



Hong Kong
Women Professionals
& Entrepreneurs
Association Limited
香港女工商及專業人員聯會有限公司

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伍婉婷

(By email: ofc-2019consultation@sfc.hk)

The Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

20 February 2020

Dear Sir/Madam

Consultation Paper on Proposed Enhancements to the Open-ended Fund Companies Regime

In response to the Consultation Paper on Proposed Enhancements to the Open-ended Fund Companies Regime, members of the Hong Kong Women Professionals & Entrepreneurs Association (HKWPEA) have set up a Task Force to study and discuss the questions contained in the Consultation document.

Attached please find HKWPEA's response paper to this consultation for your kind perusal. For any further enquiries or information, please do not hesitate to contact us at 6233-5230.

Yours faithfully,

Rebecca Choy Yung
Hong Kong Women Professionals & Entrepreneurs Association

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The Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Re: Consultation Paper on Proposed Enhancements to the Open-ended Fund Companies Regime

20 February 2020

Dear Sirs

Consultation Paper on Proposed Enhancements to the Open-ended Fund Companies Regime

This submission is our response to the Securities and Futures Commission's Consultation Paper on Proposed Enhancements to the Open-ended Fund Companies Regime.

The current regime for the operation of open-ended fund companies (**OFCs**) aimed at encouraging more funds to domicile in Hong Kong and to boost Hong Kong's position as a full service international asset management centre. The OFC regime comprises a suite of laws and codes which together seek to achieve this aim:

- the enactment of a new Part IVA of the Securities and Futures Ordinance which permitted the establishment of OFCs outside the usual regime of company law;
- the Securities and Futures (Open-ended Fund Companies) Rules (**OFC Rules**) and
- the Code on Open-ended Fund Companies (**OFC Code**)

Whilst a definite step in the right direction, the Consultation Paper proposes changes to the OFC regime with a view to further facilitating the use of Hong Kong as a domicile for the setting up of investment funds, in the face of stiff global competition we face regionally, and the time we have lost to our competition.

To ensure the ongoing competitiveness of Hong Kong, we believe it is necessary to consider ancillary provisions and incentive schemes that may need enhancement to attract qualified private OFCs and investment fund managers to set up in Hong Kong. On this basis, we support the SFC having regular dialogues with market practitioners and stakeholders to understand why Hong Kong may not be selected.

As a non-profit organization representing local women professionals and entrepreneurs, the Hong Kong Women Professionals and Entrepreneurs Association (**HKWPEA**) is aware of the importance of Hong Kong's hard-earned position as an international financial centre. Over the last 23 years, HKWPEA strives to make timely responses to HKSAR Government's public policy issues through submission of position papers. The views expressed in this submission are those of HKWPEA, based on consultation with members, including women professionals, business executives and entrepreneurs, and are in line with HKWPEA's position on the relevant issues, but not necessarily that of each and every member.

In this submission, we seek to provide our views on the Consultation.

A. Custodian eligibility requirements for private OFCs

Question:

1. Do you agree with the proposal to allow intermediaries licensed or registered for RA1 to act as custodians for private OFCs? Please explain your views.
2. Do you have any comments on the proposed eligibility criteria applicable to RA1 intermediaries which intend to be private OFC custodians? Do you have any other suggestions?
3. Do you have any comments on the proposed requirements in the new Appendix A to the OFC Code to be imposed on all private OFC custodians, including existing private OFC custodians, RA1 intermediaries which intend to be private OFC custodians and RA13 intermediaries which also act as custodians of private OFCs when the RA13 regime comes into effect?
4. Do you have any comments on the other proposed amendments to Chapter 7 of the OFC Code?

Reply:

The current eligibility requirements for custodians with whom the investment scheme property of the OFC would need to be entrusted are similar to those for custodians of SFC-authorized funds, as set out in the Code on Unit Trusts and Mutual Funds. This requirement applies whether or not the fund is to be publicly or privately offered and is too onerous. Individuals licensed by the SFC for Type 1 regulated activities will have been screened for fitness and properness and are expected to have the experience in fulfilling the custodian role.

It is sufficient, as suggested by the proposed amendments, that an intermediary which is licensed by the SFC to carry out Type 1 regulated activity, to act as a custodian of private OFCs, so long as their license does not prohibit them from doing so, they meet certain capital criteria, and maintain independence from the investment manager. This amendment brings Hong Kong more into line with requirements in the US, Europe and Singapore.

For OFCs of a smaller size, the wider choice of custodians will result in more competitive pricing and lower operational costs of the fund. This will encourage the establishment of more funds in Hong Kong and is in line with the purpose of the enhancement provisions.

B. Expansion of investment scope for private OFCs

Question:

5. Do you have any comments on the proposed expansion of the investment scope of private OFCs to loans and shares and debentures of Hong Kong private companies? Please explain your views.

Reply:

We welcome the proposed expansion of investment scope of private OFCs to include loans and shares and debentures of Hong Kong private companies. Such expansion facilitates not only investment flexibility for the OFC, but facilitates fund-raising activities by a much larger range of businesses. An additional benefit would be the ability to enhance impact investment which has the potential to bring about beneficial social or environmental impact alongside a financial return.

In general, there should be minimal restrictions in investment scope for private OFCs, including geographical limitations, especially in the case of investments into listed securities where there exist liquid markets. Provided such investments are legal, can be audited and can be held by custodians, investment decisions should be made by investment managers. If holding any investment requires a special licence, then the licensing requirement should be fulfilled.

However, we note that the SFC also requires that despite such expansion of scope, OFCs are not permitted to engage in a money-lending business. If it is the case that the SFC takes a tight stance regarding OFCs engaging in the money-lending business then we believe that in due course it may be necessary for more guidance to be given (in particular as to any transaction structures with which the SFC may have particular concerns). We would also invite the SFC to consider, if an OFC were to obtain and maintain a money –lenders’ licence, whether it would be permitted to engaged in money lending activities with clients who are classified as professional investors.

C. Re-domiciliation of overseas corporate funds

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Question:

6. Do you have any comments on the proposed re-domiciliation mechanism to facilitate the migration of overseas corporate funds to Hong Kong or the mechanism’s specific features and requirements? Please explain your views.

Reply:

The proposed re-domiciliation mechanism is welcome, as it captures the potential corporate funds which have been incorporated elsewhere, and facilitates the relocation of those funds in Hong Kong. It is noted that one of the requirements in Appendix II to the Consultation (setting out the key features of the proposed statutory re-domiciliation mechanism) requires that the overseas corporate fund to provide registration documents as specified in the OFC Rules, including a certificate issued by its directors to confirm that de-registration of the overseas corporate fund in its place of incorporation is permitted by the laws of that jurisdiction. However, this requirement only paves the way for registration of the overseas corporate fund as an OFC. It does not deal with the possible impact of de-registration of the overseas corporate fund in its place of incorporation. Therefore it is necessary for the overseas corporate fund to provide evidence to the SFC that its rights, functions, liabilities, obligations and property are not affected under the law of the original place of incorporation.

In addition, the proposed re-domiciliation mechanism cannot operate in isolation and therefore consideration should be given to whether any ancillary provisions are required to facilitate the appointment of local fund managers in place of offshore fund managers for the overseas corporate funds.

D. Significant controllers register requirement

Question:

7. What are your views on the proposed adoption of the significant controllers register requirements under the CO in the OFC regime?

Reply:

We agree with the requirement for the keeping a register of beneficial shareholders under the OFC Rules. Together with the current AML/CFT obligations imposed on investment managers of OFCs and SFC-licensed or registered intermediaries involved in selling OFC shares, this mirrors similar requirements under the Companies Ordinance.

E. Implementation timeline

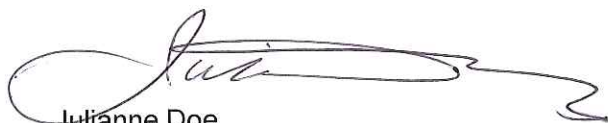
Question:

8. Do you have any comments on the proposed implementation timelines?
9. Would there be any difficulty for existing private OFC custodians to comply with the proposed requirements in the new Appendix A to the OFC Code if they were to take immediate effect? Please explain your views.

Reply:

We believe that the proposed transitional period of six months may be difficult to meet and would suggest a longer transitional period of nine to twelve months.
Should you have any questions, please feel free to contact Julianne Doe, Co-Chair, Public Affairs Committee at info@hkwpea.org.

Yours faithfully



Julianne Doe
Public Affairs Committee Co-Chair
For and on behalf of
Hong Kong Women Professionals & Entrepreneurs Association