021)**

IV. OFC grant scheme

- The SFC launched and opened the Government grant scheme for applications on 10 May 2021

Eligible applicants	<ul style="list-style-type: none"> • Investment managers who have successfully incorporated an OFC or re-domiciled a non-Hong Kong fund corporation in Hong Kong as an OFC on or after 10 May 2021
Grant amount	<ul style="list-style-type: none"> • Equivalent to 70% of the eligible expenses for each application, subject to a cap of \$1 million per OFC; and • a maximum of three OFCs per investment manager
Eligible expenses	<ul style="list-style-type: none"> • Must be expenses paid to Hong Kong-based service providers in relation to the incorporation of the OFC or the re-domiciliation of the non-Hong Kong fund corporation in Hong Kong as an OFC (e.g. Fees relating to legal services, audit, tax and accounting services, corporate services, regulatory compliance services, listing agents)
Minimum operation condition	<ul style="list-style-type: none"> • The Government reserves the right to claw back the grant if the OFC commences winding-up or applies for termination of registration within two years from the date of its incorporation or re-domiciliation

IV. OFC grant scheme

- Submit an application form together with the required supporting documents to the SFC within **three months** from:
 - Private OFCs – the date of the certificate of incorporation or re-domiciliation issued by the Companies Registry (CR); or
 - Public OFCs – the authorisation date.
- For public OFCs, applicants may submit a Confirmation of Intention to Apply as part of product application submission
- First-come-first-served basis – priority determined based on
 - submission time of the grant application; or
 - for public OFCs that submit a Confirmation of Intention to Apply, time of take-up of product application
- Designated enquiry mailbox: grantscheme@sfc.hk

V. Re-domiciliation mechanism for overseas corporate funds

Background

- To create a commercially viable and facilitating mechanism with legal and tax certainty for foreign corporate funds to re-locate to Hong Kong
- Further develop fund administration and ancillary services – bring more jobs and business opportunities to the local fund and professional services industries

V. Re-domiciliation mechanism for overseas corporate funds

Benefits of re-domiciliation to Hong Kong

- Existing corporate identity, continuity and track record can be preserved
- OECD economic substance requirements – higher costs for offshore funds
- Saves management time and costs – avoid extra offshore layer of service providers
- Stamp duty savings and profit tax treatment
 - No stamp duty will arise
 - Same profits tax position as newly formed OFCs
- Strong community of investors and professional service providers, proximity to Mainland China and active IPO market

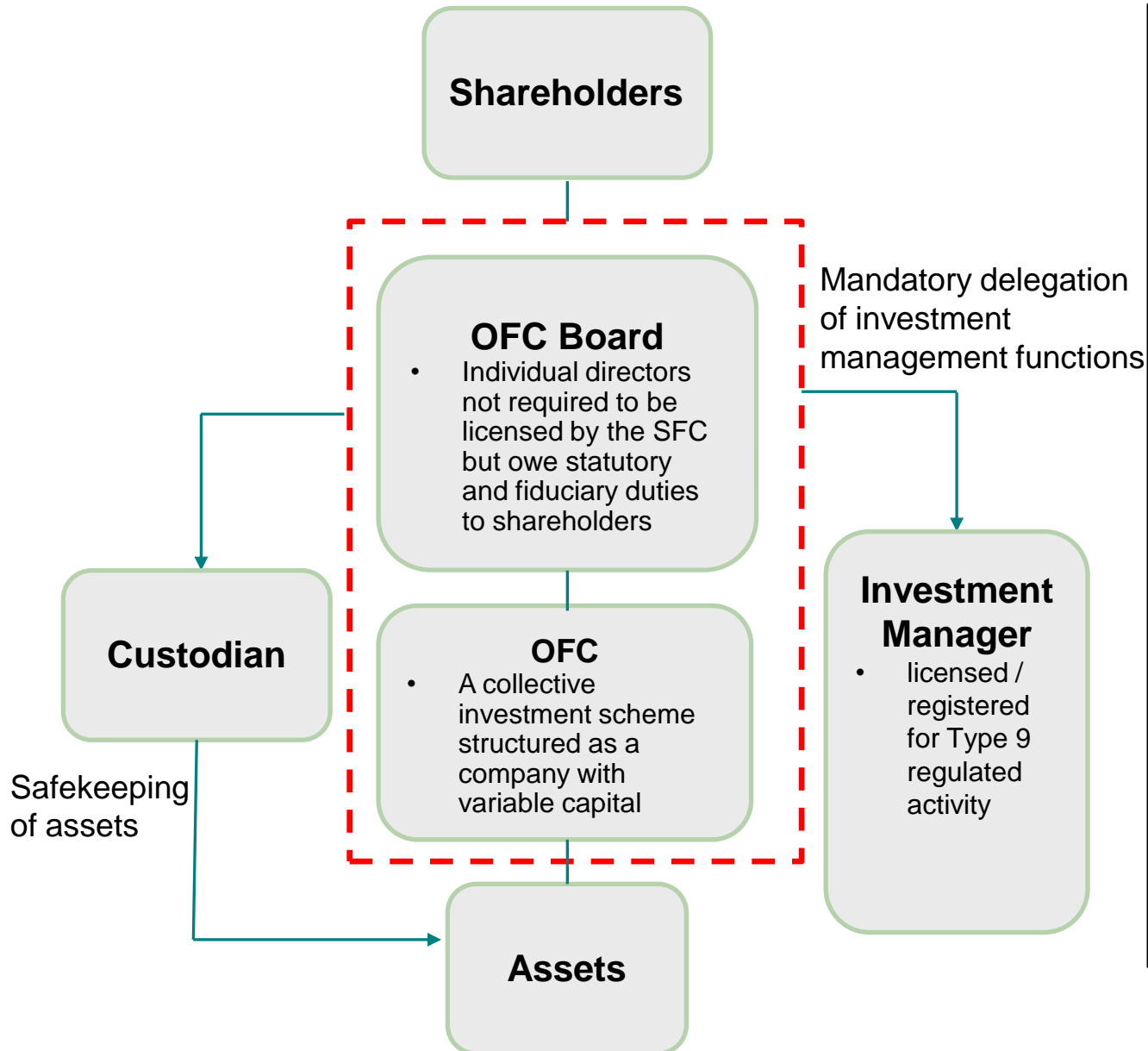
V. Re-domiciliation mechanism for overseas corporate funds

Registration by way of re-domiciliation process

- Same key registration requirements as those for registering a newly-established OFC under the SFO and the OFC Rules
- All documents to be submitted to SFC, for example:
 - copy of certificate of incorporation
 - constitutive document
 - directors' confirmation of certain matters (eg solvency of fund)
- The fund must de-register in its place of incorporation within 60 days after issue of the certificate of re-domiciliation

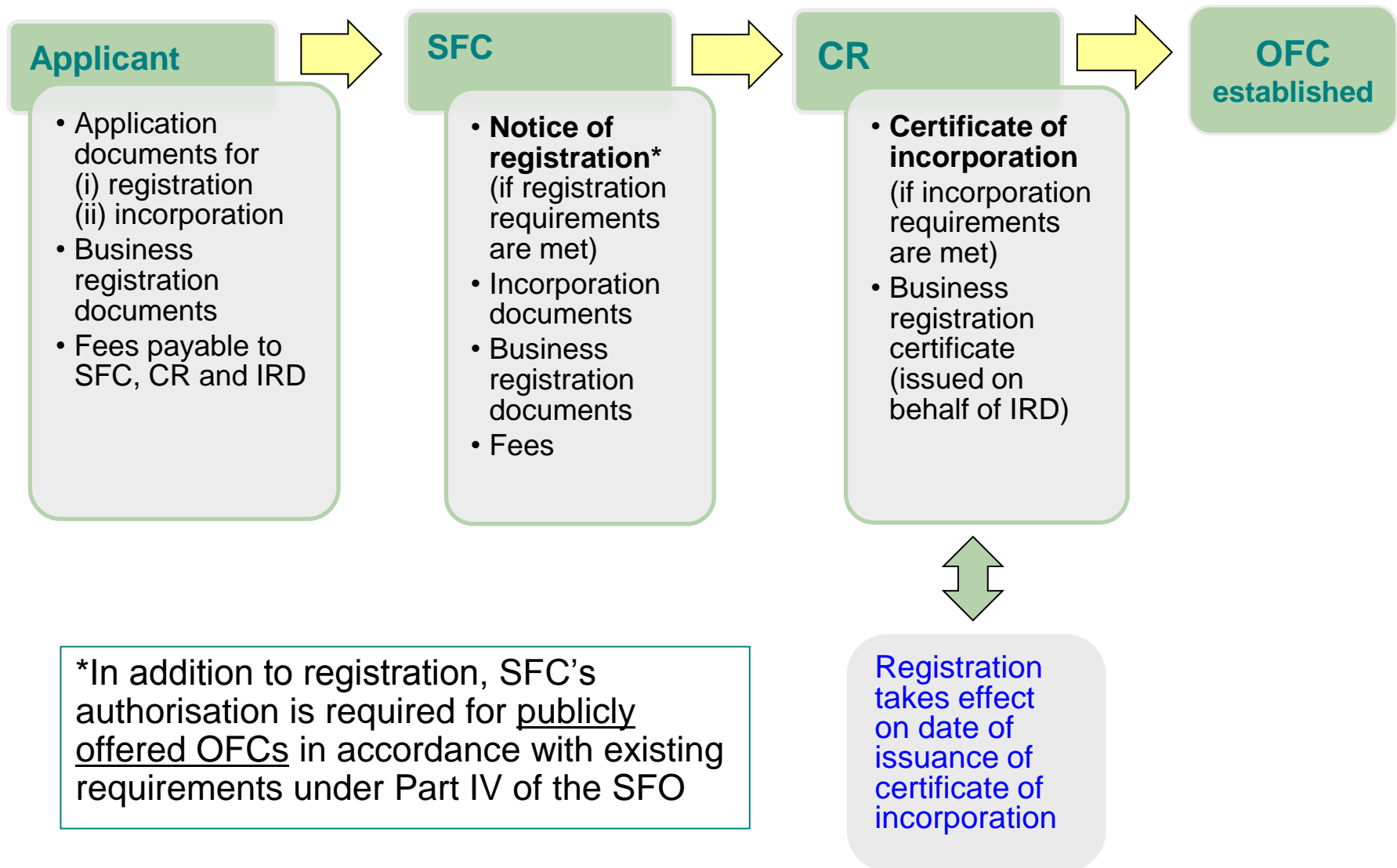
The relevant bill was introduced into the LegCo in July 2021, and is currently proposed to come into operation on 1 November 2021

VI. Establishment of an OFC: OFC structure



- A corporate structure (in addition to unit trust form) for investment funds in Hong Kong under Securities and Futures Ordinance (“SFO”)
- Not subject to restrictions under Companies Ordinance (“CO”) on (1) capital reduction; (2) distribution out of capital
- Can be used for both listed (e.g. ETFs) or unlisted funds
- Can be used for both public and private funds
- Can be used for closed-ended funds (i.e. can impose redemption terms and conditions subject to clear disclosure)

VI. Establishment of an OFC: “one-stop” flowchart



VI. Establishment of an OFC: Public OFCs and Private OFCs

- **Public OFCs: OFCs which are offered to the public**
 - Compliance with essentially the same requirements under the UT Code as existing SFC-authorized unit trusts
- **Private OFCs: OFCs which are privately offered**
 - Key regulatory focus:
 - Key operators – directors, custodian and investment manager meet basic eligibility requirements
 - Investment Scope
 - No investment restrictions – private OFCs can invest in all asset classes without any limit
 - Compliance with basic principles and structural requirements
 - No pre-vetting of offering documents nor SFC's approval required for changes to the OFC's instrument of incorporation, offering documents, investment strategy and assets
 - SFC's approval required for change of name, appointment of key operators, establishment of sub-funds and termination of OFC or sub-fund only

VI. Establishment of an OFC: Processing time

Private OFC

- Generally less than one month after application take-up by the SFC and where the registration requirements are met
- Existing private OFCs were registered within 7-14 business days after application take-up by the SFC

Public OFC

- Same as that for other SFC-authorized funds
- Generally ranging between one and three months after application take-up by the SFC, depending on its complexity, i.e. whether it is a “standard” or “non-standard” application

Applications

- Applications can be made by the proposed investment manager or proposed director

VI. Establishment of an OFC: Instrument of incorporation

■ Contents

- Must include the mandatory provisions under the SFO and comply with the OFC Rules and OFC Code, and SFC Products Handbook (for public OFCs), e.g.
 - Corporate administrative matters of the OFC, e.g. procedures and notices for holding meetings, creation of shares and the rights attached to them
- **Indicative templates (including the mandatory and optional provisions) are available on SFC's website for reference**
 - The indicative template provides the baseline contents. An OFC may include other provisions provided that they do not contradict the required contents

VI. Establishment of an OFC: Key operators

Director

- **At least two directors:** natural persons and can be overseas residents
- **Eligibility:** of good repute, appropriately qualified, experienced and proper for the purpose of carrying out the business of the OFC
- **At least one independent director:** not be a director or employee of the custodian
- **Duties:** statutory duty to exercise reasonable care, skill and diligence and fiduciary duties

Investment Manager

- **Eligibility:** registered / licensed for Type 9 (asset management) regulated activity
- **Duties:** carry out investment management functions of the OFC per instrument of incorporation and investment management agreement, comply with SFC's conduct codes

VI. Establishment of an OFC: Key operators

Custodian

■ Eligibility

- For public OFCs, same requirements as to the type of entities and capital requirements as those under the UT Code; and
- For private OFCs
 - (i) same requirements as to the type of entities and capital requirements as those under the UT Code; or
 - (ii) a licensed corporation or registered institution licensed or registered for Type 1 regulated activity which meets eligibility criteria under 7.1(b)(ii) of the OFC Code
- **Duties:** statutory duty to take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the OFC, specific duties (e.g. asset-segregation and record-keeping) are set out in OFC Code

VI. Establishment of an OFC: Changes requiring SFC's approval

All OFCs

- (A) Change of name of an OFC or its sub-fund**
- (B) Appointment of key operators (directors, investment manager and custodian):**
 - early consultation with SFC regarding change of key operators is encouraged
- (C) Establishment of sub-funds**
- (D) Termination of the OFC or its sub-fund**

Public OFCs

- Compliance with the Code on Unit Trusts and Mutual Funds as well

VI. Establishment of an OFC: Corporate administration matters

- **Share certificates:** not required, share title evidenced by entry into the register of shareholders
- **Meetings:**
 - No mandatory annual general meetings
 - Meeting quorum and notice period should comply with OFC Rules and OFC Code (private OFC) or UT Code (public OFC)
- **SFC and CR filings e.g.:-**
 - SFC: annual report, offering documents, alteration of instrument of incorporation
 - CR: change of address of registered office, alteration of instrument of incorporation

VI. Establishment of an OFC: Fees

- **Public OFCs:** No new fees – only the existing fees for authorisation and post-authorisation annual fee for public funds
- **Private OFCs:** Basic registration and post-registration fees

		Public OFC	Private OFC
Single OFC		Application fee: <u>\$ 20,000</u> Authorisation fee: <u>\$ 10,000</u> Post-authorisation Annual fee: <u>\$ 6,000</u>	Application and registration fee: <u>\$ 5,000</u> Post registration Per application for each item of change: <u>\$ 300</u>
Umbrella OFC	For the umbrella	Application fee: <u>\$ 40,000</u> Authorisation fee: <u>\$ 20,000</u> Post-authorisation Annual fee: <u>\$ 7,500</u>	Application and registration fee: <u>\$ 10,000</u> Post registration Per application for each item of change: <u>\$ 300</u>
	For <u>each</u> sub-fund	Application fee: <u>\$ 5,000</u> Authorisation fee: <u>\$ 2,500</u> Post-authorisation Annual fee: <u>\$ 4,500</u>	Application and registration fee: <u>\$ 1,250</u> Post registration Per application for each item of change: <u>\$ 300</u>
All OFC			Application for a modification or waiver of requirements of OFC Rules: <u>\$ 6,000</u>

VII. Auditors and accounting matters: Auditor

■ Eligibility requirements

- Largely similar to those under the Companies Ordinance
- Only “practice unit” under the Professional Accountants Ordinance (Cap. 50) is eligible for appointment
- Must be independent of the investment manager, the custodian and the directors of the OFC

■ Cessation

- An auditor may be removed by the OFC by ordinary resolution of the shareholders
- If an auditor ceases to be eligible, must cease to act and notify the OFC within 14 days from cessation
- A resigning auditor must give a statement of circumstances connected with the resignation that should be brought to the attention of shareholders or creditors, or if there are no such circumstances, a statement to that effect
- If a statement of circumstances is given, the auditor may also give notice to OFC requiring directors to convene a general meeting of the company for receiving and considering the explanation of the auditor.

- The procedures and requirements for appointment and removal of an auditor must be included in the instrument of incorporation of the OFC

VII. Auditors and accounting matters: Financial reports

■ Financial year determination

- First financial year: starts from date of incorporation and ends on a date within 18 months from incorporation (“primary accounting reference date”)
- Subsequent accounting reference period: the period of 12 months beginning immediately after the end of the previous accounting reference period and end on its accounting reference period
- The financial year may be shortened or extended by the board of directors after consultation with the auditor of the company, such extension should not be longer than 18 months

■ Annual Report

- The OFC must prepare an audited annual report for each financial year
- Financial statements must give a true and fair view of the financial position and financial performance of the OFC as at the end of the financial year; and comply with the accounting standards applicable to the financial statements

VII. Auditors and accounting matters: Financial reports

- **Accounting standards under the OFC Code:**
 - All accounts must be prepared in a manner compliant with Hong Kong Financial Reporting Standards or International Financial Reporting Standards
 - Other accounting standards may be considered on a case-by-case basis

- **OFC Code requires that the annual reports of the OFC must disclose the items as required for observance of the applicable accounting standards, and include at least the following:**
 - a) total value of investments, bank balances, dividends and other receivables as at the end of the financial period;
 - b) income generated/ earned by the OFC during the financial period, including investment income, interest income and dividend income;
 - c) expenses borne by the OFC, including the fees paid to the directors, investment manager, and the custodian during the financial period;
 - d) number of shares in issue, and net asset value per share, at the beginning and at the end of the financial period, respectively;
 - e) details of any distribution declared and/ or paid during the financial period should be set out in the notes to the accounts; and
 - f) information on cross sub-fund investments conducted during the financial period

VII. Auditors and accounting matters: Financial reports

■ Auditor's Report

- The auditor's report included in the annual report must state whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with:
 - the relevant provisions of the OFC's instrument of incorporation;
 - the applicable financial standards;
 - applicable regulatory requirements including the OFC Rules; and
 - the OFC Code
- Auditor's opinion must opine on whether:
 - the financial statements give a true and fair view of the financial position and financial performance of the open-ended fund company;
 - adequate accounting records have been kept by the open-ended fund company; and
 - the financial statements are in agreement with the accounting records

VII. Auditors and accounting matters: Financial reports

Interim reports

- Interim report is not mandated for private OFCs; public OFCs must prepare interim reports per UT Code.
- An interim report (if any) of the OFC must:
 - apply the same accounting policies and method of computation as are applied in the annual reports of the OFC; and
 - disclose a statement to this effect or a description of the nature and effect for any change in these policies or methods.

Umbrella OFCs

- For umbrella OFCs, the financial reports must show the respective financial positions and results of the umbrella OFCs and those of the individual sub-funds

Publication and filing with the SFC

- Annual reports: within four months of the end of the OFC's financial year
- Interim reports (if any): within two months of the end of the period they cover

VIII. Practical tips and common misconceptions

Accounting matters

- **Q: Are US Generally Accepted Accounting Principles (GAAP) or other overseas accounting standards an acceptable accounting standard for OFCs' accounts?**
 - The OFC Code has not precluded the acceptance of other accounting standards which are appropriate for the OFC including e.g. the US GAAP
 - The criteria for determining the acceptability of accounting standards (other than HKFRS and IFRS) as set out in OFC Code:
 - whether the standards are of high and robust quality and the extent to which they are internationally recognized; and
 - whether the standard setting process is accountable and subject to appropriate consultation and whether the accounting standards setters are independent

VIII. Practical tips and common misconceptions

Accounting matters

- **Q: Can an umbrella OFC adopt different accounting standards for different sub-funds?**
 - The adoption of different accounting standards to different sub-funds may be considered on a case-by-case basis
 - The reasons for and practicability of such approach will be taken into consideration

VIII. Practical tips and common misconceptions

Grant scheme

- **Q: Are audit fees for the first year's annual audit review eligible under the Grant Scheme?**
 - Only fees in relation to the incorporation of an OFC, re-domiciliation of a non-Hong Kong fund corporation to Hong Kong as an OFC or listing of a REIT are covered under the Grant Scheme
 - Generally, audit fees paid to accounting firms in relation to the annual audit review will not be considered as eligible expenses

VIII. Practical tips and common misconceptions

Investment managers

- **Q: Can an OFC have an offshore investment manager which sub-delegates the investment management functions to a Type 9 licensed corporation?**
 - The investment manager of an OFC must be an intermediary licensed / registered for Type 9 regulated activity
 - The investment management functions can be further sub-delegated to an offshore investment manager
 - The investment manager shall exercise due care in the selection, appointment and ongoing monitoring of its delegate

VIII. Practical tips and common misconceptions

Investment managers

- **Q: Can the investment manager of an OFC be an OFC director?**
 - The OFC must have at least two individual directors, with at least one independent director, who must not be a director or employee of the custodian
 - Directors / responsible officers of the investment manager can be OFC directors

VIII. Practical tips and common misconceptions

Custodians

- **Q: Can multiple custodians or sub-custodians be appointed?**
 - The appointment of multiple custodians is permitted
 - Custodians can delegate their custody tasks to one or more sub-custodians – i.e. appointment of multiple sub-custodians is permitted
 - A custodian shall exercise due care in the selection, appointment and ongoing monitoring of its delegate(s)

VIII. Practical tips and common misconceptions

Custodians

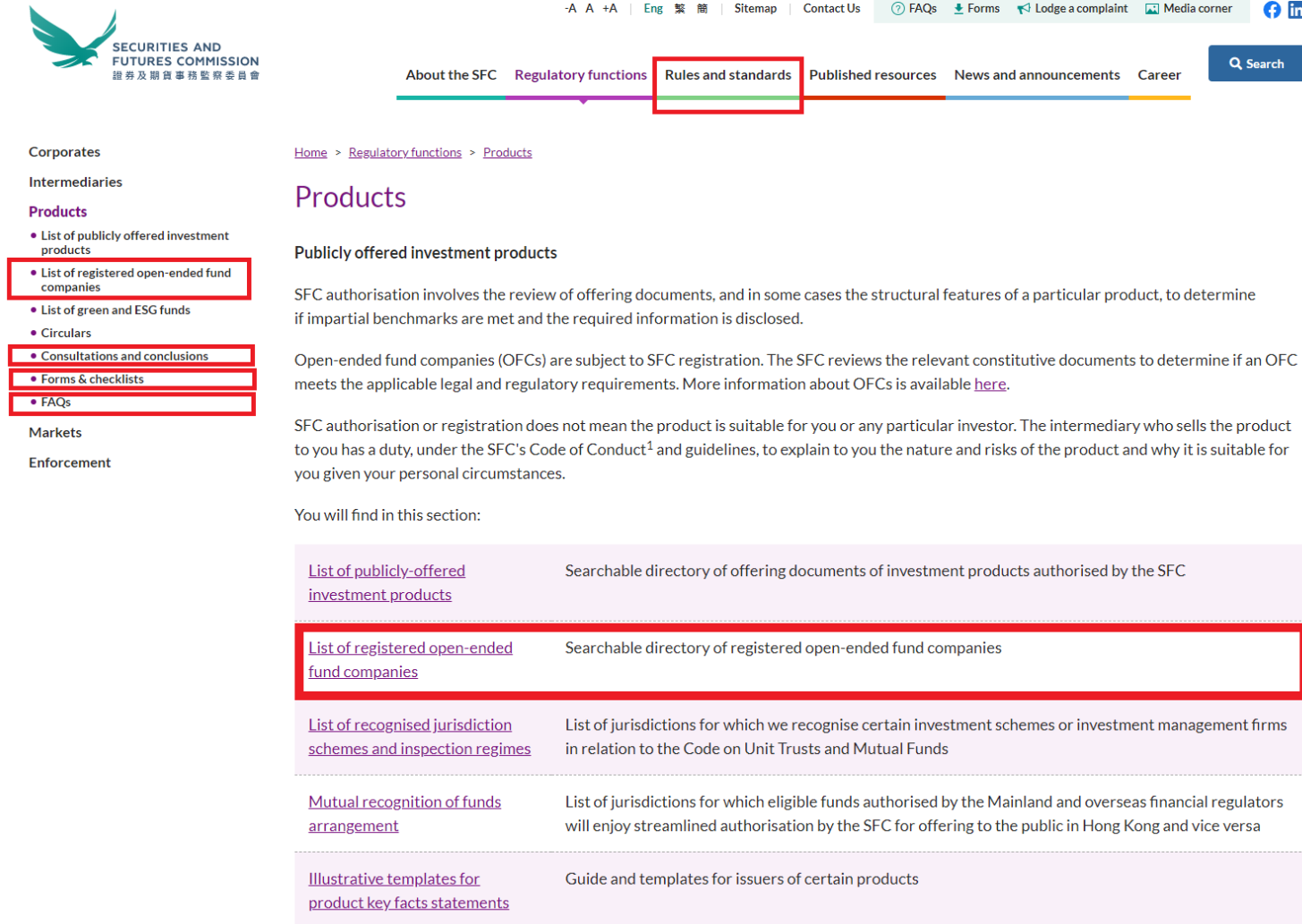
- **Q: Can overseas prime brokers act as custodians for private OFCs?**
 - These entities are already currently eligible to act as custodians for private OFCs if they meet the requirements in 4.2(d) of the UT Code

Structure

- **Q: Can a public umbrella OFC house a private sub-fund?**
 - A public umbrella OFC may have both publicly-offered and privately-offered sub-funds
- **Q: Can a closed-ended fund adopt an OFC structure?**
 - A “closed-ended” fund (ie funds which are subject to redemption restrictions) may use an OFC structure
 - SFO enables an OFC to have variable capital and does not preclude an OFC from imposing redemption restrictions

IX. Further information

- Information available on SFC's website:
<https://www.sfc.hk/en/Regulatory-functions/Products>



The screenshot shows the SFC website's 'Products' page. The navigation menu includes 'About the SFC', 'Regulatory functions', 'Rules and standards', 'Published resources', 'News and announcements', and 'Career'. The 'Rules and standards' menu item is highlighted with a red box. The left sidebar contains a 'Products' section with a list of links: 'List of publicly offered investment products', 'List of registered open-ended fund companies', 'List of green and ESG funds', 'Circulars', 'Consultations and conclusions', 'Forms & checklists', and 'FAQs'. The 'List of registered open-ended fund companies' link is highlighted with a red box. The main content area is titled 'Products' and 'Publicly offered investment products'. It contains text about SFC authorization and a table of product-related links.

SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

-A A +A | Eng 繁 簡 | Sitemap | Contact Us | FAQs | Forms | Lodge a complaint | Media corner | f in

About the SFC Regulatory functions Rules and standards Published resources News and announcements Career

Search

Corporates
Intermediaries
Products

- List of publicly offered investment products
- List of registered open-ended fund companies
- List of green and ESG funds
- Circulars
- Consultations and conclusions
- Forms & checklists
- FAQs

Markets
Enforcement

Home > Regulatory functions > Products

Products

Publicly offered investment products

SFC authorisation involves the review of offering documents, and in some cases the structural features of a particular product, to determine if impartial benchmarks are met and the required information is disclosed.

Open-ended fund companies (OFCs) are subject to SFC registration. The SFC reviews the relevant constitutive documents to determine if an OFC meets the applicable legal and regulatory requirements. More information about OFCs is available [here](#).

SFC authorisation or registration does not mean the product is suitable for you or any particular investor. The intermediary who sells the product to you has a duty, under the SFC's Code of Conduct¹ and guidelines, to explain to you the nature and risks of the product and why it is suitable for you given your personal circumstances.

You will find in this section:

List of publicly-offered investment products	Searchable directory of offering documents of investment products authorised by the SFC
List of registered open-ended fund companies	Searchable directory of registered open-ended fund companies
List of recognised jurisdiction schemes and inspection regimes	List of jurisdictions for which we recognise certain investment schemes or investment management firms in relation to the Code on Unit Trusts and Mutual Funds
Mutual recognition of funds arrangement	List of jurisdictions for which eligible funds authorised by the Mainland and overseas financial regulators will enjoy streamlined authorisation by the SFC for offering to the public in Hong Kong and vice versa
Illustrative templates for product key facts statements	Guide and templates for issuers of certain products

IX. Further information

■ Designated mailbox for OFC enquiries

Organisational chart

Corporate governance

Corporate social responsibility

Regulatory collaboration

Contact us

- Public enquiries: Further guidance and sources of information

Contact us

You are welcome to contact us with your questions or comments. Please keep in mind that we are not in a position to answer questions about [certain topics](#).

In responding to **general enquiries**, we may only be able to provide publicly available information published on our website. Before contacting us, we advise you to refer to our [FAQs](#) where you may quickly find the information you seek.

To help us handle your enquiry more efficiently, please be sure to provide us with your name and contact details so that we can get back to you.

Most regulatory filings, applications and disclosure notifications can be sent to us using [WINGS](#) (Web-based INteGrated Service), a dedicated online platform for submitting information electronically to the SFC.

By email

To ensure your enquiries are handled promptly, please write to the most relevant address below. Please do not send your enquiry to more than one SFC e-mailbox.

To lodge a complaint against intermediaries and market activities, please write to complaint@sfc.hk.

Type	email address
General enquiries, comments and suggestions (see FAQs)	enquiry@sfc.hk
Licensing-related enquiries	licensing@sfc.hk
Private equity firms enquiries	enquiry.pefirm@sfc.hk
Family offices enquiries	enquiry.familyoffice@sfc.hk
Listing and takeover matters	cfmailbox@sfc.hk
Open-ended fund companies matters	ofc-enquiry@sfc.hk
Real estate investment trusts matters	REIT-enquiry@sfc.hk
Short position reporting	shortpositions@sfc.hk

A large, stylized teal graphic of a bird in flight, positioned on the left side of the page. The bird's wings are spread wide, and its tail feathers are visible. The graphic is semi-transparent, allowing the white background to show through.

Thank you.

www.sfc.hk