

Press release

Consultation on introducing new open-ended fund company structure

Thursday, March 20, 2014

The Government today (March 20) launched a three-month public consultation on introducing a new open-ended fund company (OFC) structure to expand Hong Kong's legal structure for investment fund vehicles.

"In view of the international trend where the corporate fund structure has become a more popular fund structure, the proposed additional OFC option will provide market participants with more flexibility in establishing and operating funds in Hong Kong," a government spokesman said.

The spokesman pointed out, "We hope this would attract more mutual funds and private funds to domicile in Hong Kong."

Noting that the Financial Secretary announced in the 2013-14 Budget that Hong Kong would provide the relevant legal and regulatory frameworks to strengthen its position as a premier international asset management centre, the spokesman said that the consultation launched today will seek views from the public and the financial services industry on the policy and legal frameworks for OFCs.

Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in corporate form due to various restrictions on capital reduction under the Companies Ordinance.

As an open-ended investment fund needs the flexibility to vary its capital in order to meet investor applications and redemptions, the current legal regime for companies does not enable such funds to be established in corporate form.

To complement the existing unit trust structure, it is proposed that the new OFC will be an open-ended collective investment scheme structured in corporate form with limited liability and variable share capital, aiming to serve as an investment fund vehicle via which investments will be managed for the benefit of its shareholders.

Under the proposed OFC regime, the new OFC vehicle will be established under the Securities and Futures Ordinance (SFO) and be regulated and supervised by the Securities and Futures Commission (SFC).

The enabling provisions will be provided in the SFO to facilitate the making of a separate piece of OFC subsidiary legislation governing the detailed regulation of these new vehicles.

The SFO and the OFC subsidiary legislation will set out the full scheme of the OFC and cover matters relating to the creation and regulation of OFCs.

To supplement the SFO and the OFC subsidiary legislation, the more detailed requirements relating to OFCs and their operation, subject to further public consultation, will be set out in a separate OFC Code to be issued under the SFO.

Under the proposal, the OFC itself will be a pure legal vehicle for investment and therefore will not be required to be licensed as a licensed corporation under the SFO.

However, as an investment fund vehicle, the day-to-day management and investment functions of the OFC must be delegated to an investment manager licensed or registered with the SFC to carry out Type 9 regulated activity on asset management.

The OFC will have to be registered with the SFC under the new legislation, and if the shares of the OFC are to be offered to the public, it must also be authorised by the SFC under the SFO in line with the existing arrangement adopted for investment fund offerings in Hong Kong.

Since OFCs are set up as an investment fund vehicle, the SFC will be the primary regulator for OFCs under the SFO.

The Companies Registry will be responsible for the incorporation and relevant statutory corporate filings of OFCs.

The Companies Registry will also maintain a register for OFCs and provide the public with services to access the OFC information that it holds.

The existing profits tax exemption to public funds will apply to publicly offered OFCs. For privately offered OFCs, profits tax exemption will be available under the existing regime for offshore funds with the central management and control located outside Hong Kong.

The Government will consider carefully the exemption or the extent of exemption that should be applied to privately offered OFCs with the central management and control located onshore having regard to possible read-across implications.

The consultation paper can be downloaded from the Financial Services and the Treasury Bureau (FSTB) website at www.fstb.gov.hk/fsb/ppr/consult/doc/ofc_e.pdf.

Members of the public and the industry are welcome to send their written comments on or before June 19, 2014, by mail to Consultation on OFC, Financial Services Branch, FSTB, 24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong, or by fax to 2294 0460, or by email to ofc@fstb.gov.hk.

"We will analyse the views and comments received in order to further develop the detailed proposals," the spokesman added.