

Information Checklist for Application for Registration of a Private Open-ended Fund Company or Establishment of a Privately offered Sub-fund of an Open-ended Fund Company

This Information Checklist should be used with effect from 1 November 2021 in support of any application (“Application”) for (i) a registration of a proposed private OFC as defined in the Code on Open-ended Fund Companies (“OFC Code”) or (ii) an approval of establishment of privately offered sub-fund(s) of an existing open-ended fund company (“OFC”) as defined in section 112A of the Securities and Futures Ordinance (“SFO”).

A. Introduction

An applicant seeking registration of a proposed private OFC pursuant to section 112D of the SFO or approval of the establishment of a privately offered sub-fund of an OFC pursuant to rule 160(1) of the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”) must complete this Information Checklist and submit it to the Investment Products Division of the Securities and Futures Commission (the “SFC”), together with relevant documents provided hereunder that are required for an application. The SFC reserves the right to request for more information and/or documents in reviewing and considering each application.

The SFC reserves the right to return forthwith, without processing, an incomplete or non-compliant application to the extent the application form¹, this Information Checklist and/or the accompanying documents are not properly or fully completed, and/or where negative responses in this Information Checklist are not properly explained, and/or such application is accompanied by documents that do not meet the applicable requirements, not in good order or otherwise not suitable for clearance. The SFC reserves the right to request the applicant to submit updated and duly completed and properly executed checklist(s), confirmation(s) or undertaking(s) before registration of a private OFC or granting an approval for establishment of sub-fund(s) of an OFC.

This is a standard form document. Unless otherwise specified, when completing this Information Checklist, please do not make any deletion, addition or amendment to the forms or headings. The applicant is reminded to tick ALL boxes that are applicable to its application(s) in this Information Checklist. For ALL asterisked (*) parts, please delete as appropriate.

B. Basic information of the proposed private OFC / proposed privately offered sub-fund(s) of an existing OFC

Please fill in this sheet for each of the proposed private OFC / proposed privately offered sub-fund(s) of an umbrella OFC under application (please use separate sheet(s), if necessary).

1. The application concerns a registration of a proposed private OFC (“Proposed Private OFC”).
 - (i) The nature of the Proposed Private OFC:
 single fund umbrella fund with sub-fund(s)

¹ Application form refers to the Application Form for Registration of a Private Open-ended Fund Company or Establishment of a Privately Offered Sub-fund of an Open-ended Fund Company duly completed and executed by / for and on behalf of the applicant.



- (ii) The name of the single Proposed Private OFC / the umbrella Proposed Private OFC (*please delete as appropriate*) is:

_____ (in English)

_____ (in Chinese)

- (iii) (*Applicable where the proposed private OFC is an umbrella fund*) The name(s) of the sub-fund(s) of the Proposed Private OFC:

| Name (in English) | Name (in Chinese) |
|-------------------|-------------------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

(Please use separate sheet(s), if necessary)

2. The application concerns an application for approval of establishment of the following privately offered sub-fund(s) ("Proposed Sub-fund(s)") of an existing umbrella OFC.

- (i) The name of the existing umbrella OFC is:

- (ii) The name(s) of the Proposed Sub-fund(s) of the existing umbrella OFC:

| Name (in English) | Name (in Chinese) |
|-------------------|-------------------|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

(Please use separate sheet(s), if necessary)

3. (*Applicable to an application for registration of a proposed private OFC*) Is/ are the proposed director(s) currently managing other existing SFC-registered OFC(s)?

Yes No

Name of proposed director(s) who is/ are serving as a director of existing SFC-registered OFC(s):

1. _____

2. _____

3. _____

4. _____

5. _____

(please use separate sheets if necessary)



4. Is the Proposed Private OFC/ are the Proposed Sub-fund(s)* managed by an investment manager currently managing other existing SFC-registered OFC(s) or SFC-authorized fund(s)?
- Yes No
5. Is the custodian of the Proposed Private OFC/ Proposed Sub-fund(s)* currently acting as trustee/ custodian of other existing SFC-registered OFC(s) or SFC-authorized fund(s)?
- Yes No
6. *(Applicable to an application for registration of a proposed private OFC)* The following is the Proposed Private OFC's email address for any correspondence to be sent by email:
-

C. Confirmation from the applicant

(For all asterisked () parts, please delete as appropriate)*

In respect of an application for registration of the Proposed Private OFC / establishment of the Proposed Sub-fund(s)*:

The applicant, in respect of this application and the Proposed Private OFC / Proposed Sub-fund(s)*, hereby confirms and undertakes that:

Compliance with applicable laws and regulatory requirements

- a) all requirements set out in the SFO, the OFC Rules and the OFC Code, as amended from time to time, have been and will be complied with in respect of the Proposed Private OFC / Proposed Sub-fund(s)* under this Application;
- b) all documents required to be submitted to the SFC for the purposes of application for registration of the Proposed Private OFC / establishment of the Proposed Sub-fund(s)* under the SFO, OFC Rules and OFC Code have been submitted and are in compliance with the applicable provisions therein;

Offering documents

- c) the offering document(s) of the Proposed Private OFC/ Proposed Sub-fund(s)* is/are* compliant with the requirements under the OFC Code, including the disclosure requirements under 4.2, 5.5, 6.3, 7.4, 7.5, 8.3, 10.9, 11.5, the note to 12.3, 13.1 and the note to 13.3 of the OFC Code; and

Instrument of Incorporation

- d) with regards to the instrument of incorporation of the Proposed Private OFC / the relevant parts of the instrument of incorporation relating to the Proposed Sub-fund(s) of the OFC*, we confirm that:
- (i) it contains (and we shall ensure that it shall at all times contain) all the information required under the applicable provisions of the SFO (including section 112K), OFC Rules (including rule 3(2)(a) and rule 13) and the OFC Code; and
- (ii) nothing therein would in any way contradict or result in any breach of the applicable provisions of the SFO, OFC Rules and OFC Code (as may be modified by any applicable waivers or exemptions granted by the SFC).

General

We confirm that all information contained in this Information Checklist (including all confirmations and undertakings) and the documents submitted relating thereto are true and accurate; and unless otherwise specifically allowed for in this Information Checklist, no deletion, addition or amendment has been made to the standard templates of these current prescribed documents as published on the SFC website.



We further undertake to notify the SFC immediately if there are any changes to the information and/or confirmations provided to the SFC from time to time in connection with the application or where we have become aware of any matters or changes in circumstance that may affect the SFC's assessment of this application.

Name of authorized signatory :
 Signature :
 Title / Position² :
 Duly authorized :
 For and on behalf of³ :
 Date (date / month / year) :

D. Basic documents required to be submitted to the SFC

The list below is not exhaustive. The SFC may require additional information.

On application, please submit soft copies of the following documents in text-searchable format.

I. Mandatory documents

For an application for registration of a proposed private OFC or establishment of a privately offered sub-fund of an OFC

- 1) Duly completed and properly executed application form (“Application Form for Registration of a Private Open-ended Fund Company or Establishment of a Privately Offered Sub-fund of an Open-ended Fund Company”)
- 2) Application fee (*in the form of cheque payable to the “Securities and Futures Commission”, or other means of payment acceptable to the SFC, for the correct amount of total application fee*) (Note: The SFC will take up new OFC or sub-fund applications if they are in good order and the application fee is the only outstanding matter)
- 3) Duly and properly completed Information Checklist, including the duly completed and properly executed confirmation from the applicant under Section C of this Information Checklist

II. Additional document(s) (to the extent applicable)

- 4) For an application for registration of a proposed private OFC
 - (i) Instrument of incorporation (*marked-up against the indicative template instrument of incorporation for private OFCs published on the SFC website*)
 - (ii) Duly completed and properly executed confirmations from the proposed custodian (*see Annex A1*)

| Applicable? (please tick) | |
|------------------------------|----|
| Yes (and submitted) | No |
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² In the case of an application for registration of a proposed private OFC, the signatory should be a proposed director of the proposed private OFC or a senior-ranking executive of the proposed investment manager of the proposed private OFC (or an appropriate person designated by the senior-ranking executive of the proposed investment manager of the proposed private OFC), who is duly authorized by the applicant. In the case of an application for establishment of new privately offered sub-fund(s) of an existing OFC, the signatory should be a director of the OFC or a senior-ranking executive of the investment manager of the OFC (or an appropriate person designated by the senior-ranking executive of the investment manager of the OFC), who is duly authorized by the board of directors of the OFC.

³ State the name of the applicant.

- (iii) Duly completed and properly executed confirmation from each of the proposed directors (see Annex B1)
 - (iv) *(In the case of a proposed director who is not currently a director of other existing SFC-registered OFC(s))* Duly completed and properly executed Vetting Authorization Form from each of the proposed directors (see Annex B2)⁴
 - (v) Duly completed and properly executed confirmation from the proposed investment manager (see Annex C)
 - (vi) Duly completed and properly executed confirmation in respect of the instrument of incorporation (see Annex D)
- 5) For an application for establishment of a privately offered sub-fund of an OFC
Instrument of incorporation (marked-up against the latest version filed with the SFC) or other relevant documents for the establishment of the sub-fund⁵

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E. Additional documents required to be submitted to the SFC

The list below is not exhaustive. The SFC may require additional information.

On application, please submit soft copies of the following documents in text-searchable format.

- 1) For a proposed private OFC with new investment manager which is not currently managing other SFC-registered OFC(s) or SFC-authorized fund(s)
 - (i) Copy of valid certificate(s) showing its licensing/registration status
 - (ii) Duly completed and properly executed confirmation from the new investment manager (see Annex C)
- 2) For a proposed private OFC with a custodian which is not currently acting as trustee/ custodian for SFC-authorized fund(s)
 - (i) Duly completed and properly executed confirmations from the proposed custodian (see Annex A1) and from the proposed directors (see Annex A2)⁶ respectively regarding the proposed custodian’s internal controls and systems
- 3) For a proposed private OFC with a custodian which is not currently acting as trustee/ custodian for SFC-registered OFC(s) or SFC-authorized fund(s)
 - (i) Certificate of incorporation/registration of the custodian

| Applicable? (please tick) | |
|------------------------------|----|
| Yes (and submitted) | No |
| | |
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| | |

⁴ The hard copy of the original Vetting Authorization Form should be submitted to the SFC as soon as practicable following submission of the application.

⁵ In the case of an application for approval of establishment of a privately offered sub-fund of an existing umbrella OFC involving proposed changes to the instrument of incorporation from the latest version filed with the SFC, the applicant is required to submit the revised instrument of incorporation at the time of application as marked-up against the latest version filed with the SFC. If the establishment of a sub-fund is by other means (e.g. by resolution), relevant supporting document(s) should be submitted.

⁶ Annex A2 is not required from directors where the OFC appoints a custodian whose functions are (a) mainly carried out in an acceptable inspection regime (“AIR”) and with the primary supervisory authority being one of those with whom the SFC has co-operation agreements (including Australia, France, Germany, Ireland, Luxembourg, Malaysia, Taiwan, United Kingdom and United States of America); or (b) carried out by the head/branch office(s) of a banking institution in an AIR whereby a separate arm/office of the banking institution is currently acting as trustee/custodian for SFC-authorized funds.



(ii) Evidence to demonstrate compliance with 7.1(b) of the OFC Code (*please tick where applicable*) e.g.

- (*for a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of Laws of Hong Kong)*) licence issued by the Hong Kong Monetary Authority
- (*for a trust company registered under the Trustee Ordinance which is a subsidiary of a licensed bank or a banking institution incorporated outside Hong Kong subject to prudential regulation and supervision on an ongoing basis*) documentation showing such relationship, such as its group organizational chart, together with the licence of such bank or financial institution issued by the relevant authority
- (*for a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance*) evidence showing that it is an approved trustee by the Mandatory Provident Fund Schemes Authority and the name(s) of the relevant registered scheme(s) for which it is acting as the trustee
- (*for a banking institution incorporated outside Hong Kong subject to prudential regulation and supervision on an ongoing basis or an entity which is authorized to act as trustee/custodian of a scheme and prudentially regulated and supervised by an overseas supervisory authority*) licence of such banking institution issued by the relevant authority; or evidence showing such entity being approved/authorized as the trustee/custodian of a scheme by its supervisory authority
- (*for a licensed corporation or registered institution licensed or registered for Type 1 regulated activity*) a copy of valid certificate(s) showing its licensing/registration status, the name and CE number of the responsible officer(s) or executive officer(s) responsible for the overall management and supervision of its custodial function, an updated organisational chart, and (*where the existing systems and controls for the safekeeping of client assets of the licensed corporation's or registered institution's Type 1 regulated activity business will not be used for safekeeping of the scheme property of the proposed private OFC*) a custody operational flowchart together with the reason(s) for not using such existing systems and controls for safekeeping of the scheme property of the OFC

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ANNEX A1: Confirmation from the proposed custodian

- For asterisked parts (*), please delete as appropriate

To: Securities and Futures Commission (the "SFC")

Name (or such other name as may be approved by the SFC) of the proposed private OFC and proposed sub-fund(s) under application:

- a) Name (or such other name as :
may be approved by the SFC
of the single/umbrella*
proposed private OFC
("Proposed Private OFC") _____

- b) Name (or such other name as :
may be approved by the SFC
of the relevant proposed sub-
fund(s) _____

(Please use separate sheet(s), if necessary)

We, as the custodian of the Proposed Private OFC, confirm and undertake that:

- a) we consent to our appointment as custodian of the Proposed Private OFC;
- b) *(Applicable to custodian meeting the same eligibility requirements as set out in the Code on Unit Trusts and Mutual Funds ("UT Code") for SFC-authorized funds)* we shall at all times comply with 7.1(b)(i) of the Code on Open-ended Fund Companies ("OFC Code"), in particular,

- (i) we shall act independently of the investment manager of the Proposed Private OFC in our dealings with the Proposed Private OFC;

(please tick one of the following boxes)

- (ii) we, based on the latest audited financial report (and if more recent, the latest semi-annual report) (at the entity level) or an audit certificate⁷ (at the entity level), comply with the financial resources requirement under 4.3 of the UT Code (applicable to the Proposed Private OFC under 7.1(b)(i) of the OFC Code);

- (iii) we have obtained a standing commitment or an undertaking from the holding company (which is attached in separate sheet) in compliance with 4.4 of the UT Code (applicable to the Proposed Private OFC under 7.1(b)(i) of the OFC Code);

- c) *(Applicable to custodian which is a licensed corporation or registered institution licensed or registered for Type 1 regulated activity)* we shall at all times comply with 7.1(b)(ii) of the OFC Code;

- (i) the licence/registration status of the RA1 intermediary is as follows:

| Licence/ registration status | Date of licence/ registration | Restriction attached to the licence/ registration (if any) or state Nil (if applicable) |
|------------------------------|-------------------------------|---|
| | | |

⁷ Where the private OFC custodian to be appointed by the private OFC is an existing trustee/ custodian of an SFC-authorized fund, an audit certificate may already have been prepared. Such audit certificate can be used as supporting document for the above purpose.



- (ii) *(Applicable to custodian which is not currently acting as custodian for SFC-registered OFC(s))*
(Please tick one of the following boxes)

- there is no disciplinary history of the intermediary in the past five years or since the date of licence/registration if it has been licensed/ registered for less than five years;
- the details of the disciplinary history of the intermediary in the past five years or since the date of licence/registration if it has been licensed/ registered for less than five years have been submitted under separate sheet(s); and such disciplinary matter(s) does/do not materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;

- (iii) *(Applicable to custodian which is not currently acting as custodian for SFC-registered OFC(s))*
(Please tick one of the following boxes)

- there is no current or pending investigation/disciplinary matter(s) of the intermediary;
- the details of the current or pending investigation/disciplinary matter(s) of the intermediary is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;

- (iv) *(Applicable to custodian which is not currently acting as custodian for SFC-registered OFC(s))*
(Please tick one of the following boxes)

- there is no current or pending investigation/disciplinary matter(s) of the responsible officer(s) of the intermediary;
- the details of the current or pending investigation/disciplinary matter(s) of the responsible officer(s) of the intermediary is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect the responsible officer(s)' ability in performing his/her/their roles/duties as responsible officer(s) of the intermediary and the justification is also attached;

- (v) the Proposed Private OFC will be, and will remain at all times, our client in respect of our business in Type 1 regulated activity;
- (vi) we have at least one responsible officer/ executive officer responsible for the overall management and supervision of our custodial function;
- (vii) we shall act independently of the investment manager of the Proposed Private OFC in our dealings with the Proposed Private OFC;
- (viii) *(Please tick one of the following boxes)*

- we confirm that our existing systems and controls for the safekeeping of the client assets of our Type 1 regulated activity business ("Existing Systems and Controls") will be used for safekeeping of the scheme property of the Proposed Private OFC;
- our Existing Systems and Controls will not be used for safekeeping of the scheme property of the Proposed Private OFC; and a custody operational flowchart demonstrating the systems and controls that we will use for safekeeping of the scheme property of the Proposed Private OFC, together with the reason(s) for not using such Existing Systems and Controls for safekeeping of the scheme property of the OFC, is attached;



(ix) *(Applicable to custodian which is currently acting as custodian for SFC-registered OFC(s)) (Please tick one of the following boxes)*

we confirm that there is no change to the organisational chart that we previously submitted to the SFC as part of an application for the registration of a private OFC;

there have been changes to the organisational chart that we previously submitted to the SFC as part of an application for the registration of a private OFC and an updated organisational chart is attached;

- d) we have sufficient experience, expertise and competence in safekeeping the asset types in which the Proposed Private OFC may invest;
- e) we are not the subject of any disciplinary proceeding or subject to any action for breach of any applicable rules, which may materially affect our financial condition, status as a custodian, or ability to perform our services;
- f) nothing should be drawn to the attention of the SFC which would affect our ability to act or perform as the custodian of SFC-registered OFC in compliance with Chapter 7 of the OFC Code;
- g) *(please delete as appropriate) (applicable to non-Hong Kong custodian⁸ as defined in the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”))* for the purpose of rule 115(1) of the OFC Rules, a process agent meeting the requirements in rule 2 of the OFC Rules has been appointed. We undertake to give notice to the Proposed Private OFC of any matters relating to the process agent that are required for the record kept by the Proposed Private OFC in accordance with rule 115(6) of the OFC Rules.
- h) *(Please tick if applicable)* In the case of a custodian which is not currently acting as trustee/custodian for any SFC-authorized fund(s), we further confirm that (please tick one of the following):
- (a) our functions are (i) mainly carried out in acceptable inspection regimes and with the primary supervisory authority being one of those with whom the SFC has co-operation agreements (including Australia, France, Germany, Ireland, Luxembourg, Malaysia, Taiwan, United Kingdom and United States of America); or (ii) carried out by the head/branch office(s) of a banking institution in an acceptable inspection regime whereby a separate arm/office of the banking institution is currently acting as trustee/custodian for SFC-authorized funds);
- (b) our functions are mainly carried out in Hong Kong and/or in a non-acceptable inspection regime. We have submitted to the OFC a report (“Custodian Report”)⁹ with respect to our internal controls and systems, which is in full compliance with Annex A3, which the directors of the OFC have reviewed and considered satisfactory. We will provide any other supporting documents which the SFC may deem necessary.

⁸ This does not apply to a non-Hong Kong custodian that is a registered non-Hong Kong company (as defined in section 2(1) of the Companies Ordinance (Cap. 622)).

⁹ In the case of a custodian which is currently acting as custodian of any other existing SFC-registered OFC(s), no separate Custodian Report is mandated to be prepared. The board of directors of the private OFC making the appointment should review the adequacy of the existing Custodian Report and decide whether a separate Custodian Report for the OFC is required to ensure that the custodian’s internal controls and systems are commensurate with the nature, scale and complexity of the private OFC concerned.



- i) (for a custodian which is not currently acting as trustee/ custodian for any other existing SFC-registered OFC(s) or SFC-authorized fund(s) only) the information relating to the custodian below has been accurately completed:-

| | |
|---|--|
| Name and title of the contact person | |
| Address: | |
| Telephone number | |
| Fax number | |
| Email address | |
| Principal place of operations of the custodian for the Proposed Private OFC | |
| Name of primary supervisory authority | |
| Financial year-end of the custodian | |

Signed for and on behalf of:

Name of custodian : _____

Name of authorized signatory : _____

Signature : _____

Title / Position : _____

Date (date / month / year) : _____



ANNEX A2: Confirmation from the directors of the OFC where (i) the custodian is not currently acting as trustee/custodian for any other existing SFC-authorized fund(s); and (ii) the custodian’s functions are mainly carried out in Hong Kong and/or in a non-acceptable inspection regime

- For asterisked parts (*), please delete as appropriate

To: Securities and Futures Commission (the “SFC”)

Name (or such other name as may be approved by the SFC) of the proposed private OFC and proposed sub-fund(s) and custodian of the proposed private OFC under application:

- a) Name (or such other name as may be approved by the SFC) of the single/umbrella* proposed private OFC (“Proposed Private OFC”) _____
- b) Name (or such other name as may be approved by the SFC) of the relevant proposed sub-fund(s) _____
- c) Name of the custodian of the Proposed Private OFC _____
(Please use separate sheet(s), if necessary)

We, as the directors of the Proposed Private OFC, confirm that (i) we have assessed the custodian’s experience, expertise and competence in safekeeping the asset types in which the OFC may invest; and (ii) we have reviewed a report (“Custodian Report”) with respect to the custodian’s internal controls and systems. We are satisfied that (i) the custodian has sufficient experience, expertise and competence in safekeeping the asset types in which the OFC may invest; and (ii) the custodian’s internal controls and systems are commensurate with the nature, scale and complexity of the Proposed Private OFC and the custodial risks specific to the type and nature of assets in which the Proposed Private OFC may invest, and is in compliance with Annex A3.

We will also:

- review the adequacy of the custodian’s internal systems and controls on an ongoing basis having regard to the nature, scale and complexity of the private OFC and the custodial risks specific to the type and nature of assets in which the private OFC may invest and any relevant changes to the OFC from time to time; and
- provide any other supporting documents which the SFC may deem necessary.

Name of authorized signatory :
Signature :
Title / Position¹⁰ :
Duly authorized :
For and on behalf of¹¹
Date (date / month / year) :

¹⁰ The signatory should be a proposed director of the proposed private OFC, who is duly authorized by the respective proposed directors of the proposed OFC, to sign this confirmation and undertaking.

¹¹ State the name of the applicant.

ANNEX A3: Guidance on information to be contained in the Custodian Report

- *Under the Securities and Futures Ordinance, the OFC custodian must take reasonable care, skill and diligence to ensure the safekeeping of the scheme property of the OFC that is entrusted to it. The Code on Open-ended Fund Companies (“OFC Code”) also sets out the specific duties of OFC custodians. Accordingly, custodians of OFC, including private OFCs, are expected to put in place adequate internal controls and systems to meet its duties under the applicable laws and regulations.*
- *The report on the Custodian’s internal controls and systems (the “Custodian Report” as referred to in Annex A1 and Annex A2) should describe the control environment of the custodian, and the policies and procedures of the custodian’s internal controls and systems that are designed to ensure compliance with the requirements of 7.3 and Appendix A of the OFC Code. The policies and procedures are expected to cover, at a minimum, each of the areas (“Control Attributes”) below.*
- *The following Control Attributes are basic requirements for the Custodian Report. The custodian should ensure, and the OFC should review and ensure it is satisfied that, the custodian’s internal controls and systems are commensurate with the nature, scale and complexity of the private OFC concerned and the custodial risks specific to the type and nature of assets in which the private OFC invests. In this connection, the directors should note their duty under the OFC Code to use reasonable care, skill and diligence to oversee the activities of the custodian as part of their overall duty to oversee the operations of the OFC.*

Basic contents of a Control Report

(I) General

1. Maintenance of a control environment

- (a) Resources: possession of relevant knowledge, skills, qualifications, experiences, resources and operational capabilities commensurate with the OFC’s nature, scale, complexity and underlying investments.
- (b) Procedures: appropriate procedures (subject to regular and frequent review and update) for acting as the custodian of the OFC, including ongoing monitoring on third parties.
- (c) Corporate governance: a corporate governance framework for its operation as a custodian, with timely escalation to and involvement of senior management on issues that may lead to breaches.
- (d) Risk management: a risk management framework; identification, monitoring and control of relevant risks for acting as an OFC custodian, with supervision from senior management.
- (e) Business continuity plan (“BCP”): a BCP with regular testing of effectiveness and subject to ongoing review, with timely reporting to senior management on material exceptions.

2. Compliance with legal and regulatory requirements

- (a) Compliance function and review: establishment of a compliance programme and policies (with periodic review) approved by the management for the obligations under the applicable laws and regulations; and ensuring sufficient and adequate compliance resources.
- (b) Breach reporting: procedures for identifying breaches; formation and monitoring of rectification plans; and reporting to senior management, the OFC and regulatory bodies.

(II) Appointment and oversight on third parties relevant for the custodian’s discharge of obligations

- (a) Due diligence: selection and due diligence of third parties engaged, including an assessment on their competency, regulatory and financial status, and capabilities in discharging their

delegated function(s)/operation(s) and their internal controls and systems, covering the respective matters provided in this Annex with respect to the relevant delegated function(s)/operations(s) by the custodian.

- (b) Ongoing monitoring: ongoing monitoring and review of third parties engaged to ensure the delegated function(s)/operation(s) are performed in compliance with relevant legal and regulatory requirements.
- (c) Oversight: oversight on third parties engaged that all the necessary internal controls and systems are established and maintained effectively in carrying out the delegated function(s)/operation(s).
- (d) Documented procedures: documented procedures in respect of matters in (II)(a) to (c) above.
- (e) Contingency planning: contingency plan on third parties engaged, including actions and measures to be taken on breaches and solvency matters/issues relating to the third parties engaged.
- (f) Conflicts: policies and measures to address conflicts of interests.

(III) Custody and safeguarding of scheme property

- (a) Segregation of the scheme property of the OFC from the assets of the custodian and, unless the scheme property of the OFC is held in an omnibus client account with adequate safeguards in line with international standards and best practices to ensure that the scheme property of the OFC is properly recorded with frequent reconciliations, segregation of the scheme property of the OFC from:
 - (i) the assets of the investment manager of the OFC and its affiliates;
 - (ii) the assets of a sub-custodian, if any, throughout the custody chain; and
 - (iii) the assets of other clients of the custodian throughout the custody chain.
- (b) Establishment of proper and appropriate record-keeping requirements
- (c) Segregation of duties in the custodian's operations.
- (d) Safeguard of physical assets of the OFC.
- (e) Payment and asset transfer on behalf of the OFC.
- (f) Reconciliation of scheme property against third party records on a regular basis.
- (g) Obtain sufficient and reliable information to conduct regular verification of ownership (including reconciliation between records of the custodian and the investment manager where necessary) and maintenance of comprehensive, up-to-date and accurate records for scheme property of the OFC that cannot be held in custody.
- (h) Proper registration of the OFC's scheme property.
- (i) Assessment and monitoring of custody risk with adequate organizational arrangement to minimize risk of loss.
- (j) Escalation and rectification procedures on issues and exceptions identified.
- (k) Booking of all cash of the OFC in the cash accounts of the OFC.
- (l) Accuracy of cash record and cash reconciliation against third party, such as reconciliation of its own records with records of the investment manager on a frequent basis.



ANNEX B1: Confirmation from each of the proposed directors

To: Securities and Futures Commission (the "SFC")

Name (or such other name as may be approved by the SFC) of the proposed private OFC:
[insert name of the proposed private OFC under application] (hereinafter the "Proposed Private OFC")

I [insert name of the proposed director] confirm for the purposes of sections 112W and 112X of the Securities and Futures Ordinance ("SFO") and 5.1 of the Code on Open-ended Fund Companies ("OFC Code") that:

- (a) I have attained the age of 18 years;
- (b) I am not an undischarged bankrupt;
- (c) I am not subject to any disqualification order from acting in the capacity of a director of a corporation pursuant to any applicable laws and regulations of Hong Kong;
- (d) *(please tick one of the following boxes)*
 - I have not (nor has any business with which I have been involved) been (i) held by any court or competent authority to have breached any company, securities or financial markets laws and regulations, or held for fraud or other misfeasance; or (ii) disciplined by, or disqualified from, any professional body ((i) and (ii) above are collectively referred to as the "Relevant Breaches");
 - details of the Relevant Breaches are attached to this confirmation in separate sheet(s); and none of the Relevant Breaches will materially affect my ability in performing my roles/duties as director of the Proposed Private OFC and compliance with the SFO, the Securities and Futures (Open-ended Fund Companies) Rules ("OFC Rules") and the OFC Code. The justification is also attached;
- (e) to demonstrate fulfilment of the eligibility criteria in the SFO, OFC Rules and the OFC Code¹² *(please tick one of the following boxes)*:
 - (applicable to a proposed director who is not currently a director of other existing SFC-registered OFC(s))* my profile is attached to this confirmation in separate sheet(s); and
 - (applicable to a proposed director who is currently a director of other existing SFC-registered OFC(s) and there has/have been change(s) to his/ her profile last submitted to the SFC which should be drawn to the attention of the SFC)* my updated profile (marked-up against the latest version submitted to the SFC) is attached to this confirmation in separate sheet(s); and
 - (applicable to a proposed director who is currently a director of other existing SFC-registered OFC(s) and there has been no change to his/her profile last submitted to the SFC which should be drawn to the attention of the SFC)* there has been no change to my profile last submitted to the SFC which should be drawn to the attention of the SFC; and
- (f) I am of good repute, appropriately qualified, experienced and proper for the purpose of carrying out the business of the Proposed Private OFC.
 - (Applicable to a proposed director who will serve as an independent director of the Proposed Private OFC)* I confirm that I will be serving as an independent director of the Proposed Private OFC, and confirm that I am compliant with and undertake that I will remain duly compliant with the requirements applicable to an independent director under the OFC Code (including 5.2 of the OFC Code).

¹² If the proposed director is licensed for or registered with the SFC for Type 9 regulated activity, please provide information on such licence/ registration, which would be considered for the purpose of determining whether the proposed director meets the eligibility requirements under the SFO, OFC Rules and OFC Code.



(Applicable to a proposed director who will be a non-resident director as defined in the OFC Rules) I confirm that as a non-resident director of the Proposed Private OFC, for the purpose of rule 102 of the OFC Rules, a process agent meeting the requirements in rule 2 of the OFC Rules has been appointed and I undertake that I will give notice to the Proposed Private OFC of any matters relating to the process agent that are required for the record kept by the Proposed Private OFC in accordance with rule 102(7) of the OFC Rules.

I undertake that I shall, and shall ensure that the Proposed Private OFC will, at all times be compliant with the applicable laws and regulations to the Proposed Private OFC (including the SFO, the OFC Rules and the OFC Code).

I confirm nothing should be drawn to the attention of the SFC which would affect my ability to act or perform as the director of the Proposed Private OFC in compliance with the applicable laws and regulations, and undertake to bring to the SFC's attention as soon as practicable on any matter which may affect my abovementioned status or any of the above confirmations or undertakings.

I also confirm to the SFC that I have read and understood the Personal Information Collection Statement as set out at the Appendix (the "PICs") and consent to the use by the SFC of my Personal Data (as defined in the PICs) I have provided and may provide in the future, for the purposes described in the PICs.

Signed by:

Name of the proposed director:

Signature:

Date (date/ month/ year):



ANNEX B2: (in the case of a proposed director who is not currently a director of other existing SFC-registered OFC(s)) Vetting Authorization Form from each of the proposed directors

I, _____ hereby authorize the Commissioner of Police/Commissioner of Customs and Excise/any local or overseas criminal investigatory body or regulatory authority, or their representatives, to release full particulars of any pertinent information and materials including all criminal convictions recorded against me to the Securities and Futures Commission. My personal particulars are as follows:

Name _____

Date of birth (dd/mm/yyyy) _____

HKID number _____

Chinese Commercial Code _____ / _____ / _____ / _____

PRC ID number (if applicable) _____

Passport number* _____

Country of issue* _____

Place of birth _____

(Signature of applicant)

Date

Witness by** _____
(Signature of witness)

Name of witness _____

Designation _____

Company name _____

Notary Public number (where applicable) _____

HKID / Passport number* _____

Country of issue* _____



- * Only applicable where the person does not possess a Hong Kong Identity Card.
- ** The witness must be one of the following persons:
 - (i) a practicing solicitor, notary public or Justice of the Peace; or
 - (ii) a director or responsible officer of the licensed corporation/corporation applying for a licence.



ANNEX C: Confirmation from the proposed investment manager

- For asterisked parts (*), please delete as appropriate

To: Securities and Futures Commission (the "SFC")

The proposed open-ended fund company ("Proposed Private OFC") / relevant proposed sub-fund(s) ("Proposed Sub-fund(s)")* under application: As stated in Section B of this Information Checklist

We hereby confirm and undertake that, in respect of this application, the investment manager is not the subject of any disciplinary proceeding in respect of its licence or registration to conduct any regulated activity, or subject to any action by an exchange, regulated market or self-regulatory organisation for breach of any applicable rules, which may materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity.

(Please tick if applicable) In the case of new investment manager which is not currently managing other existing SFC-registered OFC(s) or SFC-authorized fund(s), we further confirm and undertake that, in respect of this application:

(a) (Please tick one of the following boxes)

- the investment manager has submitted an application to the SFC in applying for the licensing/registration status to carry out Type 9 regulated activity;
- the investment manager is licensed by or registered with the SFC to carry out Type 9 regulated activity;

(b) the licence/registration status of the investment manager to manage funds is as follows:

| Licence/ registration status | Date of licence/ registration | Restriction attached to the licence/ registration (if any) or state Nil (if applicable) |
|------------------------------|-------------------------------|---|
| | | |

(i) (Please tick one of the following boxes)

- there is no disciplinary history of the investment manager in the past five years or since the date of licence/registration if it has been licensed/ registered for less than five years;
- the details of the disciplinary history of the investment manager in the past five years or since the date of licence/registration if it has been licensed/ registered for less than five years have been submitted under separate sheet(s); and such disciplinary matter(s) does/do not materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;

(ii) (Please tick one of the following boxes)

- there is no current or pending investigation/disciplinary matter(s) of the investment manager;
- the details of the current or pending investigation/disciplinary matter(s) of the investment manager is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity and the justification is also attached;



(iii) (Please tick one of the following boxes)

there is no current or pending investigation/disciplinary matter(s) of the director(s) of the investment manager;

the details of the current or pending investigation/disciplinary matter(s) of the director(s) of the investment manager is attached to this confirmation in separate sheet(s); and none of the current or pending investigation/disciplinary matter(s) will materially affect the director(s)' ability in performing his/her/their roles/duties as director(s) of the investment manager and the justification is also attached;

(c) the investment manager has adequate internal controls and has put in place relevant written procedures (including, if applicable, procedures for compliance with the Fund Manager Code of Conduct);

(d) the investment manager has sufficient experience, expertise and competence in managing the asset types in which the Proposed Private OFC may invest.

Signed for and on behalf of: _____

Name of the new investment manager : _____

Name of authorized signatory : _____

(Insert name of at least one Responsible Officer (in respect of Type 9 regulated activity) of the investment manager)

Signature : _____

Title / Position : _____

Date (date / month / year) : _____

ANNEX D TO SCHEDULE: Checklist for Instrument of Incorporation

- For asterisked parts (*), please delete as appropriate

To: Securities and Futures Commission (the “SFC”)

The proposed private open-ended fund company (“Proposed Private OFC”) under application: As stated in Section B of this Information Checklist

With regards to the instrument of incorporation of the Proposed Private OFC, we confirm that:

(Please tick the following boxes if applicable)

(I) Minimum compliance requirements on provisions

- The instrument of incorporation contains all the information required under the applicable provisions of the Securities and Futures Ordinance (“SFO”), including:
- the name of the Proposed Private OFC;
 - a statement that the registered office of the Proposed Private OFC is situated in Hong Kong;
 - the objects of the Proposed Private OFC;
 - provision as to the kinds of property in which the Proposed Private OFC is to invest;
 - a statement that the Proposed Private OFC is an open-ended fund company with variable share capital;
 - a statement that the amount of the paid-up share capital of the Proposed Private OFC is at all times equal to the net asset value of the Proposed Private OFC;
 - a statement that the Proposed Private OFC’s shareholders are not liable for the debts of the Proposed Private OFC;
 - a statement that the Proposed Private OFC’s scheme property is entrusted to a custodian of the Proposed Private OFC for safe keeping in compliance with the law;
 - (applicable where the proposed private OFC is an open-ended fund company with sub-funds)* a statement that the assets of a sub-fund of the Proposed Private OFC belong exclusively to the sub-fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the Proposed Private OFC and any other sub-fund of the Proposed Private OFC.
- The instrument of incorporation is signed by each person who is to be a director of the Proposed Private OFC.
- Provisions in the instrument of incorporation relating to valuation, paid-up share capital, and net asset value of the Proposed Private OFC are in compliance with section 112P(3) of the SFO which requires that the amount of paid-up share capital of the Proposed Private OFC is at all times equal to the net asset value of the Proposed Private OFC.
- The instrument of incorporation contains all the information required under the applicable provisions of the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”), including:
- a statement that the object of the Proposed Private OFC is the operation of the Proposed Private OFC as a collective investment scheme.
- Provisions in the instrument of incorporation relating to the Proposed Private OFC’s approval of appointment or cessation of office of directors, investment manager, custodian and auditor are in compliance with Part 6 of the OFC Rules, including:
- Rule 101(2)(a) (in case where the Proposed Private OFC is required to hold an annual general meeting under the instrument of incorporation) or rule 101(2)(b) (in case where the Proposed Private OFC is not required to hold an annual general meeting under the instrument of incorporation) in relation to appointment of director by ordinary resolution or by directors of the Proposed Private OFC, as the case may be;

- Rule 103 in relation to removal of director by ordinary resolution at a general meeting and voting rights pertaining to such resolution;
 - Rule 114 in relation to appointment of custodian by directors and rule 118 in relation to cessation of office of custodian;
 - Rule 125 in relation to appointment of investment manager and rule 127 in relation to cessation of office of investment manager;
 - Rule 130 in relation to appointment of auditor by directors, rule 131 in relation to appointment to fill vacancy by directors or by a resolution at a general meeting of the Proposed Private OFC, as the case may be; and
 - Rule 138 in relation to resignation of auditor and rule 140 in relation to removal of auditor by ordinary resolution at a general meeting of the Proposed Private OFC.
- The instrument of incorporation contains all the information required under the applicable provisions of the Code on Open-ended Fund Companies (“OFC Code”), including:
- the circumstances under which the directors must cease to hold office and the procedures of removal from office;
 - the corporate administrative matters of the Proposed Private OFC, including but not limited to:
 - (a) procedures and notices for holding general meetings and directors’ meetings, exercise of votes, quorum required, matters which require approval, as well as the thresholds for and manner of approval and record-keeping;
 - (b) creation of shares and share classes (if any), rights attached to the shares, terms of issuance and cancellation of shares;
 - a minimum of 2 shareholders present in person or by proxy constitutes a quorum of a general meeting of the Proposed Private OFC;
 - (*applicable where the proposed private OFC provides in its instrument of incorporation that it would hold annual general meetings*) the notice period for holding annual general meetings should be of at least 21 days;
 - the procedures and requirements for appointment and removal of a person from the office of auditor;
 - the circumstances and procedures to be followed for conducting the termination and arrangements for distribution of assets to shareholders, including a reasonable notice to its shareholders containing relevant and key particulars and procedures of the termination and impact on shareholders; and
 - fund operations including pricing, dealing, issue and redemption of shares, valuation, distribution policy, use of leverage, fees and charges in respect of the Proposed Private OFC¹³.

(II) Other matters

- Where the instrument of incorporation provides for matters relating to investment management functions (including investment management, valuation and pricing of the scheme property of the Proposed Private OFC), the investment manager of the Proposed Private OFC is the party which carries out such functions in such provisions of the instrument of incorporation, in accordance with 5.3 of the OFC Code.
- Where the instrument of incorporation provides for different share classes with different voting rights, the provisions relating to changes to the instrument of incorporation are in compliance with 12.1 and 12.2 of the OFC Code regarding shareholders’ approval, and 12.3 of the OFC Code regarding notices to shareholders.

Note: Material changes to instrument of incorporation which affect a share class may only be made with approval of shareholders of that class in accordance with 12.1 of the OFC Code. Other changes to instrument of incorporation which affect a share class may be made with approval of shareholders of that class in accordance with 12.2(a) of the OFC Code.

¹³ Such information should be clearly set out in its instrument of incorporation and/or offering documents as appropriate under 13.1 of the OFC Code.



Where the instrument of incorporation provides for a side pocket arrangement, the provisions relating to the side pocket arrangement including provisions governing the valuation of side pocket assets, are in compliance with the applicable requirements under the Fund Manager Code of Conduct and section 112P(3) of the SFO.

Where the instrument of incorporation provides that the transfer of shares is subject to consent of the Proposed Private OFC, such provisions are in compliance with rule 61 of the OFC Rules, including the requirement to give a statement of the reasons at the request of the transferor or transferee in case of refusal to register the transfer.

(*Applicable only to proposed private OFC with sub-fund(s)*) Where the instrument of incorporation provides for the allocation of assets and liabilities of sub-fund(s) of the Proposed Private OFC (e.g. directors' power to allocate assets and liabilities among sub-funds), such provisions are in compliance with section 112S of the SFO.

Name of authorized signatory :
Signature :
Title / Position¹⁴ :
Duly authorized :
For and on behalf of¹⁵ :
Date (date / month / year) :

¹⁴ The signatory should be a proposed director of the proposed private OFC or a senior-ranking executive of the proposed investment manager of the proposed private OFC (or an appropriate person designated by the senior-ranking executive of the proposed investment manager of the proposed private OFC), who is duly authorized by the applicant.

¹⁵ State the name of the applicant.

APPENDIX

Personal Information Collection Statement

1. This Personal Information Collection Statement (“**PICS**”) is made in accordance with the guidelines issued by the Office of the Privacy Commissioner for Personal Data. The PICS sets out the policies and practices of the Securities and Futures Commission (“**SFC**”) with regard to your Personal Data¹⁶ and what you are agreeing to with respect to the SFC’s use of your Personal Data for the purposes identified below.

Purpose of Collection

2. The Personal Data provided in any application, filing, submission (including any related form, checklist, confirmation, documentation or correspondence), enquiry, survey or any other form of request for information (as the case may be) will be used by the SFC for one or more of the following purposes:
 - to administer the Securities and Futures Ordinance (“**SFO**”) and other relevant Ordinances (including the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Companies Ordinance, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Financial Institutions (Resolution) Ordinance), rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC as in force at the relevant time, including:
 - *SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products and the various Product Codes therein;*
 - *Code on Real Estate Investment Trusts;*
 - *SFC Code on MPF Products;*
 - *Code on Open-ended Fund Companies;*
 - *Code on Pooled Retirement Funds;*
 - *Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes;*
 - *Guidance Note for Persons Advertising or Offering Collective Investment Schemes on the Internet;*(collectively, the “**Relevant Ordinances and Regulatory Requirements**”)
 - to process any application made under the Relevant Ordinances and Regulatory Requirements where you may have a connection;
 - to monitor the ongoing compliance of SFC-authorized investment products, open-ended fund companies and their key operators with the Relevant Ordinances and Regulatory Requirements;
 - for the purposes of inviting attendees to events or industry briefings organised by the SFC;
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances, including surveillance, investigation, inspection or enforcement / disciplinary action;
 - for research or statistical purposes;
 - other purposes directly relating to any of the above; and
 - other purposes as permitted by law.

¹⁶ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“**PDPO**”).



3. Failure to provide the requested Personal Data may result in the SFC being unable to process your application or request, or perform its statutory functions under the relevant Ordinances.

Transfer / Matching of Personal Data

4. Personal Data may be disclosed by the SFC to (i) other financial regulators in Hong Kong (including the Hong Kong Exchanges and Clearing Limited, the Hong Kong Monetary Authority, the Insurance Authority and the Mandatory Provident Funds Schemes Authority), (ii) government bodies (including the Hong Kong Police Force, the Customs and Excise Department, the Independent Commission Against Corruption, and the Companies Registry), (iii) relevant courts, panels, tribunals and committees, (iv) overseas regulatory / government / judicial bodies as permitted or required under the law, or pursuant to any regulatory / supervisory / investigatory assistance arrangements between the SFC and other regulators (local / overseas), and/or (v) persons engaged by the SFC to assist the SFC in the performance of its statutory functions.
5. Personal Data may be used by the SFC and/or disclosed by the SFC to the above organizations / bodies / persons in Hong Kong or elsewhere for the purposes of verifying / matching¹⁷ those data. You consent to the use of your Personal Data for carrying out a matching procedure (as defined in the PDPO).
6. Your Personal Data may be transferred to place(s) outside of Hong Kong for the purposes stated herein (such places may or may not offer the same or a similar level of personal data protection as in Hong Kong).

Access to Data

7. You have the right to request access to and correction of your Personal Data held by the SFC about you in accordance with the provisions of the PDPO. Your right of access includes the right to request a copy of your Personal Data held by the SFC. The SFC has the right to charge a fee for processing of any data access request.

Enquiries

8. Any enquiries regarding the Personal Data provided, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
Securities and Futures Commission
54/F, One Island East
18 Westlands Road, Quarry Bay, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available on the SFC website at www.sfc.hk.

November 2021

¹⁷ "matching procedure" is defined in section 2 of the PDPO.