

Frequently Asked Questions relating to Open-ended Fund Companies

This FAQ is prepared by the Investment Products Division and aims to provide basic information to market practitioners in respect of open-ended fund companies (“OFCs”), which are subject to the Securities and Futures Ordinance (the “SFO”), the Securities and Futures (Open-ended Fund Companies) Rules (“OFC Rules”) and the Code on Open-ended Fund Companies (the “OFC Code”) (collectively, the “OFC-related Laws and Regulations”).

An applicant which seeks to establish a public OFC (as defined in the OFC Code) must also comply with all applicable requirements in the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (“SFC Products Handbook”) including the Code on Unit Trusts and Mutual Funds (“UT Code”) for authorization by the Securities and Futures Commission (“SFC”). A public OFC and publicly offered sub-funds of an OFC must also comply with all applicable requirements in the SFC Products Handbook after registration.

Applicants are encouraged to contact the relevant case team in the Investment Products Division of the SFC if in doubt on any specific issues arising from the application/interpretation of the relevant regulatory requirements or this FAQ. Please note that each application for registration is considered on a case-by-case basis. The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or registration will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Unless otherwise defined herein, all terms shall have the meanings given to such terms in the OFC-related Laws and Regulations and the SFC Products Handbook.

	Question	Answer
Requirements relating to establishment of an OFC		
1.	How do I establish an OFC?	<p>To establish an OFC, the following must be obtained:</p> <ul style="list-style-type: none"> i. registration of the OFC by the SFC; ii. Certificate of Incorporation issued by the Registrar of Companies; and iii. Business Registration Certificate issued by the Registrar of Companies on behalf of the Inland Revenue Department (“IRD”). <p>A one-stop approach is adopted for the establishment of an OFC. The applicant would only have to submit all application documents required for (i), (ii) and (iii) above and the associated fees to the SFC. No separate submission of documents and fees in respect of (ii) and (iii) to the Companies Registry (“CR”) would be required. The documents intended for submission to the CR under (ii) and (iii) should be submitted to the SFC before the registration of an OFC is granted.</p> <p>If the registration requirements are met, the SFC will send a notice of registration to CR together with the applicant’s documents and fees for (ii) and (iii). Where the relevant requirements are met, the Registrar of Companies will issue the Certificate of Incorporation and Business Registration Certificate to the applicant. The SFC’s registration of the OFC will take effect on the date of issuance of the Certificate of Incorporation, whereupon the OFC would be established. For details on the CR’s requirements, you may refer to the thematic section on OFCs on CR’s website.</p> <p>If you intend to establish a public OFC and seek authorization by the SFC, you must also comply with all applicable authorization requirements set out in the SFC Products Handbook (see the Frequently Asked Questions on Application Procedures for Authorization of Unit Trusts and Mutual Funds under the Revamped Process (“FAQs on Application For Authorization”).</p>

	Question	Answer
2.	How do I start an application for registration?	<p>To start an application, you have to submit to the SFC:</p> <ul style="list-style-type: none"> i. a duly signed and completed <u>Application Form</u>¹ (also see Q.3 below in respect of a public OFC); ii. a duly signed and completed <u>Information Checklist</u>² (also see Q.3 below in respect of a public OFC); iii. a copy of the instrument of incorporation signed by each of the proposed directors; iv. documents (including any confirmations and/or undertakings) required to be submitted pursuant to the Information Checklist; and v. a cheque made payable to “Securities and Futures Commission” in the amount of the applicable application fee (see Q.4 below). <p>If you intend to establish a public OFC, you should also submit the application documents for seeking the SFC’s authorization (see Q.3 below). During the application process, all changes to any subsequent draft documentation must be duly marked up.</p>
3.	Do I have to make separate applications for registration and authorization of a public OFC?	<p>The application documents required for registration and authorization of a proposed public OFC are expected to be submitted together to the SFC at the same time. The SFC will process the registration and authorization of a public OFC in tandem.</p>

¹ In respect of a public OFC or a publicly offered sub-fund, Application Form refers to the “Application Form for Registration of a Public Open-ended Fund Company or Establishment of a Publicly Offered Sub-fund of an Open-ended Fund Company” set out in the Annex to the “Application Form for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products”. In respect of a private OFC or a privately offered sub-fund of an OFC, 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”.

² In respect of a public OFC or a publicly offered sub-fund, Information Checklist refers to the “Information Checklist for Application for Registration of a Public Open-ended Fund Company or Establishment of a Publicly Offered Sub-fund of an Open-ended Fund Company” set out in the Schedule to the “Information Checklist for Application for Authorization of Unit Trusts and Mutual Funds under the Revamped Process”. In respect of a private OFC or a privately offered sub-fund of an OFC, Information Checklist refers to the “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”.

	Question	Answer								
		<p>To streamline the application process, the Application Form¹ for registration of a public OFC is set out in the Annex to the “Application Form for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products”. Similarly, the Information Checklist² for the registration of a public OFC is set out in the Schedule to the “Information Checklist for Application for Authorization of Unit Trusts and Mutual Funds under the Revamped Process”.</p>								
4.	<p>What are the fees payable for establishment of an OFC?</p>	<p><u>Fees payable to the SFC for registration of an OFC</u></p> <p>i. For registration of a private OFC, the applicable fee(s) are as follows:</p> <table border="1" data-bbox="846 635 2049 938"> <tbody> <tr> <td colspan="2" data-bbox="846 635 1227 735">Single OFC</td> <td data-bbox="1227 635 2049 735">Application for registration fee: <u>HK\$5,000</u></td> </tr> <tr> <td data-bbox="846 735 1016 836" rowspan="2">Umbrella OFC</td> <td data-bbox="1016 735 1227 836">For the umbrella</td> <td data-bbox="1227 735 2049 836">Application for registration fee: <u>HK\$10,000</u></td> </tr> <tr> <td data-bbox="1016 836 1227 938">For each sub-fund</td> <td data-bbox="1227 836 2049 938">Application fee: <u>HK\$1,250</u></td> </tr> </tbody> </table> <p>ii. For registration of a public OFC, there will be no separate application for registration fee. Similar to other funds seeking the SFC’s authorization, an application for authorization for a proposed public OFC are subject to the fees for (a) application for authorization and (b) authorization (see the FAQs on Application for Authorization).</p> <p>The applicable fees payable are as provided in the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (Cap. 571AR) (“Fees Regulation”), subject to the SFC’s power to grant waiver pursuant to section 6 of the Fees Regulation. Upon an application for fee waiver supported by valid reasons, if in a particular case, the SFC is of the opinion that the payment of the above fee(s) would be inappropriate or unduly burdensome, the SFC may waive in whole or in part the fee(s).</p>	Single OFC		Application for registration fee: <u>HK\$5,000</u>	Umbrella OFC	For the umbrella	Application for registration fee: <u>HK\$10,000</u>	For each sub-fund	Application fee: <u>HK\$1,250</u>
Single OFC		Application for registration fee: <u>HK\$5,000</u>								
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	For each sub-fund	Application fee: <u>HK\$1,250</u>								

	Question	Answer
		<p><u>Fees payable to the CR for incorporation and for business registration (“BR”) purposes</u></p> <p>The fees for incorporation of an OFC are HK\$3,034. With regards to the application for BR, for a one-year BR certificate, a fee of HK\$2,000 and a levy of HK\$250 are applicable. For a three-year BR certificate, a fee of HK5,200 and a levy of HK\$750 are applicable. For details, please refer to the CR’s website.</p> <p>Separate cheques should be issued for the fees payable to the SFC and to the CR respectively.</p>
5.	<p>What is the expected processing time for registration of a public OFC and private OFC?</p>	<p>As the SFC will process the registration and authorization of a public OFC in tandem, the processing time for registration of a proposed public OFC is expected to be the same as that for other public funds, generally ranging between one and three months from the take-up date of the application depending on whether it is a “standard” or “non-standard” application (please refer to the FAQs on Application for Authorization).</p> <p>For private OFCs, where the documents are in order and the registration requirements are met, a registration would be granted as soon as practicable and is generally expected to take less than one month after the application is taken up by the SFC.</p>
6.	<p>Is there any template instrument of incorporation (“lol”)? Must the template be adopted by an OFC? Can revisions be made when adopting the template?</p>	<p>The templates of the lol for public OFCs and private OFCs respectively are available on the SFC website. The templates set out the baseline contents of an lol generally expected of an OFC. OFCs are free to include other provisions in their individual lols and make relevant variations as appropriate, provided that such additions and variations would not result in non-compliance with the OFC-related Laws and Regulations (e.g. the lol must contain the provisions mandated under section 112K of the SFO). In the case of a public OFC, the requirements in the SFC Products Handbook must also be complied with.</p>

	Question	Answer
Requirements in relation to post-registration changes to an OFC		
7.	How do I apply for an addition of a new sub-fund to an existing umbrella fund?	<p>To start an application, you have to submit to the SFC:</p> <ul style="list-style-type: none"> i. a duly signed and completed Application Form¹; ii. a duly signed and completed Information Checklist²; iii. documents (including any confirmations and/or undertakings) required to be submitted pursuant to the Information Checklist; and iv. a cheque made payable to “Securities and Futures Commission” in the amount of the applicable application fee (see Q.4 above). <p>During the application process, all changes to any subsequent draft documentation must be duly marked up.</p> <p>The application documents required for the applications for establishment and authorization of a new publicly offered sub-fund are expected to be submitted together to the SFC at the same time. The SFC will process the establishment and authorization of a new publicly offered sub-fund in tandem.</p>
8.	What are the changes to a SFC-registered OFC that requires the SFC’s approval? What are the documents and fees that should be submitted?	<p>The following changes to an OFC are subject to the SFC’s approval:</p> <ul style="list-style-type: none"> i. Appointment of a director, custodian or investment manager³ ii. Change of name of an OFC or sub-fund of an OFC iii. Establishment of a new sub-fund under an OFC (see Q.7 above) iv. Termination of an OFC or a sub-fund and cancellation of registration of an OFC (see Q.14 below)

³ An appointment of a custodian or investment manager of a sub-fund of an OFC would also be regarded as an appointment of the custodian or investment manager of the OFC requiring the SFC’s approval.

	Question	Answer									
		A duly signed and completed application form and the relevant information checklist (also see Q.9-Q.11 below) together with the applicable fee (see Q.12 below) should be submitted to the SFC.									
9.	What documents should be submitted to the SFC for a change of key operators of a public OFC?	<p>For a change of key operators of a public OFC⁴, the documents required are as follows:</p> <table border="1" data-bbox="779 501 2049 1289"> <thead> <tr> <th data-bbox="779 501 987 571"></th> <th data-bbox="987 501 1503 571">Change of Director</th> <th data-bbox="1503 501 2049 571">Change of Custodian or Investment Manager</th> </tr> </thead> <tbody> <tr> <td data-bbox="779 571 987 676">Appointment</td> <td colspan="2" data-bbox="987 571 2049 676">“Application Form for Approval of Appointment of Director, Custodian or Investment Manager of an Open-ended Fund Company”</td> </tr> <tr> <td data-bbox="779 676 987 1289"></td> <td data-bbox="987 676 1503 1289"> (a) Duly signed and completed “Information Checklist for (i) a Change of Director of a Public Open-ended Fund Company; or (ii) a Change of Name of a Public Open-ended Fund Company or a Publicly Offered Sub-fund of an Open-ended Fund Company” (“Public OFC Director/ Name Change Information Checklist”); and (b) the notice to shareholders relating to the change (if any) after issuance. <i>(Note: <u>no</u> “Filing Form for Notice of Scheme Change(s) falling within</i> </td> <td data-bbox="1503 676 2049 1289"> Only the following existing documents applicable to SFC-authorized funds for a 11.1 scheme change under the UT Code are required to be submitted: (a) Duly signed and completed “Application Form for Scheme Change(s)”; and (b) “List of Confirmations of Compliance related to Application for Approval of Scheme Change(s) pursuant to 11.1 of the Code on Unit Trusts and Mutual Funds (UT Code)”, including the confirmation required in relation to an OFC in the <u>Annex</u> </td> </tr> </tbody> </table>		Change of Director	Change of Custodian or Investment Manager	Appointment	“Application Form for Approval of Appointment of Director, Custodian or Investment Manager of an Open-ended Fund Company”			(a) Duly signed and completed “Information Checklist for (i) a Change of Director of a Public Open-ended Fund Company; or (ii) a Change of Name of a Public Open-ended Fund Company or a Publicly Offered Sub-fund of an Open-ended Fund Company” (“Public OFC Director/ Name Change Information Checklist”); and (b) the notice to shareholders relating to the change (if any) after issuance. <i>(Note: <u>no</u> “Filing Form for Notice of Scheme Change(s) falling within</i>	Only the following existing documents applicable to SFC-authorized funds for a 11.1 scheme change under the UT Code are required to be submitted: (a) Duly signed and completed “Application Form for Scheme Change(s)”; and (b) “List of Confirmations of Compliance related to Application for Approval of Scheme Change(s) pursuant to 11.1 of the Code on Unit Trusts and Mutual Funds (UT Code)”, including the confirmation required in relation to an OFC in the <u>Annex</u>
	Change of Director	Change of Custodian or Investment Manager									
Appointment	“Application Form for Approval of Appointment of Director, Custodian or Investment Manager of an Open-ended Fund Company”										
	(a) Duly signed and completed “Information Checklist for (i) a Change of Director of a Public Open-ended Fund Company; or (ii) a Change of Name of a Public Open-ended Fund Company or a Publicly Offered Sub-fund of an Open-ended Fund Company” (“Public OFC Director/ Name Change Information Checklist”); and (b) the notice to shareholders relating to the change (if any) after issuance. <i>(Note: <u>no</u> “Filing Form for Notice of Scheme Change(s) falling within</i>	Only the following existing documents applicable to SFC-authorized funds for a 11.1 scheme change under the UT Code are required to be submitted: (a) Duly signed and completed “Application Form for Scheme Change(s)”; and (b) “List of Confirmations of Compliance related to Application for Approval of Scheme Change(s) pursuant to 11.1 of the Code on Unit Trusts and Mutual Funds (UT Code)”, including the confirmation required in relation to an OFC in the <u>Annex</u>									

⁴ If a revision of document (“ROD”) is involved in connection with the change for the public OFC, please be reminded to submit the relevant forms for ROD applicable to SFC-authorized funds.

Question		Answer		
			<p><i>11.1B of the Code on Unit Trusts and Mutual Funds (UT Code) and Do Not Require SFC's Prior Approval</i> ("11.1B Filing Form") needs to be filed for any notice issued for such change where it falls within 11.1B of the UT Code.)("Note on 11.1B Filing")</p>	<p>((a) and (b) are collectively referred to as the "11.1 Scheme Change Documents").</p>
		<p>Cessation and other changes (if applicable)</p>	<p>For a cessation of directorship, the following documents are required to be submitted:</p> <p>(a) the above Public OFC Director/ Name Change Information Checklist (please also refer to the Note on 11.1B Filing above); and</p> <p>(b) notice to SFC of a resolution to remove a director.</p>	<p>The 11.1 Scheme Change Documents above⁵.</p>
10.	<p>What documents should be submitted to the SFC for a change of name of a public OFC or its sub-fund(s)?</p>	<p>In respect of a change of name of a public OFC or its sub-fund, the following documents should be submitted to the SFC:</p> <ol style="list-style-type: none"> i. a duly signed and completed "Application Form for Approval of Change of Name of an Open-ended Fund Company or Sub-fund of an Open-ended Fund Company"; ii. a duly signed and completed Public OFC Director/ Name Change Information Checklist; and iii. the notice to shareholders relating to the change (if any) after issuance. 		

⁵ These apply to changes which fall under 11.1 of the UT Code such as cessation of office, change of their regulatory status and change of investment delegate.

	Question	Answer
		<i>(Note: no 11.1B Filing Form is required, please refer to the Note on 11.1B Filing.)</i>
11.	What documents should be submitted to the SFC for a change of key operators of a private OFC or change of name of such OFC or its sub-funds?	<p>For a change of name, a duly signed and completed “Application Form for Approval of Change of Name of an Open-ended Fund Company or Sub-fund of an Open-ended Fund Company” should be submitted to the SFC.</p> <p>For an appointment of director, custodian or investment manager, the following documents should be submitted:</p> <ul style="list-style-type: none"> - a duly signed and completed “Application Form for Approval of Appointment of Director, Custodian or Investment Manager of an Open-ended Fund Company”; and - a duly signed and completed “Information Checklist for Application for Approval of Appointment of Director, Custodian or Investment Manager of a Private Open-ended Fund Company”. <p>An OFC should also notify the SFC of a (i) resolution to remove a director; and (ii) cessation of investment manager or custodian of the OFC⁶.</p>

⁶ Such notification should also be made to the SFC where there is a cessation of a custodian or investment manager of a sub-fund of an OFC.

	Question	Answer
12.	What are the fees payable for a change which requires approval from SFC to an OFC?	<p>For a public OFC and publicly offered sub-fund, no separate fee is payable for post-establishment changes seeking SFC's approval. An annual fee is applicable to a public OFC as an SFC-authorized fund as in the case of other SFC-authorized funds (you may refer to the FAQs on Application for Authorization for further information).</p> <p>For a private OFC, a fee of HK\$300 is payable for an application for (i) an approval of appointment of director, custodian or investment manager, (ii) an approval of a change of name, or (iii) a cancellation of registration. A fee of HK\$300 is also payable for the termination or change of name of a sub-fund of a private OFC.</p>
13.	What are the documents that need to be filed with the SFC for both public and private OFCs post-registration?	<p>Filings with the SFC should be made in accordance with the OFC-related Laws and Regulations, including for example:</p> <ul style="list-style-type: none"> • Annual report • Interim report (if any) • Offering documents • Alteration of instrument of incorporation • Statement of circumstances issued by auditor or custodian • Documents in relation to change of key operators and change of name as mentioned in these FAQs. <p>A public OFC should also comply with relevant requirements applicable to SFC-authorized funds including those under the SFC Products Handbook.</p>

	Question	Answer
14.	How may I apply for a termination of an OFC or sub-funds of an OFC with the SFC?	<p>To make an application for termination of an OFC or sub-fund of an OFC, the following requirements should be met:</p> <ul style="list-style-type: none"> i. the requirements under Chapter 10 of the OFC Code should be complied with; ii. a duly signed and completed “Application Form for Cancellation of Registration of an Open-ended Fund Company or Termination of a Sub-fund of an Open-ended Fund Company” should be submitted; and iii. (a) <i>(for a private OFC)</i> a duly completed “Information Checklist for Termination of a Private OFC or Privately Offered Sub-fund under Chapter 10 of the Code on Open-ended Fund Companies” should be submitted; or (b) <i>(for a public OFC)</i> the applicable requirements under the SFC Products Handbook should be complied with, and a duly completed “On-Going Compliance Form For Notice of Mergers/Restructuring/Termination/Withdrawal of Authorization” should be submitted.
15.	If I submit documents required by the CR to the SFC, how do I ensure the relevant deadlines for filings prescribed by CR have been met?	<p>Under the one-stop approach, documents are treated as being delivered to the CR at the time when they are delivered to the SFC. The applicant should ensure that the relevant documents required by the CR are delivered to the SFC prior to the relevant deadline in the OFC-related Laws and Regulations.</p>
16.	Which are the post-registration filing forms required by the CR? Which ones need to be submitted via the SFC?	<p>The CR’s specified forms in relation to OFCs can be downloaded from the CR’s website at www.cr.gov.hk/en/ofc.</p> <p>As a change of name and appointment of director of an OFC require the SFC’s approval, the following CR forms should be submitted via the SFC:</p> <ul style="list-style-type: none"> • OFCNC2(SFC) – Notice of Change of Company Name • OFCD1(SFC) – Notice of Appointment of Director <p>All other filing forms with the CR should be submitted to CR directly.</p>

	Question	Answer
General		
17.	Will my application lapse after a certain period of time?	<p>An application will lapse if (a) in the case of an application for registration of an OFC or approval of establishment of a sub-fund of a SFC-registered OFC, six months have elapsed after the application has been taken up and no registration/ approval has been granted; or (b) in the case of an application for approval of change of name or appointment key operator(s) of an OFC, no approval is granted within the applicable processing time period as indicated in the first requisition issued by the SFC (if issued). The SFC will issue a letter of mindedness to remind and inform the applicant of the lapse of the application prior to the date. In the case of an application of registration of a private OFC or approval of establishment of a privately offered sub-fund, such reminder will be issued after 4 months have elapsed from the take-up date of the application. As the applications for registration and authorization for a public OFC or public sub-fund will be processed in tandem and the processing timeline for the two applications will be attuned, please refer to the FAQs on Application for Authorization for information on the lapse of an application.</p> <p>Once an application has lapsed or has been refused, if the applicant wishes to make an application for the same matter, it would have to make a fresh application.</p>
18.	Can a private OFC be converted into a public OFC and vice versa?	<p>A private OFC may seek the SFC's authorization to become a public OFC. To apply for an authorization, it must comply with the authorization requirements set out in the SFC Products Handbook. You may refer to the FAQs on Application for Authorization and other relevant materials on the SFC website for information on application for authorization, including the Application Form and Information Checklist as well as the applicable fees.</p> <p>A public OFC may become a private OFC by applying to the SFC for a withdrawal of authorization and complying with the relevant requirements applicable to private OFCs under the OFC Code. An application should be made for such conversion by submitting the relevant documents to evidence compliance with the applicable requirements. Further, you may refer to the SFC Products Handbook for the requirements on withdrawal of authorization and other relevant materials on the SFC website including the Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds and Frequently Asked Questions on Revamped Post Authorization Process of SFC-authorized Unit Trusts and Mutual Funds.</p>

	Question	Answer
		Applicants should consult the Investment Products Division of the SFC at the earliest opportunity should they wish to proceed with any such conversion.
19.	Can public OFCs be exchange-traded funds (“ETFs”)?	Yes, where the public OFC meets the relevant requirements under the SFC Products Handbook with regards to ETFs.
20.	Are OFCs qualified for the mutual fund recognition (“MRF”) arrangements entered into by the SFC?	SFC-authorized funds structured in the form of OFCs are eligible under the scope of the MRF arrangements entered into by the SFC with the Swiss Financial Market Supervisory Authority, and with the Financial Conduct Authority of the United Kingdom, respectively ⁷ . Discussions are underway with other relevant overseas regulators with a view to seeking the inclusion of OFCs in the MRF arrangements. Further updates will be made where there are relevant developments.

Last update: 28 December 2018

⁷To qualify, the OFC should meet the requirements under the relevant MRF arrangement. With regards to the MRF arrangement with Switzerland, please refer to SFC’s press release on 2 December 2016 available at: <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=16PR132>. With regards to the MRF arrangement with the United Kingdom, please refer to SFC’s press release on 8 October 2018 available at: <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR116>.