

Subsidiary legislation for open-ended fund companies gazetted

The Government and the Securities and Futures Commission (SFC) published in the Gazette today (May 18) three pieces of subsidiary legislation to enable the implementation of the open-ended fund company (OFC) regime. The three pieces of subsidiary legislation are:

- (a) the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice (the Commencement Notice);
- (b) the Securities and Futures (Open-ended Fund Companies) Rules (the OFC Rules); and
- (c) the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (the Fees Regulation).

The Commencement Notice will bring into effect all provisions in the Securities and Futures (Amendment) Ordinance 2016 from July 30, 2018, onwards and the OFC regime will commence on that day. The detailed statutory operational requirements of the regime, including matters related to an OFC's formation, incorporation and maintenance, appointment and cessation of appointment of the key operators, corporate filings, segregated liability of sub-funds (if any), winding-up and offences, will be set out in the OFC Rules. The fees to be collected by the SFC and the Registrar of Companies in respect of OFCs will be set out in the Fees Regulation.

The Inland Revenue (Amendment) (No. 2) Ordinance 2018, which extends profits tax exemption to onshore privately offered OFCs, will also take effect on July 30, 2018.

"With the commencement of the OFC regime, fund managers will have the option of setting up a fund in the form of a company, in addition to the form of a unit trust. This additional choice should help diversify Hong Kong's fund domiciliation platform and build up our fund manufacturing capabilities. This will in turn help further develop Hong Kong's asset management industry," a government spokesperson said.

An OFC is a collective investment scheme with variable capital set up in the form of a company, but with the flexibility to create and cancel shares for investors' subscription and redemption in the fund. Also, an OFC will not be bound by restrictions on distribution out of capital applicable to a conventional company, and instead may distribute out of capital subject to solvency and disclosure requirements. The SFC will be the primary regulator responsible for the registration and regulation of OFCs under the Securities and Futures Ordinance (Cap. 571). The Companies Registry will oversee the incorporation and statutory corporate filings of OFCs and the Official Receiver's Office the winding-up procedure.

The three pieces of subsidiary legislation will be tabled before the Legislative Council on May 23, 2018, for negative vetting.