



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

Open-ended Fund Companies (OFC) – the Corporate Investment Fund Vehicle in Hong Kong

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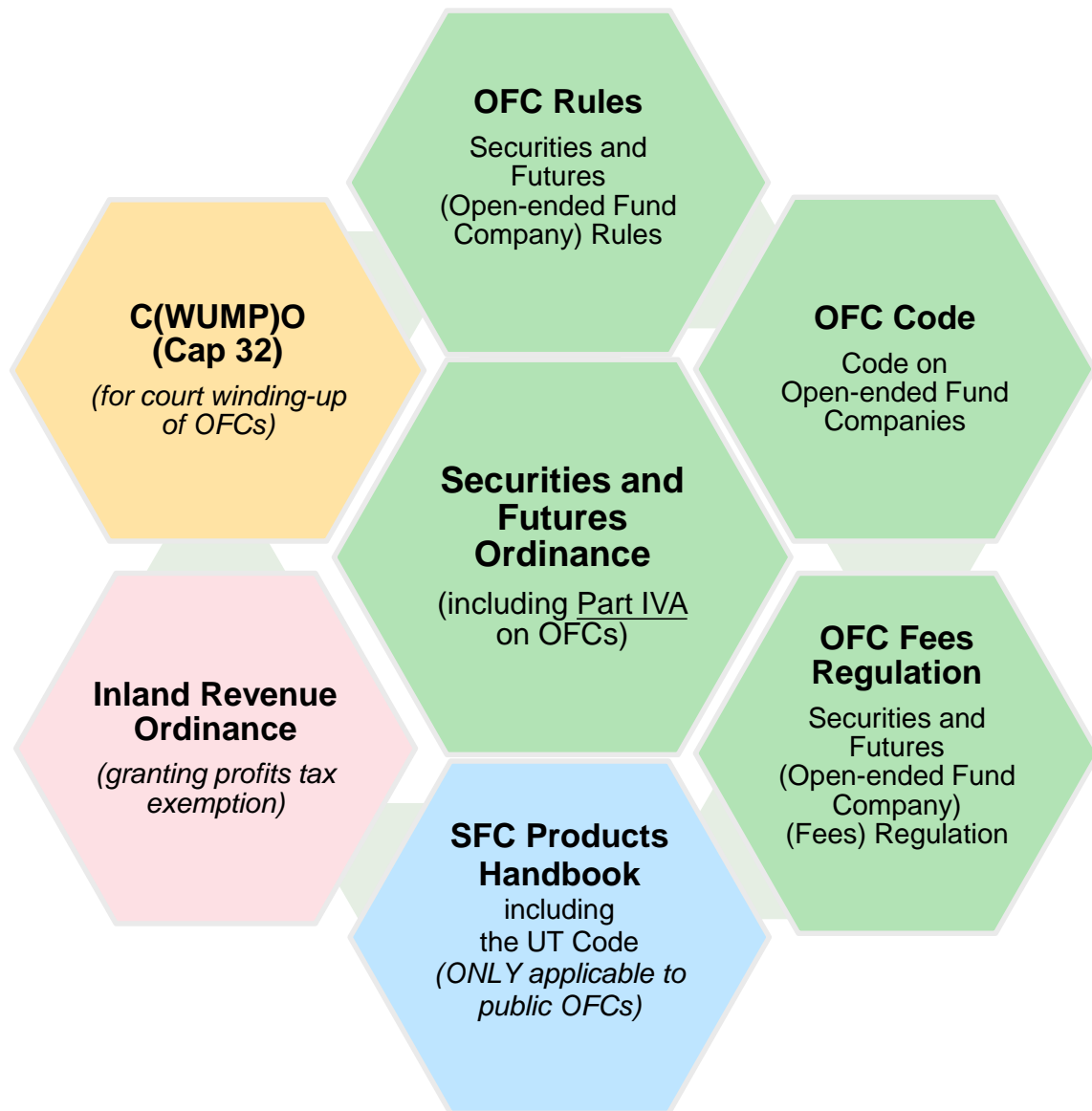
Investment Products

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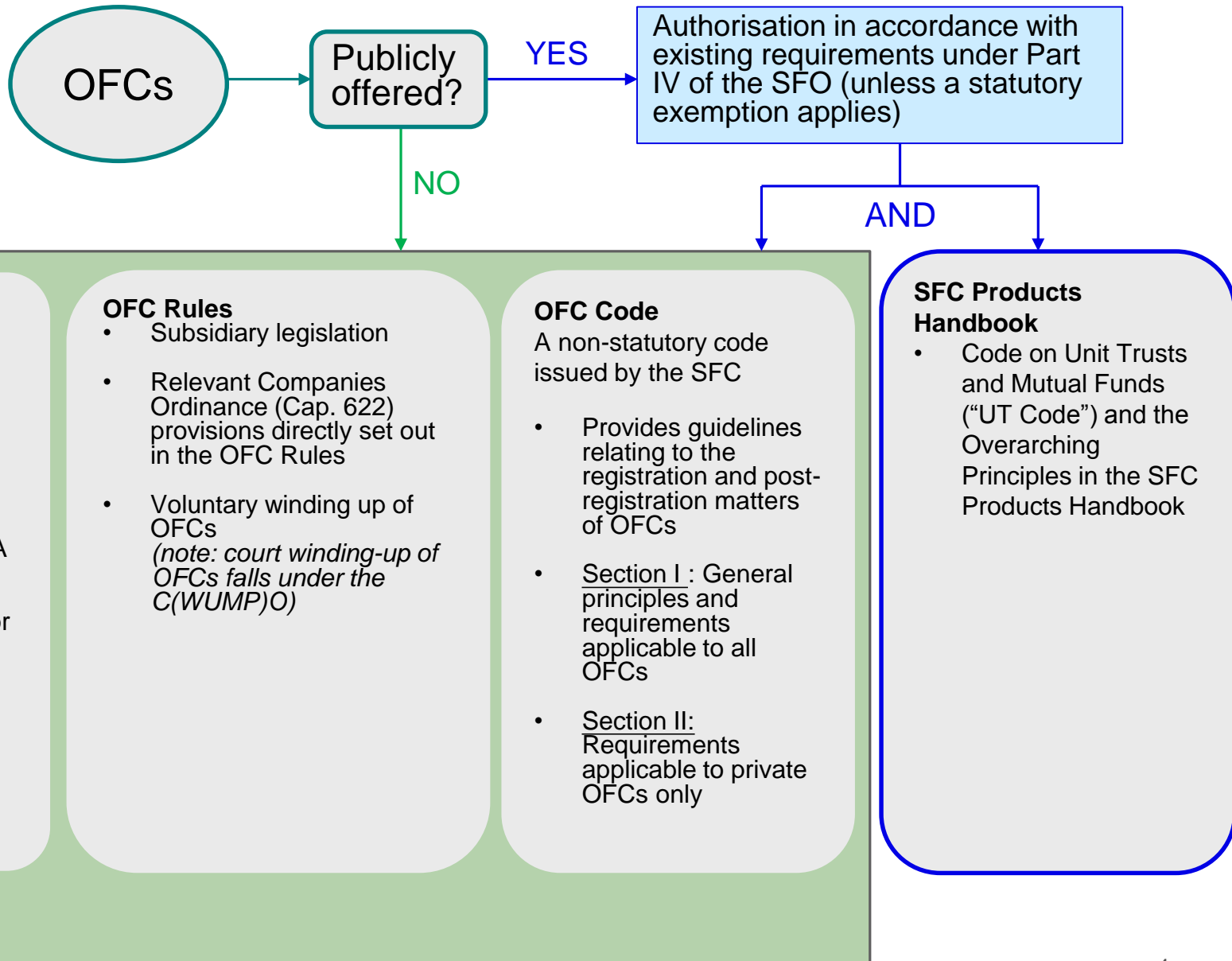
Legal and regulatory framework for OFC

The OFC regime came into effect on 30 July 2018

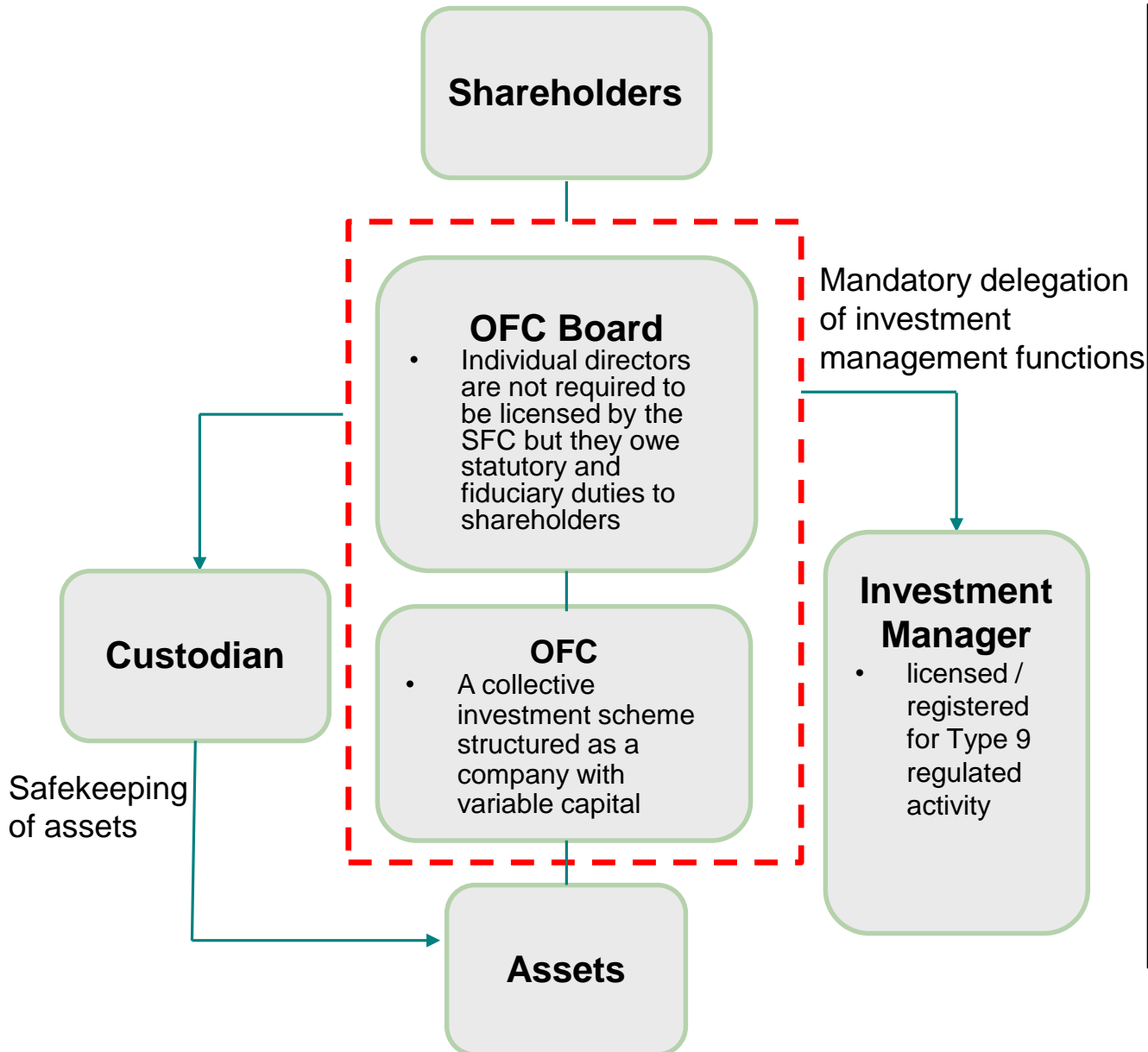


- **Primary regulator:** SFC
- **Incorporation and corporate filings:** Companies Registry (CR)
- **Winding up:** Official Receiver's Office (ORO)

Legal and regulatory framework for OFC



OFC structure

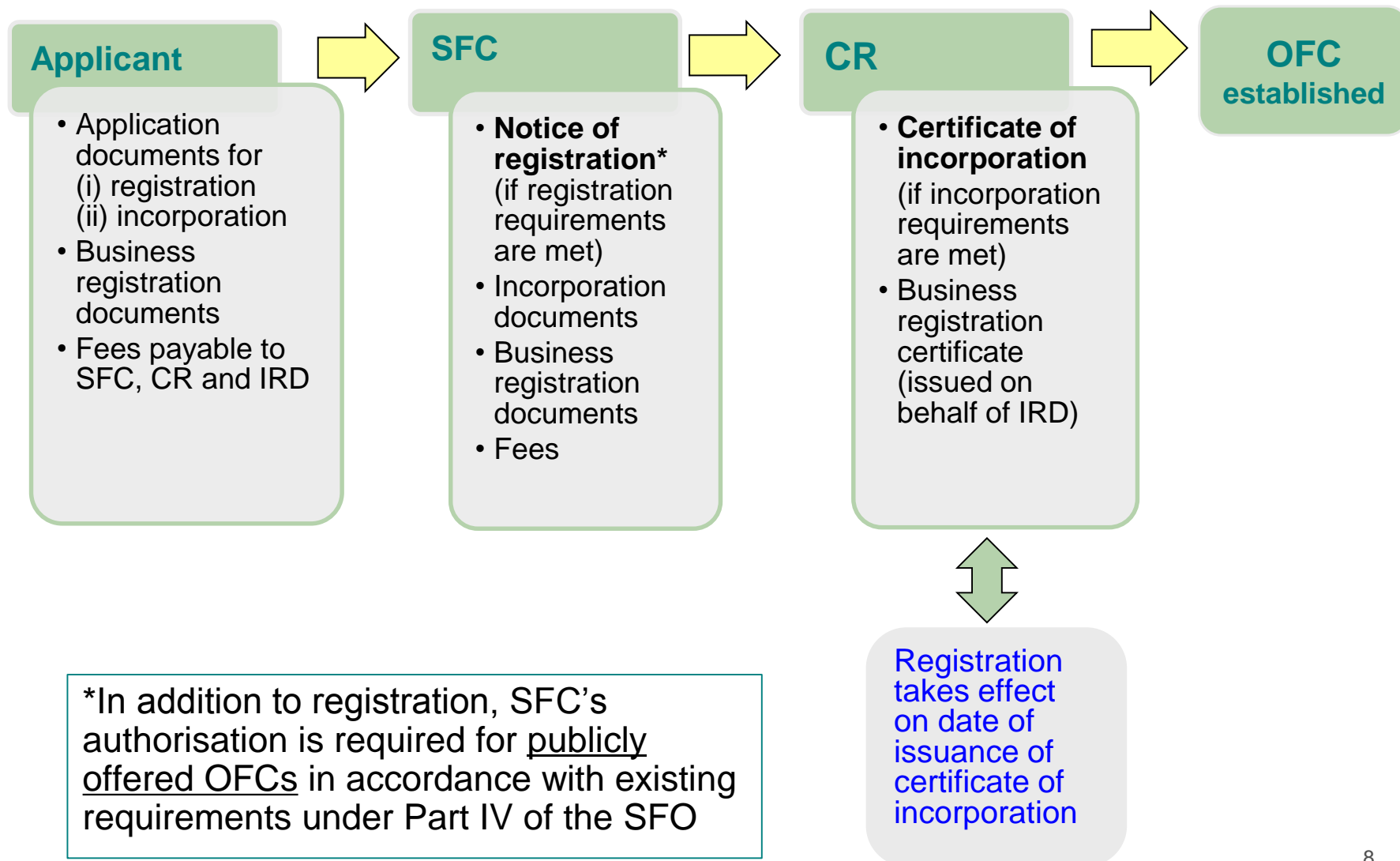


- A new corporate structure (in addition to unit trust form) for investment funds in Hong Kong
- Not subject to restrictions under Companies Ordinance (“CO”) on (1) capital reduction; (2) distribution out of capital
- Can be used for both listed (e.g. ETFs) or unlisted funds
- Can be used for both public and private funds
- Can be used for closed-ended funds (i.e. can impose redemption terms and conditions subject to clear disclosure)

- **Public OFCs: OFCs which are offered to the public**
 - Compliance with essentially the same requirements under the UT Code as existing SFC-authorized unit trusts
- **Private OFCs: OFCs which are privately offered**
 - Key regulatory focus:
 - Key operators - directors, custodian and investment manager meet basic eligibility requirements
 - Investment scope – at least 90% of the OFC’s gross asset value invests in securities, futures contracts, OTC derivatives, cash, bank deposits, certificates of deposit, foreign currencies and foreign exchange contracts, 10% cap for other asset types
 - Compliance with basic principles and structural requirements
 - No pre-vetting of offering documents nor SFC’s approval required for changes to the OFC’s instrument of incorporation, offering documents, investment strategy and assets
 - SFC’s approval required for change of name, appointment of key operators, establishment of sub-funds and termination of OFC or sub-fund only

Establishment of an OFC

Establishment of an OFC: “one-stop” flowchart



Processing time

Private OFC

- Generally less than one month after application take-up by the SFC and where the registration requirements are met

Public OFC

- Same as that for other SFC-authorized funds
- Generally ranging between one and three months after application take-up by the SFC, depending on its complexity, i.e. whether it is a “standard” or “non-standard” application

Instrument of incorporation

■ Contents

- Must include the mandatory provisions under the SFO and comply with the OFC Rules and OFC Code, and SFC Products Handbook in the case of an public OFC, e.g.
 - Objects of the OFC must include a statement on its operation as a collective investment scheme
 - The kinds of properties in which the OFC invests
 - Corporate administrative matters of the OFC, eg. procedures and notices for holding meetings, creation of shares and the rights attached to them
 - A statement that the company is an open-ended fund company with variable share capital
- **Indicative templates (including the mandatory and optional provisions) are available on SFC's website for reference**
 - The indicative instrument of incorporation provides the baseline contents. An OFC may include other provisions provided that they do not contradict the required contents

Key operators – Directors

- An OFC must have at least two directors, who must be
 - natural persons
 - aged 18 or above
 - not an undischarged bankrupt unless with the leave of the court
- At least one of the directors must be an independent director
 - OFC Code provides guidance on independent director, who must not be a director or employee of the custodian
- Directors must delegate investment management functions to the investment manager by an investment management agreement
- A non-resident director (i.e. a director whose usual residential address is outside Hong Kong) must appoint a process agent to receive any process or notice
 - an individual whose usual residential address is in Hong Kong;
 - a company; or
 - a firm of solicitors or certified public accountants (practising)

Key operators – Directors

- **Eligibility:**
 - The experience and expertise of the persons appointed as directors of an OFC, taken together, must be appropriate for carrying on the business of the company
 - 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
 - Examples of factors considered:
 - whether the person has relevant qualifications and/ or experience; and
 - 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

Key operators – Investment manager

- **Eligibility:**
 - must be registered or licensed for Type 9 (asset management) regulated activity
 - must be and remain fit and proper, at and after the registration of the OFC
- **The investment manager is expected to:**
 - carry out investment management functions of the OFC in accordance with the instrument of incorporation and investment management agreement
 - fulfill the duties and functions in compliance with applicable laws and regulations (including the Fund Manager Code of Conduct and Code of Conduct for Persons Licensed by or Registered with the SFC)

Key operators – Custodian

- **Eligibility**

- Same requirements as to the type of entities and capital requirements as those under the UT Code

- **Duties of custodian**

- Statutory duty to take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the OFC that is entrusted to it (same for sub-custodian)
- Proper segregation of assets
- Safe-keeping and record keeping of assets
- Exercise due care in the selection, appointment and ongoing monitoring of its delegates, including sub-custodians

- **A non-Hong Kong custodian** (i.e. a custodian incorporated outside Hong Kong) must have a process agent to receive any process or notice

- Exception: a non-Hong Kong custodian that is a “registered non-Hong Kong company” as defined in the CO, since the CO already provides for a local authorised representative for service of documents

Post-establishment of an OFC

Financial reports

- The OFC must prepare an audited annual report for each financial year
- Accounting standards under the OFC Code:
 - All accounts must be prepared in a manner compliant with Hong Kong Financial Reporting Standards or International Financial Reporting Standards
 - Other accounting standards may be considered on a case-by-case basis
- Guidance on contents required for financial reports of private OFCs are set out in the OFC Code (*Note: public OFCs to comply with the UT Code*)
- Interim report not a mandatory requirement for private OFCs

Sub-funds - protected cell regime

- Part IVA of the SFO (section 112S) provides for the segregated liability of sub-funds of an OFC to limit the contagious effect of insolvency of a sub-fund within an umbrella OFC
- For an umbrella OFC, its instrument of incorporation and offering document must contain a statement on the segregated liability of its sub-funds
- To fortify the protected cell regime, certain terms are implied into the contracts and transactions entered into by an umbrella OFC under the OFC Rules:
 - the counterparty agrees not to seek recourse to any assets of a sub-fund to discharge any liability not incurred on behalf of that sub-fund,
 - if the counterparty succeeds to have such recourse to the sub-fund's assets, the counterparty will pay a sum to the OFC equal to the value of benefit it has obtained, and
 - if the counterparty succeeds in seizing the assets of the sub-fund for unrelated liabilities, it will hold such assets or proceeds for sale of assets on trust for the OFC

Appeal and benefits of the OFC regime

- **Facilitates international fund distribution**
 - Corporate funds are more popular with investors internationally
- **Cost-savings over offshore structure**
 - Saves management time and costs by dealing with one jurisdiction instead of two
 - Avoid extra offshore layer of service providers
- **Caters for different types of funds**
 - The OFC can be used for public, private, open-ended, closed-ended, listed or unlisted funds
- **Tax incentives**
 - Public OFCs: enjoy same profits tax exemption as other SFC-authorized public funds
 - Private OFCs: enjoy profits tax exemption since roll out of the regime in July 2018, enhanced tax exemption regime commenced on 1 April 2019

Appeal and benefits of the OFC regime

■ **Fast set-up**

- “One-stop” approach: submit establishment documents to SFC only, no need to submit separately to the CR or Inland Revenue Department
- Public OFCs – same as other public funds, ranging between 1-3 months depending on standard/ non-standard application, simultaneous authorisation and registration
- Private OFCs – generally less than one month, subject to general principles and basic requirements only
- Template instrument of incorporation available

■ **May tap into Hong Kong’s deep capital pool sourced from local and international investors**

Appeal and benefits of the OFC regime

■ Easy management and administrative convenience

- Private OFCs: flexibility in setting redemption terms and conditions, no annual fees, minimal approval for changes
- Public OFCs: approvals required on par with other SFC-authorized funds
- No annual returns nor mandatory annual general meetings

■ Protected-cell feature

- Statutory segregation of liabilities of sub-funds increases investors' confidence

■ Investor protection and confidence in robust regime

- Funds in traditional offshore jurisdictions come under increasing international scrutiny
- Hong Kong's adherence to international standards promotes investors confidence in its investment products

Further information

■ Laws and Regulations

- SFO (see Part IVA on OFC)
- OFC Rules
- OFC Code
- Products Handbook (applicable to public OFCs only)

■ Forms

- Forms & checklists

■ Template instrument of incorporation

- Template for umbrella public OFC
- Template for umbrella private OFC

■ Guidance

- FAQs

- **Designated mailbox for OFC enquiries:** ofc-enquiry@sfc.hk

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Thank you.

www.sfc.hk