



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

## Code on Open-Ended Fund Companies

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## General matters

### Chapter 1: Introduction and administrative matters

#### Introduction

- 1.1 This Code on Open-Ended Fund Companies (“OFC Code”) is made under section 112ZR of the SFO and establishes guidelines in respect of matters relating to the registration, management, and operation of OFCs and their business.
- 1.2 The Commission is empowered under section 112D of the SFO to register a proposed company as an OFC. By virtue of section 112D(6), the registration may be granted subject to such conditions as the Commission considers appropriate.
- 1.3 An OFC seeking registration with the Commission under section 112D of the SFO is expected to comply with the applicable provisions of the SFO, OFC Rules and the OFC Code in order to be registered with the Commission.
- 1.4 The Commission may review the registration of an OFC at any time, may withdraw such registration and may amend or revoke conditions imposed or impose new conditions as it considers appropriate.
- 1.5 The Commission may modify or relax the application of a requirement in the OFC Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner. Applications for registration which seek waivers of any of the provisions in the OFC Code must give detailed reasons why waivers are sought.

#### Effect of breach of the OFC Code

- 1.6 Failure by any person to comply with any applicable provision of the OFC Code:
  - (a) does not by itself render the person liable to any judicial or other proceedings, but in any proceedings under the SFO before any court, the OFC Code may be admissible in evidence, and if any provision set out in the OFC Code appears to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining the question;
  - (b) may cause the Commission to consider whether such failure adversely reflects on the person’s fitness and properness (in so far as the relevant person is licensed or registered under the SFO);
  - (c) may cause the Commission to consider whether such failure adversely reflects on whether the OFC should remain registered;
  - (d) may cause the Commission to consider whether such failure adversely reflects on whether further OFCs managed and/ or proposed by such person should be granted registration in the interest of the investing public (i.e. where there is a serious breach, the Commission may refuse to register new OFCs to be managed and/ or proposed by the person in breach for a stated period); and

- (e) may cause the Commission to impose additional registration condition(s).
- 1.7 Section I of the OFC Code applies to both public and private OFCs. Section II of the OFC Code applies only to private OFCs. Public OFCs and their key operators are also required to comply with all applicable requirements in the SFC Products Handbook.
- 1.8 The provisions in the OFC Code apply to each sub-fund of an umbrella OFC as if each sub-fund were an OFC to the extent applicable.
- 1.9 Nothing in the OFC Code shall be interpreted in a manner that alters or imposes any restriction upon the exercise by the Commission of any power or discretion conferred upon it under the SFO. The OFC Code shall not be interpreted in a way that will override the provision of any law.

### **Data privacy**

- 1.10 The information requested under the OFC Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the Commission.

## Chapter 2: Interpretation

- 2.1 “Applicable laws” means the SFO, its subsidiary legislation including the OFC Rules, and other applicable laws.
- 2.2 “Applicable codes and guidelines” means the codes and guidelines issued by the Commission, including without limitation the SFC Products Handbook (in the case of public OFCs), the Fund Manager Code of Conduct and the Code of Conduct.
- 2.3 “Applicable regulatory requirements” means the applicable laws, applicable codes and guidelines and the requirements of any regulatory authority which are applicable.
- 2.4 “Bank” means a bank as defined in section 1 of Part 1 of Schedule 1 to the SFO.
- 2.5 “Bank deposit” means a deposit of money made with a bank, and the term “deposit” has the meaning given in section 2(1) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong).
- 2.6 “Certificate of deposit” means a certificate of deposit as defined in section 1 of Part 1 of Schedule 1 to the SFO.
- 2.7 “CO” means the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- 2.8 “Code of Conduct” means the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
- 2.9 “Commission” or “SFC” means the Securities and Futures Commission referred to in section 3(1) of the SFO.
- 2.10 “Foreign exchange contract” means a contract under which the parties to the contract agree to exchange different currencies on a particular date.
- 2.11 “Key operators” means the director(s), investment manager and custodian of an OFC.
- 2.12 “Open-ended fund company”, “OFC” or “Company” means an open-ended fund company as defined in section 112A of the SFO.
- 2.13 “OFC Fees Rules” means the Securities and Futures (Open-ended Fund Companies)(Fees) Regulation which sets out the fees chargeable by the SFC and the other relevant authorities, namely that the Companies Registry and the Official Receiver’s Office, in connection with the OFC made by the Financial Secretary under section 112ZQ of the SFO.
- 2.14 “OFC Rules” means the Securities and Futures (Open-ended Fund Companies) Rules made under section 112ZK, 112ZL and 112ZM of the SFO.
- 2.15 “Offering document”, in relation to an OFC, means a document inviting offers, or calculated to invite offers, to subscribe for or purchase for cash or other consideration shares in the company.
- 2.16 “Private OFC” means a proposed company or an OFC which is not a public OFC.

- 2.17 “Proposed company” means a company intended to be registered by the SFC and incorporated as an OFC under Part IVA of the SFO.
- 2.18 “Public OFC” means a proposed company or an OFC intended to apply for an authorization by the SFC under section 104 of the SFO or which has obtained such authorization by the SFC.
- 2.19 “Registered non-Hong Kong company” means a registered non-Hong Kong company as defined in section 2(1) of the CO.
- 2.20 “Regulated activity” means any of the regulated activities specified in Part 1 of Schedule 5 to the SFO.
- 2.21 “Scheme property” means the scheme property of the OFC as defined in section 112A of the SFO.
- 2.22 “SFC Products Handbook” means the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.
- 2.23 “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong).
- 2.24 “Sub-fund” means a sub-fund as defined in section 112R of the SFO.
- 2.25 “Umbrella OFC” means an OFC with sub-funds.
- 2.26 “UT Code” means the Code on Unit Trusts and Mutual Funds administered by the SFC as set out in Section II of the SFC Products Handbook.

## Section I: Requirements applicable to all OFCs

### Chapter 3: General principles

In formulating the principles in this Chapter, the Commission has taken into account principles developed by the International Organisation of Securities Commissions and other principles that the Commission believes to be fundamental for the regulation of collective investment schemes in the form of OFCs.

An OFC and its key operators shall comply with the spirit of these principles when administering, managing or dealing with any matters relating to the operation of an OFC.

**GP 1. Acting fairly:** Key operators shall act honestly, fairly and professionally.

**GP 2. Diligence and competency:** Key operators shall discharge their functions with due skill, care and diligence. Where a delegate is appointed by a key operator, the key operator shall exercise due care in the selection, appointment and ongoing monitoring of its delegate.

**GP 3. Proper protection of assets:** All the scheme property of an OFC shall be entrusted to the custodian and shall be properly protected.

**GP 4. Managing conflicts of interest:** Key operators shall avoid situations where conflicts of interest may arise including any actual or potential conflicts that may arise between different parties in respect of an OFC. Where conflicts of interests cannot be avoided, and provided that investors' interests can be sufficiently protected, the conflict shall be managed and minimized by appropriate safeguards, measures and product structure, which shall be properly disclosed to investors. The board of directors shall uphold good corporate governance principles and standards for its activities conducted in relation to the OFC.

**GP 5. Disclosure:** Disclosure shall be clear, concise and effective, containing information necessary for investors to be able to make an informed judgement and be kept up-to-date. Where ongoing disclosure is required, information shall be disseminated in a timely and efficient manner.

**GP 6. Regulatory compliance:** The OFC and its key operators shall ensure compliance with the applicable regulatory requirements, and shall respond to enquiries from regulators in an open and co-operative manner. They should also inform the Commission promptly should there be any material breach of the OFC Code.

**GP 7. Compliance with constitutive documents:** The OFC and relevant key operators shall comply with the instrument of incorporation and offering documents of the OFC.

## Chapter 4: Registration and name

### Registration

- 4.1 An application for registration of an OFC must be made in the specified form and be accompanied by the payment of such fees in accordance with the OFC Fees Rules as published on the website of the Commission from time to time, and include the following information:
- (a) the instrument of incorporation of the OFC;
  - (b) profile of the key operators;
  - (c) address of the registered office of the OFC; and
  - (d) the letter of consent to appointment as a custodian and latest audited report of the custodian.
- 4.2 The following disclosures must be included in the offering documents of the OFC:
- (a) whether the OFC is a private OFC, or a public OFC;
  - (b) that it is an open-ended fund company with variable capital with limited liability, and segregated liability between sub-funds (where applicable in the case of an umbrella OFC only);
  - (c) the following statement(s), which must be set out prominently:
    - (i) For public OFCs: *“SFC registration and authorization do not represent a recommendation or endorsement of an OFC nor do they guarantee the commercial merits of an OFC or its performance. They do not mean the OFC is suitable for all investors nor do they represent an endorsement of its suitability for any particular investor or class of investors.”*
    - (ii) For private OFCs only: *“This is not an OFC authorized under section 104 of the Securities and Futures Ordinance (“SFO”) for offer to the public and its offering documents have not been authorized by the SFC under section 105 of the SFO.*

*SFC registration is not a recommendation or endorsement of an OFC nor does it guarantee the commercial merits of an OFC or its performance. It does not mean the OFC is suitable for all investors nor does it represent an endorsement of its suitability for any particular investor or class of investors.”*

*Note: For the avoidance of doubt, the disclosure of 4.2(c)(i) in the offering documents would suffice in meeting the requirement of 11.14 of the UT Code.*



- (d) in the case of an umbrella OFC, the warning statement below, which shall be stated prominently:

*“Important - while section 112S of the SFO provides for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to section 112S of the SFO.”*

- 4.3 The OFC must inform the SFC as to the details of any process agent appointed by an overseas director or custodian as required under the OFC Rules upon registration of the OFC, and within 14 days of any change in such process agent or its details.

### **Name of an OFC**

- 4.4 The name of an OFC must be compliant with the SFO. The name of an OFC must:
- (a) in the opinion of the Commission, not be misleading or otherwise undesirable;
  - (b) not be the same as the name of another existing OFC; and
  - (c) end with “Open-ended Fund Company” or “OFC”.
- 4.5 In considering whether the name of an OFC is misleading or undesirable for purpose of compliance with 4.4, the SFC may take into account whether the proposed name of the OFC:
- (a) is inconsistent with the nature, investment objectives or policy of the OFC;
  - (b) is substantially similar to the name of another OFC;
  - (c) would give investors a sense of assurance or security not justified by the underlying features of the OFC;
  - (d) might lead investors into inferring or might otherwise create the impression that persons other than the directors and/or investment manager are responsible for the OFC; and
  - (e) might lead investors into inferring or might otherwise create the impression that the directors are not responsible for the OFC.
- 4.6 Any application to the SFC for a change to the name of an OFC must be supported with explanations having regard to the requirements in the SFO and this Chapter.

## Chapter 5: Board of directors

5.1 Each of the directors of an OFC must be of good repute, appropriately qualified, experienced and proper for the purpose of carrying out the business of the OFC.

*Note: In determining whether a person satisfies 5.1, the Commission may have regard to factors including but not limited to the following:*

- (a) whether the person has relevant qualifications and/ or experience; and*
- (b) whether the person, or any business with which the person has been involved, has been held by any court or competent authority to have breached any company, securities or financial markets laws and regulations, have been held for fraud or other misfeasance; or has been disciplined by, or disqualified from, any professional body.*

5.2 The board of directors of an OFC must have at least one independent director, who must not be a director or employee of the custodian.

5.3 The OFC must have in place at all times an investment management agreement in writing for the delegation of the investment management functions of the OFC to the investment manager. Such investment management functions should include, at a minimum, the investment management, valuation and pricing of the scheme property of the OFC.

5.4 The directors should use reasonable care, skill and diligence to oversee the activities of the investment manager and custodian as part of their overall duty to oversee the operations of the OFC.

5.5 The circumstances under which the directors must cease to hold office and the procedures of removal from office should be included in the instrument of incorporation of the OFC and disclosed in its offering documents.

5.6 The OFC should put in place appropriate arrangements as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least two individual directors including at least one independent director.

*Note: For example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements. The OFC should also establish appropriate procedures to prepare for and facilitate a replacement in the event of any retirement or removal of director. Early consultation with the Commission is encouraged in the case of a change or intended change of directors where such change may impact on the OFC's compliance with the applicable regulatory requirements.*

## Chapter 6: Investment manager

- 6.1 An investment manager of an OFC must be and remain fit and proper at and after the time of registration of the OFC.

*Note: The Commission may take into account relevant guidance issued by the Commission relating to the fitness and properness of licensed and/ or registered intermediaries when considering the acceptability of the investment manager for the purpose of the registration of an OFC.*

- 6.2 The investment manager must carry out the investment management functions of the OFC in accordance with the OFC's instrument of incorporation and investment management agreement, in the best interests of the OFC and its shareholders.

- 6.2A In conducting the investment management functions of the OFC, the investment manager should comply with the Fund Manager Code of Conduct, the Code of Conduct, the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission, the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions) as if all the investment management functions of the OFC are undertaken by the investment manager in the course of, and as an integral part of its conduct of the Type 9 regulated activity for which it is licensed by or registered with the Commission.

- 6.2B In conducting the investment management functions of the OFC, the investment manager should keep

- (a) such trading, accounting and other records as are sufficient to explain and reflect the financial position and operation of the investment manager's activities, including maintaining an audit trail of all transactions effected and contracts entered into by the investment manager, details of all orders initiated by the investment manager or instructions received by the investment manager, details of all income received by the investment manager, whether such income relates to charges made by the investment manager for the provision of services to the OFC, all information relating to the OFC accounts and transaction records produced by third parties and all relevant internal reports, accounting/securities ledgers, registers of securities, and records of investment processes adopted by the investment manager; and
- (b) those records in such manner as will enable an audit to be conveniently and properly carried out.

- 6.2C An investment manager which is a licensed corporation should retain records or documents related to its business of conducting investment management functions of an OFC in premises which have been approved by the Commission under section 130(1) of the SFO for keeping records or documents in relation to the regulated activity for which the investment manager is licensed by the Commission. The investment manager should retain such records or documents for a period of not less than seven years.

- 6.3 The circumstances under which the appointment of the investment manager must cease to hold office and the procedures of removal from office should be included in the investment management agreement and disclosed in the offering documents of the OFC.

- 6.4 The OFC should put in place appropriate arrangements as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least one investment manager licensed or registered for Type 9 regulated activity.

*Note: For example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements. The OFC should also establish appropriate procedures to prepare for and facilitate a replacement in the event of any retirement or removal of the investment manager. Early consultation with the Commission is encouraged in the case of a change or intended change of investment manager.*

- 6.5 The investment manager must retire:
- (a) when it ceases to meet the eligibility requirements under the applicable regulatory requirements; or
  - (b) in such other cases as provided for in the OFC's instrument of incorporation and/or the investment management agreement with the OFC.

## Chapter 7: Custodian and custody of assets

7.1 The custodian of an OFC should:

- (a) for public OFCs, meet the same eligibility requirements as set out in the UT Code for SFC-authorized funds; and
- (b) for private OFCs:
  - (i) meet the same eligibility requirements as set out in the UT Code for SFC-authorized funds; or
  - (ii) be a licensed corporation or registered institution licensed or registered for Type 1 regulated activity and meet the following criteria:

A. its licence or registration granted under section 116(1) or section 119(1) of the SFO (as the case may be) is not subject to the condition that it shall not hold client assets;

*Note: The terms “hold” and “client assets” are as defined in the SFO.*

B. for a custodian which is a licensed corporation, it at all times maintains paid-up share capital of not less than HK\$10 million and liquid capital of not less than HK\$3 million;

C. the private OFC is, and remains at all times, a client of such licensed corporation or registered institution in respect of its business in Type 1 regulated activity;

*Note: Where a private OFC will likely cease, or has ceased to be a client of the licensed corporation or registered institution, the licensed corporation or registered institution should inform the Commission prior to or as soon as practicable following the cessation. A grace period of six months for the licensed corporation or registered institution to continue to act as custodian of the private OFC will be allowed. The licensed corporation or registered institution should arrange for the transfer of the private OFC’s scheme property to another custodian (subject to SFC’s approval) to be appointed in place of the licensed corporation or registered institution as soon as practicable. An extended grace period may be allowed in exceptional circumstances. Early consultation with the Commission is encouraged.*

D. have at least one responsible officer or executive officer responsible for the overall management and supervision of its custodial function; and

E. be independent of the investment manager.

*Note: While the custodian and the investment manager may be bodies corporate having the same ultimate holding company, the custodian must be functionally independent of the investment manager. Amongst other things, there should be*

*systems and controls in place to ensure that persons fulfilling the custodial function / safekeeping of the OFC's scheme property are functionally independent of persons fulfilling the OFC's investment management functions.*

7.1A The custodian must:

- (a) ensure that it has sufficient experience, expertise and competence in safekeeping the asset types in which the OFC invests; and
- (b) maintain adequate internal controls and systems commensurate with the custodial risks specific to the type and nature of assets in which the OFC invests.

7.2 Where the custodian is an overseas entity and is not a registered non-Hong Kong company, it must have a process agent at all times in Hong Kong for the purpose of accepting the service of notices and documents in Hong Kong.

*Notes: (1) In accordance with the OFC Rules, the following persons/ entities may act as a process agent: (a) an individual whose usual residential address is in Hong Kong, (b) a company formed and registered under the CO in Hong Kong, or (c) a firm of solicitors or certified public accountants in Hong Kong.*

*(2) If the custodian is a registered non-Hong Kong company, service of process should be made to the authorized representative of the company as is required to be appointed under the CO.*

7.3 The custodian must:

- (a)
  - (i) hold in its custody all scheme property which can be so held, whether by the delivery of physical assets and/ or documents of title, or by way of registration in book entry form in the account of the OFC;
  - (ii) maintain a proper record of all other scheme property of the OFC which by its nature cannot be held in custody in the account of the OFC in the custodian's books;
- (b) maintain proper and up-to-date records of all scheme property belonging to the OFC, including cash and scheme property that cannot be held in custody, in the custodian's books, which should include frequent reconciliations;

*Note: It is generally expected that there should be reconciliations with the statement of accounts provided by other financial institutions on a regular basis where appropriate.*

- (c) put in place appropriate measures for the verification of ownership of scheme property of the OFC;
- (d) segregate 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, segregate 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;
- (e) not reuse the scheme property of the OFC without prior consent from the OFC;
  - (f) put in place adequate risk management measures to ensure that it can properly carry out the above functions; and
  - (g) for private OFC custodians, comply with the requirements for safekeeping of OFC scheme property set out in Appendix A.
- 7.4 The custody arrangements in respect of the scheme property of the OFC and any material risks associated with the arrangements should be disclosed in its offering document.
- 7.5 The circumstances under which the custodian must cease to hold office and the procedures of removal from office should be included in the custody agreement and disclosed in the offering documents of the OFC.
- 7.6 The OFC should put in place appropriate arrangements as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least one custodian.

*Note: For example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements. The OFC should also establish appropriate procedures to prepare for and facilitate a replacement in the event of any retirement or removal of the custodian. Early consultation with the Commission is encouraged in the case of a change or intended change of custodian.*

## Chapter 8: Corporate administrative matters

- 8.1 The instrument of incorporation of the OFC shall provide as to the corporate administrative matters of an 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.

*Note: An indicative template for the OFC's instrument of incorporation which reflects the mandatory and optional provisions is available on the SFC's website for reference.*

- 8.2 The instrument of incorporation of an OFC must provide the following:
- (a) a minimum of 2 shareholders present in person or by proxy constitutes a quorum of a general meeting of the OFC; and
  - (b) in the case of an OFC which provides in its instrument of incorporation that it would hold annual general meetings, the notice period for holding such meeting should be of at least 21 days.

*Note: Public OFCs should comply with the additional requirements in respect of quorum in the UT Code.*

- 8.3 The manner in which shareholders may obtain relevant information in relation to the OFC and make enquiries with the OFC should be disclosed in the offering documents of the OFC.

- 8.4 Corporate filings the subject matter of which is subject to approval by the SFC should be filed with the SFC for onward transmission to CR after approval by the SFC of the subject matter.

*Note: An OFC should refer to the further guidance published on the SFC's website as to the types of filings which should be made to the CR by way of submission to the SFC.*



## Chapter 9: Auditor and accounting requirements

### Auditor

- 9.1 The auditor appointed by an OFC must be independent of the investment manager, the custodian and the directors of the OFC.

*Note: The procedures and requirements for appointment and removal of a person from the office of auditor must be included in the instrument of incorporation of the OFC and must be compliant with the applicable regulatory requirements.*

### Financial reports

- 9.2 All accounts must be prepared in a manner compliant with Hong Kong Financial Reporting Standards or International Financial Reporting Standards. The acceptability of other accounting standards may be considered by the Commission on a case-by-case basis.

*Note: The Commission may consider such other accounting standards as acceptable having regard to for example, the following factors:*

- (a) *whether the standards are of high and robust quality and the extent to which they are internationally recognized; and*
  - (b) *whether the standard setting process is accountable and subject to appropriate consultation and whether the accounting standards setters are independent.*
- 9.3 The annual reports of the OFC are expected to contain information on the investment portfolio, assets, liabilities, income and expenses of the OFC to enable shareholders to make an informed judgement on the development of the activities and the results of the OFC's performance.
- 9.4 The annual reports of the OFC must disclose the items as required for observance of the applicable accounting standards and include (without limitation) 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.
- 9.5 The 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.
- 9.6 For OFCs that are formed as umbrella OFCs, the financial reports must show the respective financial positions and results of the umbrella OFCs and those of the individual sub-fund(s) of umbrella OFCs.

### **Auditor's report**

- 9.7 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, and the OFC Code.

### **Publication**

- 9.8 Annual reports must be published within four months of the end of the OFC's financial year. Interim reports (if any) must be published within two months of the end of the period they cover.
- 9.9 All financial reports published by the OFC must be filed with the Commission within the time frame specified in 9.8.

## Chapter 10: Termination, and cancellation of registration

### General

10.1 This Chapter provides for the matters in relation to an application for a voluntary termination of an OFC pursuant to section 112ZH of the SFO, and the cancellation of registration of an OFC.

*Note: Sub-funds of an umbrella OFC can similarly apply for termination pursuant to this Chapter, and the references hereunder to shareholders, resolution, scheme property, assets and liability should be read as those of or attributable to the particular sub-fund.*

10.2 Any decision to terminate an OFC should take due account of the best interests of the shareholders of the OFC. The directors and the investment manager should ensure that the termination process of an OFC is carried out in an orderly manner, and that the OFC's shareholders are treated fairly.

10.3 A proposal for a termination of an OFC under this Chapter may be submitted by the OFC to the Commission and should include:

- (a) a solvency statement under 10.4;
- (b) reasons for the OFC's termination;
- (c) proposed key procedures for such termination;
- (d) consequences of such termination; and
- (e) effect on its shareholders.

10.4 Before a submission is made under 10.3, the board of directors must make a full enquiry into the affairs of the OFC to determine whether it could give a confirmation that the OFC will be able to meet all its liabilities within 12 months from the date of that confirmation ("**solvency statement**").

10.5 This solvency statement must:

- (a) relate to the OFC's affairs within 5 weeks immediately preceding the date of submission of the termination proposal to the Commission;
- (b) be approved by the board of directors and signed on their behalf by one director; and
- (c) contain the confirmation referred to in 10.4.

### Procedures and notice of termination

10.6 The instrument of incorporation of an OFC must clearly disclose 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. There should be adequate disclosure of the termination process to investors at the same time and in an appropriate and timely manner.

- 10.7 The OFC should note that with effect from the date of the notice to its shareholders on its proposed termination:
- (a) the OFC must no longer be marketed and must not accept subscription from new investors; and
  - (b) the corporate powers of the OFC and the powers of the directors may continue solely for carrying on business operations that are essential for closing down its business.
- 10.8 During the termination process and in valuing the assets of the terminating OFC, the directors in conjunction with the investment manager must ensure that fair valuation of the assets will apply, and seek to address conflicts of interest arising.
- 10.9 The offering document of an OFC must disclose:
- (a) a summary of the circumstances under which an OFC can be terminated;
  - (b) parties who may apply for termination of the OFC; and
  - (c) the extent to which approval or consent from the OFC's shareholders is required to effect termination.

### **Cancellation of registration**

- 10.10 Once the OFC's assets have been fully realised, all liabilities have been settled, and proceeds have been distributed to shareholders, the board of directors may apply to the Commission for cancellation of registration under section 112ZH of the Ordinance together with:
- (a) the final accounts of the OFC accompanied by the auditor's report;
  - (b) a declaration signed by the board of directors and the investment manager confirming completion of realization of assets and distribution of proceeds in accordance with the OFC's instrument of incorporation, and that the OFC has no outstanding liabilities; and
  - (c) an application for withdrawal of authorization (in the case of public OFCs only).
- 10.11 Written notification to investors must be made prior to and upon cancellation of registration, with explanation as to the reasons for the OFC's termination and cancellation of registration.

### **Winding up**

- 10.12 In the case of a termination of an OFC by way of conducting a statutory winding-up, the OFC shall comply with the OFC Rules. The registration of the OFC will be automatically cancelled upon the completion of the winding-up. The OFC shall keep



the SFC informed as to the material progress of the winding-up, comply with information requests of the SFC as to the winding-up, and provide such notifications to the SFC as are required under the OFC Rules.

## Section II: Requirements applicable to private OFCs only

### Chapter 11: Investment scope

11.1 [deleted]

11.2 [deleted]

11.3 [deleted]

11.4 A private OFC must not be a business undertaking for general commercial or industrial purpose.

*Note: A private OFC will generally be regarded as “a business undertaking for general commercial or industrial purpose” if it engages predominantly in:*

- (i) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities, and/or supply of services; and/ or*
- (ii) an industrial activity, involving the production of goods or construction of properties.*

11.5 The investment scope and investment strategies adopted by the investment manager must be clearly disclosed in the offering documents of the OFC.

## Chapter 12: Scheme changes

12.1 No material change to the instrument of incorporation of an OFC may be made without shareholders' approval.

*Note: The changes under 12.1 are generally expected to include the following:*

- (a) *material changes to the OFC's investment objectives and policy; or*
- (b) *other changes which may materially prejudice shareholders' rights.*

12.2 No other alteration to the instrument of incorporation of an OFC may be made unless:

- (a) the alteration has been approved by a resolution passed by such majority of shareholders as is specified in the instrument of incorporation in respect of the alteration; or
- (b) the directors certify in writing that in their opinion the proposed alteration is of the following nature, and that the custodian has no objection to such alteration:
  - (i) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements; or
  - (ii) does not materially prejudice shareholders' interests, does not to any material extent release the directors, the investment manager or any other person from any liability to shareholders and does not increase the costs and charges payable from the scheme property; or
  - (iii) is necessary to correct a manifest error.

12.3 Reasonable prior notice to shareholders should be provided for any material changes which may affect investors' investment decisions, or materially impact on shareholders' rights. Notification of scheme changes should be provided to shareholders in accordance with the offering documents and/or the instrument of incorporation.

*Note: The circumstances and procedures for effecting a scheme change should be set out clearly in the offering documents.*

## Chapter 13: Fund operations and disclosure

### Fund operations

- 13.1 Fund operations including pricing, dealing, issue and redemption of shares, valuation, distribution policy, use of leverage, fees and charges in respect of a private OFC should be clearly set out in its instrument of incorporation and/or offering documents as appropriate.
- 13.2 In particular, the following principles must be complied with at all times:
- (a) the General Principles;
  - (b) scheme property should be regularly valued in good faith;
  - (c) there should be a proper and disclosed basis for asset valuation, pricing and redemption of shares; and
  - (d) offer and redemption prices should be carried out at forward prices.

### Disclosure

- 13.3 The offering documents and other disclosure of an OFC must comply with the General Principles.

*Note: This would include ensuring that offering documents contain clear disclosures on all material risks specific to the type and nature of assets in which the OFC is invested, in particular where the OFC invests 10% or more of the gross asset value of the OFC in non-financial or other less common asset class(es).*

- 13.4 The offering document must be filed with the Commission (a) as soon as practicable following issuance by the OFC and (b) in the case of changes, within seven days from date of issuance of the revised offering document.



## Requirements for safekeeping of private OFC scheme property under 7.3(g) of the OFC Code

1. Custodians of private OFCs (“Private OFC Custodian”) should comply with the requirements set out in this Appendix.

### Money of the private OFC in Hong Kong

2. Where a Private OFC Custodian that is not a bank receives or holds any money on behalf of a private OFC in Hong Kong (“Hong Kong Scheme Money”), it should:
  - (a) establish and maintain in Hong Kong one or more segregated bank accounts designated as a trust account or client account for holding the Hong Kong Scheme Money received by it. Such bank account(s) should be established and maintained with an authorized financial institution in Hong Kong;
  - (b) pay all amounts of Hong Kong Scheme Money into a segregated bank account mentioned in paragraph 2(a) of this Appendix within one business day after the receipt of such monies;
  - (c) ensure that any amount of Hong Kong Scheme Money is retained in a segregated bank account mentioned in paragraph 2(a) of this Appendix until it is:
    - (i) paid in accordance with a written direction for Hong Kong Scheme Money from or on behalf of the private OFC;

*Note: A “written direction for Hong Kong Scheme Money” is a written notice given to a Private OFC Custodian by or on behalf of a private OFC directing the Private OFC Custodian to pay a specified amount of Hong Kong Scheme Money in a particular manner and ceases to have effect after the Hong Kong Scheme Money to which it relates has been paid by the Private OFC Custodian in the manner directed.*
    - (ii) paid in accordance with a standing authority for Hong Kong Scheme Money from or on behalf of the private OFC;

*Note: A “standing authority for Hong Kong Scheme Money” is a written notice given to a Private OFC Custodian by or on behalf of a private OFC authorizing the Private OFC Custodian to deal with Hong Kong Scheme Money from time to time in one or more specified ways before the expiry date of the authority.*
    - (iii) required in order to meet the private OFC’s obligations to meet settlement or margin requirements in respect of any investment transaction carried out by the investment manager of the private OFC on behalf of the private OFC; or
    - (iv) required to pay Hong Kong Scheme Money that the private OFC, on whose behalf such Hong Kong Scheme Money is held by the Private OFC Custodian, owes to the Private OFC Custodian in respect of:

- A. the carrying on by the Private OFC Custodian of any regulated activity for which it is licensed; or
  - B. acting as the custodian of the private OFC;
- (d) not pay any amount of Hong Kong Scheme Money pursuant to a standing authority for Hong Kong Scheme Money if:
- (i) to do so would be unconscionable; or
  - (ii) the standing authority authorizes payment to an account in Hong Kong of
    - A. the Private OFC Custodian or its associated entity in circumstances other than those set out in paragraph 2(c)(iii) or (iv) of this Appendix; or
    - B. any corporation with which the Private OFC Custodian is in a controlling entity relationship or in relation to which its associated entity is a linked corporation,and that account is not a segregated account; or
- Note: Linked corporation, in relation to an associated entity of a Private OFC Custodian, means a corporation –*
- (a) of which the associated entity is a controlling entity;
  - (b) which is a controlling entity of the associated entity; or
  - (c) which has as its controlling entity a person which is also a controlling entity of the associated entity;
- (e) pay out an amount held in a segregated bank account mentioned in paragraph 2(a) of this Appendix that is not Hong Kong Scheme Money within one business day of becoming so aware.

### **Securities of the private OFC in Hong Kong**

3. Where a Private OFC Custodian receives or holds securities on behalf of a private OFC in Hong Kong (“Hong Kong Scheme Securities”), it should:

*Note: For the purpose of paragraph 3 of this Appendix, “securities” refers to securities listed or traded on a recognized stock market or interests in a collective investment scheme authorized by the Commission under section 104 of the SFO.*

- (a) establish and maintain in Hong Kong one or more segregated accounts designated as a trust account or client account for holding the Hong Kong Scheme Securities received by it. Such accounts should be established and maintained with an authorized financial institution in Hong Kong, a custodian approved by the Commission under section 11 of the Securities and Futures (Client Securities) Rules (“CSR”) or another licensed corporation or registered institution licensed or registered for dealing in securities;
- (b) ensure that, as soon as reasonably practicable, the Hong Kong Scheme Securities are:

- (i) deposited in safe custody in a segregated account; or
  - (ii) registered in the name of:
    - A. the OFC on whose behalf the Hong Kong Scheme Securities have been received; or
    - B. the associated entity of the Private OFC Custodian;
- (c) deal with the Hong Kong Scheme Securities that it receives or holds in accordance with:
- (i) a written direction for Hong Kong Scheme Securities from or on behalf of the private OFC; or
  - (ii) a standing authority for Hong Kong Scheme Securities from or on behalf of the private OFC, except where (unless permitted under the CSR) this would result in a transfer of any of the Hong Kong Scheme Securities to an account in Hong Kong of:
    - A. the Private OFC Custodian or its associated entity; or
    - B. any corporation with which the Private OFC Custodian is in a controlling entity relationship or in relation to which its associated entity is a linked corporation;

*Note: A “written direction for Hong Kong Scheme Securities” is a written direction given to a Private OFC Custodian by or on behalf of a private OFC directing the Private OFC Custodian to deal with any of the Hong Kong Scheme Securities in a particular manner, such as settlement of a sale order executed for the private OFC by the investment manager of the OFC and applying any of the Hong Kong Scheme Securities in question pursuant to a securities borrowing and lending agreement entered by the private OFC.*

other than an account referred to in paragraph 3(a) of this Appendix, or otherwise result in the Private OFC Custodian or any corporation with which the Private OFC Custodian is in a controlling entity relationship having the benefit or use of any of the Hong Kong Scheme Securities; or

- C. be unconscionable.

*Note: A “standing authority for Hong Kong Scheme Securities” is a written notice given to a Private OFC Custodian by or on behalf of a private OFC authorizing the Private OFC Custodian to deal with Hong Kong Scheme Securities from time to time in one or more specified ways.*

*A Private OFC Custodian which is a Type 1 intermediary may deal with Hong Kong Scheme Securities which are client securities or securities collateral of the intermediary in accordance with section 7 of the CSR.*

*Linked corporation, in relation to an associated entity of a private OFC Custodian, has the same meaning as set out in the Note to paragraph 2(d)(ii) above.*

### **Other scheme property of a private OFC**

4. Where any of the scheme property of a private OFC is not received or held by the Private OFC Custodian or its sub-custodian(s), the Private OFC Custodian should verify that the private OFC or the investment manager of the private OFC has authorized the payments of, transfers of or other dealings with the private OFC's scheme property.

### **Sub-custodians**

5. Where sub-custodian(s) are appointed, a Private OFC Custodian should have proper oversight over the sub-custodian(s) to enable the Private OFC Custodian to be satisfied that the sub-custodian(s) are suitably qualified and competent in safekeeping any of the private OFC's scheme property. The Private OFC Custodian should have written internal control policies and procedures for:
  - (a) the selection of a sub-custodian for the safekeeping of any of the private OFC's scheme property, including an assessment of the sub-custodian's competence, regulatory and financial status, capabilities and internal controls and systems in discharging its delegated obligation of safekeeping of any of the private OFC's scheme property;
  - (b) the ongoing monitoring of such sub-custodian(s); and
  - (c) addressing actual or potential conflicts of interests arising from the appointment and oversight of the sub-custodian.
6. Although a sub-custodian may be engaged by a Private OFC Custodian to perform safekeeping of the scheme property of a private OFC, the responsibilities and obligations shall remain with the Private OFC Custodian.

### **Record-keeping**

7. A Private OFC Custodian should keep such accounting and other records as are sufficient to:
  - (a) account in the books of the Private OFC Custodian for all of the private OFC's scheme property that:
    - (i) it receives or holds on behalf of each private OFC; and
    - (ii) by its nature cannot be held in custody;
  - (b) enable all movements of such scheme property of a private OFC to be traced through its account systems and asset holding system;
  - (c) maintain an audit trail of all transactions relating to the scheme property of a private OFC (such as deposits and withdrawals of scheme property) effected by (i) the Private OFC Custodian; (ii) the private OFC; or (iii) the investment manager of the private OFC, all information relating to the accounts of the private OFC showing the details of all movements of scheme property of the private OFC produced by the Private OFC Custodian or third parties and all relevant internal reports and statements of account;

- (d) show particulars of the liabilities, including any financial commitments and contingent liabilities of each private OFC; and
  - (e) demonstrate that the Private OFC Custodian has complied with the requirements set out in the OFC Code and all other requirements administered by the Commission which are applicable to the Private OFC Custodian.
8. A Private OFC Custodian which is a licensed corporation should retain records or documents related to its business of safekeeping of the scheme property of each private OFC in premises which have been approved by the Commission under section 130(1) of the SFO for keeping records or documents in relation to the regulated activity for which the Private OFC Custodian is licensed by the Commission. The Private OFC Custodian should retain such records or documents for a period of not less than seven years.

### **Risk management**

9. A Private OFC Custodian must manage custody risk with adequate organisational arrangements to minimize the risks of loss of the scheme property of a private OFC.

### **General**

10. In general, a Private OFC Custodian is expected to adopt internal policies and procedures, systems and controls that are substantially the same as those adopted by the Private OFC Custodian for the safekeeping of client assets received or held by the Private OFC Custodian in conducting a regulated activity for which it is licensed by or registered with the Commission ("RA assets"), in particular, in respect of scheme property of the private OFC of the same asset type as the RA assets.
11. For the avoidance of doubt, where a Private OFC Custodian which is licensed for Type 1 regulated activity and provides dealing in securities services to a private OFC receives or holds any client money, client securities and securities collateral on behalf of a private OFC in Hong Kong, it should:
- (a) treat and deal with such client money, client securities and securities collateral in accordance with the applicable provisions of the Securities and Futures (Client Money) Rules and CSR; and
  - (b) keep such accounting, trading and other records in relation to the services provided in accordance with the applicable provisions of the Securities and Futures (Keeping of Records) Rules.
12. In performing its duties of safekeeping the scheme property of a private OFC, to the extent not already covered elsewhere in the OFC Code and this Appendix, a Private OFC Custodian which is licensed by or registered with the Commission to conduct a regulated activity should comply with the applicable provisions of the Code of Conduct, the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission, the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) and the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions) as if:
- (a) the holding of each of the private OFC's scheme property is undertaken in the course of, and as an integral part of its conduct of the regulated activity for which it is licensed by or registered with the Commission; and

- (b) any reference to client assets, including client money, client securities and securities collateral in the applicable codes and guidelines, includes the private OFC's scheme property.