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Securities and Futures (Open-ended Fund Companies) Rules

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(Made by the Securities and Futures Commission under section 112ZK of the Securities and Futures Ordinance (Cap. 571), under section 112ZL of that Ordinance with the consent of the Registrar of Companies, and under section 112ZM of that Ordinance with the consent of the Official Receiver)

Part 1

Preliminary

1. Commencement

These Rules come into operation on the day on which the Securities and Futures (Amendment) Ordinance 2016 (16 of 2016) comes into operation.

2. Interpretation

In these Rules—

applicable fee (適用費用), in relation to a matter, means the fee specified in the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation to be payable in relation to the matter;

certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

Court means the Court of First Instance;

financial statements (財務報表) means the statements required to be contained in the annual report of an open-ended fund company under rule 152(1);

financial year (財政年度), in relation to an open-ended fund company, means a financial year of the company determined in accordance with rule 148;

identity card (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

non-resident director (非香港居民董事) means a person who is a director of an open-ended fund company and whose usual residential address is outside Hong Kong;

OFC code (《開放式基金型公司守則》) means any code or guideline published by the Commission under section 112ZR of the Ordinance;

OFC register (開放式基金型公司登記冊) means the register maintained under rule 24(2);

offering document (要約文件), in relation to an open-ended fund company, means a document inviting offers, or calculated to invite offers, to subscribe for or purchase for cash or other consideration shares in the company;

ordinary resolution (普通決議)—see rule 88;

process agent (法律程序文件代理人), in relation to a non-resident director or non-Hong Kong custodian (**principal**), means any of the following persons who is authorized to accept service of any process or notice required to be served on the principal—

- (a) an individual whose usual residential address is in Hong Kong;
- (b) a company;
- (c) a firm of solicitors or certified public accountants (practising);

Registrar (處長) means the Registrar of Companies;

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solicitor (律師) means a person who is qualified to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159);

special resolution (特別決議)—see rule 89;

specified form (指明格式) means a form specified under rule 21.

Part 2

Formation of Open-ended Fund Company and Related Matters

Division 1—Incorporation and Registration, etc.

3. Application for registration with Commission before incorporation—section 112D(1) of Ordinance

- (1) An application made under section 112D(1) of the Ordinance in relation to a proposed company must contain—
 - (a) the name of the proposed company;
 - (b) the name and any other particulars required by the Commission in respect of each person—
 - (i) who is to be a director of the company (if incorporated);
 - (ii) who is to be an investment manager of the company (if incorporated); or
 - (iii) who is to be a custodian of the company (if incorporated); and
 - (c) the address of the place which is to be the registered office of the company (if incorporated).
- (2) The application must be accompanied by—
 - (a) the proposed company's instrument of incorporation which has been signed by each person falling within the description in subrule (1)(b)(i); and
 - (b) the applicable fee (if any).

**4. Requirements for incorporation of open-ended fund company—
section 112C of Ordinance**

- (1) If a person proposes to incorporate an open-ended fund company under Part IVA of the Ordinance, the person must, in the manner specified in subrule (2), deliver to the Registrar the following fees and documents, together with the documents specified in section 112C(1) of the Ordinance (*prescribed documents*)—
- (a) the applicable fee (if any) for lodging the prescribed documents;
 - (b) the applicable fee (if any) for incorporating the company;
 - (c) a notice in the form specified by the Commissioner of Inland Revenue under section 5D(1) of the Business Registration Ordinance (Cap. 310); and
 - (d) the prescribed business registration fee and levy.
- (2) The manner of delivery referred to in subrule (1) is delivery to the Commission.
- (3) On registering a proposed company under section 112D(1) of the Ordinance, the Commission must, as soon as reasonably practicable, send to the Registrar the documents, fees and levy referred to in subrule (1).
- (4) In this rule—
- levy* (徵費) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310);
- prescribed business registration fee* (訂明的商業登記費) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310).

5. Content of incorporation form

The incorporation form mentioned in section 112C(1)(a) must contain, in relation to the proposed company concerned—

- (a) the particulars specified in section 1 of the Schedule;
- (b) for each person who is to be a director (whether or not a non-resident director) of the company after the company's incorporation—the particulars and statement specified in sections 2 and 3 of Part 2 of the Schedule;
- (c) for each person who is to be a non-resident director (*principal*) of the company after the company's incorporation, the particulars specified in section 4 of Part 2 of the Schedule in relation to each person who is to be a process agent of the principal;
- (d) the statements specified in section 6 of Part 3 of the Schedule; and
- (e) the statement of compliance mentioned in rule 7.

6. Signing of incorporation form

The incorporation form of a proposed company must be signed by any one of the first directors of the proposed company.

Note—

As to the first directors of an open-ended fund company—see section 112U(2) of the Ordinance.

7. Statement of compliance

- (1) The statement of compliance referred to in rule 5(e) is a statement certifying that—

- (a) all the requirements prescribed by Part IVA of the Ordinance and these Rules in respect of the incorporation of the proposed company concerned have been complied with; and
 - (b) the information, statements and particulars contained in the incorporation form are accurate and consistent with those in the proposed company's instrument of incorporation.
- (2) The Registrar may accept the statement of compliance as sufficient evidence that the requirements for incorporation prescribed by Part IVA of the Ordinance or these Rules are met with respect to the proposed company.

8. Formation for a lawful purpose

An open-ended fund company may only be formed for a lawful purpose.

**Division 2—Change of Name of Open-ended
Fund Company**

9. Change of name of open-ended fund company

- (1) An open-ended fund company must not change its name unless the Commission has approved the change under subrule (2).
- (2) On an application made in writing and on payment of the applicable fee (if any) by an open-ended fund company, the Commission may grant approval to the company for a change of its name.
- (3) The Commission must, as soon as reasonably practicable after granting an approval under subrule (2), give the company notice in writing of the approval.

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- (4) The open-ended fund company must, within 15 days after the date on which the company is given notice of the Commission's approval under subrule (3), deliver in the manner specified in subrule (5) to the Registrar for registration a notice, in the specified form, of the change of name of the company and the following fees—
 - (a) the applicable fee (if any) for lodging the notice; and
 - (b) the applicable fee (if any) for issuing a certificate of change of name under subrule (7)(c).
- (5) The manner of delivery referred to in subrule (4) is delivery to the Commission.
- (6) The Commission must, as soon as reasonably practicable after granting the approval under subrule (2)—
 - (a) inform the Registrar of the approval; and
 - (b) send the notice and the fees to the Registrar.
- (7) After receiving the notice of approval of the Commission under subrule (6)(a) and the notice and the fees under subrule (6)(b), the Registrar must take the following actions if the Registrar is satisfied that the requirements for the change of name as prescribed by Part IVA of the Ordinance and these Rules are met—
 - (a) register the notice referred to in subrule (6)(b);
 - (b) enter the new name of the company in the OFC register in place of the former name; and
 - (c) issue to the company a certificate of change of name.
- (8) The change of name of the company has effect from the date on which the certificate of change of name is issued under subrule (7)(c) in respect of the company.
- (9) A change of name of the company under this rule does not affect any rights or obligations of the company or

render defective any legal proceedings by or against the company. Any legal proceedings that could have been commenced or continued by or against the company by its former name may be commenced or continued by or against it by its new name.

- (10) If an open-ended fund company contravenes subrule (4), the company commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 3—Capacity and Powers of Open-ended Fund Company

- 10. Open-ended fund company's exercise of powers limited by instrument of incorporation**
- (1) An open-ended fund company must not do any act that it is not authorized to do by its instrument of incorporation.
 - (2) If a power of an open-ended fund company is expressly modified or excluded by its instrument of incorporation, the company must not exercise the power contrary to that modification or exclusion.
 - (3) A shareholder of an open-ended fund company may commence proceedings to restrain the company from doing an act, or exercising a power, in contravention of subrule (1) or (2).
 - (4) Proceedings must not be commenced under subrule (3) in respect of an act to be done, or a power to be exercised, in fulfillment of a legal obligation arising from a previous act of an open-ended fund company.

- (5) An act done, or a power exercised, by an open-ended fund company is not invalid only because the company does the act or exercises the power in contravention of subrule (1) or (2).

11. Transaction or act binds open-ended fund company despite limitation in instrument of incorporation etc.

- (1) In favour of a person dealing with an open-ended fund company in good faith, the power of the company's directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant document of the company.
- (2) For the purposes of subrule (1)—
- (a) a person deals with an open-ended fund company if the person is a party to a transaction or any other act to which the company is a party; and
- (b) a person dealing with an open-ended fund company—
- (i) is presumed, unless there is evidence to the contrary, to have acted in good faith;
- (ii) is not to be regarded as acting in bad faith because of the person's knowing that an act is beyond a director's powers under any relevant document of the company; and
- (iii) is not required to inquire as to the limitations on the power of the company's directors to bind the company or authorize others to do so.
- (3) This rule does not affect the right of any shareholder of an open-ended fund company to commence proceedings to restrain the company from doing an act that is beyond the directors' powers.

- (4) Proceedings must not be commenced under subrule (3) in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This rule does not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.
- (6) In this rule—
relevant document (有關文件), in relation to an open-ended fund company, means—
 - (a) the company's instrument of incorporation;
 - (b) any resolution of the company or of any class of shareholders of the company; or
 - (c) any agreement between the shareholders, or shareholders of any class of shareholders, of the company.

12. No constructive notice of matters disclosed in instrument of incorporation etc.

A person is not regarded as having notice of any matter only because the matter is disclosed in—

- (a) the instrument of incorporation of an open-ended fund company kept by the Registrar; or
- (b) a return or resolution kept by the Registrar.

Division 4—Instrument of Incorporation

13. Instrument of incorporation

- (1) The instrument of incorporation of an open-ended fund company—
 - (a) must be in the English or Chinese language; and

- (b) must be signed by each of the first directors of the company.
- (2) The instrument of incorporation of an open-ended fund company must include a statement that the object of the company is the operation of the company as a collective investment scheme.
- (3) The instrument of incorporation of an open-ended fund company is binding on the company's officers, its custodian, and its shareholders, and all these persons are taken to have notice of the provisions of the instrument of incorporation.

14. Alteration of instrument of incorporation

- (1) Subject to the Ordinance, these Rules and its instrument of incorporation, an open-ended fund company may alter its instrument of incorporation.
- (2) An open-ended fund company must not alter any of the following statements contained in its instrument of incorporation—
 - (a) a statement referred to in section 112K(2)(b), (e), (f), (g) or (h) of the Ordinance;
 - (b) if the company is an open-ended fund company with sub-funds, the statement referred to in section 112K(3);
 - (c) the statement referred to in rule 13(2).
- (3) An open-ended fund company must give notice in writing to the Commission of each alteration made by the company to the company's instrument of incorporation.
- (4) Any alteration made in contravention of subrule (2) has no effect.

15. Notifying Registrar on alteration of instrument of incorporation

- (1) If an open-ended fund company alters its instrument of incorporation under rule 14, the company must, within 15 days after the date on which the alteration takes effect, deliver to the Registrar for registration, the following documents—
 - (a) a notice of the alteration in the specified form; and
 - (b) a copy of the company's instrument of incorporation as altered, which is certified by a director of the company as correct copy of the instrument.
- (2) Subrule (1) does not apply to an alteration to change the name of an open-ended fund company under rule 9.
- (3) If a provision of, or the effect of a provision of, the instrument of incorporation of an open-ended fund company is altered by an order of the Court, the company must, within 15 days after the date on which the alteration takes effect, deliver to the Registrar for registration, the following documents—
 - (a) a notice of the alteration in the specified form;
 - (b) an office copy of the order; and
 - (c) a copy of the company's instrument of incorporation as altered by the order.
- (4) Subrule 3(b) does not apply if the company is required to deliver an office copy of the order to the Registrar under another provision of the Ordinance.
- (5) If an open-ended fund company contravenes subrule (1) or (3), the company commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 5—Communications and Documents etc.

16. Name and particulars to appear in correspondence etc.

- (1) An open-ended fund company must disclose the details specified in subrule (2)—
 - (a) in every letter of the company;
 - (b) in each agreement entered into by the company with another person;
 - (c) in every other document issued by the company in the course of its business; and
 - (d) on any website of the company.
- (2) The details referred to in subrule (1) are—
 - (a) the name of the open-ended fund company;
 - (b) the fact of the company's registration with the Commission;
 - (c) the number with which it is so registered;
 - (d) the address of the registered office of the company;
 - (e) the fact that it is an open-ended fund company with variable capital and limited liability; and
 - (f) in the case of a company with sub-funds, the fact that it is an open-ended fund company with segregated liability between sub-funds.

17. Execution of documents

- (1) An open-ended fund company may execute a document under its common seal.
- (2) An open-ended fund company may also execute a document by having it signed by at least one director on the company's behalf.

- (3) A document signed in accordance with subrule (2) and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under the company's common seal.
- (4) This rule has effect subject to section 112M of the Ordinance.

18. Execution of deeds

- (1) An open-ended fund company may execute a document as a deed by—
 - (a) executing it in accordance with rule 17;
 - (b) having it expressed (in whatever words) to be executed by the company as a deed; and
 - (c) delivering it as a deed.
- (2) For the purposes of subrule (1)(c), if a document is executed in accordance with rule 17, the document is presumed, unless there is evidence to the contrary, to be delivered as a deed.
- (3) An open-ended fund company may, either generally or in respect of any specific matter, by an instrument executed as a deed, empower any person as its attorney to execute a deed or any other document on its behalf in Hong Kong or elsewhere.
- (4) A deed or any other document executed by an attorney on behalf of the company binds the company and has effect as if it were executed by the company.
- (5) This rule does not affect the operation of any other Ordinance as to the execution of powers of attorney.

Division 6—Registered Office

19. Registered office

The address stated in the incorporation form registered under section 112C(3) of the Ordinance in respect of an open-ended fund company is to be regarded as the address of the registered office of the company, until a notice of change of the address is delivered to the Registrar under rule 20.

20. Change of address of registered office

- (1) If the address of an open-ended fund company's registered office is changed, the company must, within 15 days after the change, deliver to the Registrar for registration, a notice of the change in the specified form.
 - (2) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
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Part 3

Registrar's Functions and OFC Register

Division 1—Registrar's Functions

21. Registrar may specify form

- (1) The Registrar may specify the form of any document, required under Part IVA of the Ordinance or these Rules, to be delivered to the Registrar.
- (2) Subrule (1) does not apply to a document the form of which is prescribed by Part IVA of the Ordinance or these Rules.
- (3) In specifying the form of a document under subrule (1), the Registrar may specify more than one form of the document, whether as alternatives or to provide for different circumstances.

22. Registrar may issue guidelines

- (1) The Registrar may issue guidelines—
 - (a) indicating the manner in which the Registrar proposes to perform any function under any provision of Part IVA of the Ordinance or these Rules; or
 - (b) providing guidance on the operation of any provision of Part IVA of the Ordinance or these Rules to the extent that it relates to the performance of any function by the Registrar.
- (2) The Registrar—

- (a) must publish the guidelines in a manner appropriate to bring them to the notice of persons affected by them; and
 - (b) must make copies of the guidelines available to the public (in hard copy form or electronic form).
- (3) Guidelines issued under this rule are not subsidiary legislation.
 - (4) The Registrar may amend or revoke any of the guidelines. Subrules (2) and (3) apply to an amendment or revocation of guidelines in the same way as they apply to the issuance of guidelines.
 - (5) A person does not incur any civil or criminal liability only because the person has contravened any of the guidelines.
 - (6) If, in any legal proceedings, the court is satisfied that a guideline is relevant to determining a matter that is in issue—
 - (a) the guideline is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

23. Registrar may authenticate document etc.

- (1) If a document is required under Part IVA of the Ordinance or these Rules to be signed by the Registrar or to bear the Registrar's printed signature, the Registrar may authenticate it in any manner that the Registrar thinks fit.

- (2) If anything is authorized to be certified by the Registrar under Part IVA of the Ordinance or these Rules, the Registrar may certify it in a manner that the Registrar thinks fit.

Division 2—OFC Register

24. Registrar must keep records and maintain register of open-ended fund companies

- (1) The Registrar must keep records of—
- (a) the information contained in every document that is delivered to the Registrar for registration and that the Registrar decides to register under Part IVA of the Ordinance or these Rules; and
 - (b) the information contained in every certificate that is issued by the Registrar under Part IVA of the Ordinance or these Rules.
- (2) The Registrar must maintain a register of open-ended fund companies.
- (3) The register maintained under subrule (2) must contain—
- (a) the records kept under subrule (1);
 - (b) notes made by the Registrar under rule 40; and
 - (c) the index of directors kept by the Registrar under rule 109(1).

25. Provisions supplementary to rule 24

- (1) The records kept under rule 24(1) must be such that information relating to an open-ended fund company is associated with the company in a manner determined by the Registrar, so as to enable all the information relating to the company to be retrieved.

- (2) Each of the records mentioned in subrule (1) must be kept in a form that enables any person to inspect the information contained in the record and to make a copy of the information.
- (3) Subject to subrules (1) and (2), a record of information kept for the purposes of rule 24(1) may be kept in any form that the Registrar thinks fit.
- (4) Notes made by the Registrar under rule 40 and the index of directors kept by the Registrar under rule 109(1) may be made or kept in any form that the Registrar thinks fit.
- (5) If the Registrar keeps the record mentioned in subrule (3) in a form that differs from the form in which the document or certificate containing the information was delivered to, or generated by, the Registrar, the record is presumed, unless the contrary is proved, to represent the information contained in the document or certificate as delivered or generated.
- (6) If the Registrar records the information contained in a document for the purposes of rule 24(1), the Registrar is to be regarded as having discharged any duty imposed by Part IVA of the Ordinance or these Rules on the Registrar to keep, file or register the document or certificate concerned.

26. Registrar not required to keep certain documents etc.

- (1) The Registrar may destroy or dispose of a document delivered to the Registrar for registration under Part IVA of the Ordinance or these Rules if the information contained in the document has been recorded by the Registrar in any other form for the purposes of rule 24(1).

- (2) If a document or certificate has been kept by the Registrar for at least 7 years for the purposes of rule 24(1), the Registrar may destroy or dispose of the document or certificate.
- (3) If the Registrar is required by rule 43 not to make any information available for public inspection, the Registrar is not required to keep a record of the information for any longer than appears to the Registrar to be reasonably necessary for the purpose for which the information was delivered to the Registrar.

27. Registrar must keep index of names of open-ended fund company

The Registrar must keep an index of the names of every open-ended fund company.

Division 3—Registration of Document

28. Unsatisfactory document

- (1) For the purposes of this Division, a document delivered to the Registrar for registration is unsatisfactory if—
 - (a) the information contained in the document is not capable of being reproduced in legible form;
 - (b) the requirements specified in relation to the document under rule 29 are not complied with;
 - (c) the document is not delivered in accordance with an agreement made under rule 30 in relation to it;
 - (d) the applicable requirements of Part IVA of the Ordinance or these Rules under which the document is delivered are not complied with;
 - (e) the document is not accompanied by the fee payable for the registration;

- (f) the document, or any signature on, or any digital or electronic signature accompanying, the document—
 - (i) is incomplete or incorrect; or
 - (ii) is altered without proper authority;
 - (g) the information contained in the document—
 - (i) is internally inconsistent; or
 - (ii) is inconsistent with other information on the OFC register or other information contained in another document delivered to the Registrar;
 - (h) the information contained in the document derives from anything that—
 - (i) is invalid or ineffective; or
 - (ii) has been done without the open-ended fund company's authority; or
 - (i) the document contains matters contrary to law.
- (2) In this rule—
- applicable requirements*** (適用規定), in relation to a document, means the requirements as regards—
- (a) the contents of the document;
 - (b) the form of the document;
 - (c) the authentication of the document; and
 - (d) the manner of delivery of the document.

29. Registrar may specify requirements for rule 28(1)(b)

- (1) The Registrar may, in relation to any document required or authorized to be delivered to the Registrar under Part IVA of the Ordinance or these Rules—

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- (a) specify requirements for the purpose of enabling the Registrar to make copies or image records of the document and to keep records of the information contained in it;
 - (b) specify requirements as to the authentication of the document; and
 - (c) specify requirements as to the manner of delivery of the document.
- (2) The Registrar may, in relation to any document authorized to be delivered to the Registrar for registration under rule 37(3) for the purpose of rectification of an error, specify requirements as to—
 - (a) the delivery of the document in a form and manner enabling it to be associated with the document containing the error; and
 - (b) the identification of the document containing the error.
- (3) For the purposes of subrules (1) and (2), the Registrar may specify different requirements for different documents or classes of documents, or for different circumstances.
- (4) For the purposes of subrule (1)(b), the Registrar may—
 - (a) require the document to be authenticated by a particular person or a person of a particular description;
 - (b) specify the means of authentication; and
 - (c) require the document to contain, or to be accompanied by, the name or registration number, or both, of the company to which it relates.
- (5) For the purposes of subrule (1)(c), the Registrar may—

- (a) require the document to be in hard copy form, electronic form or any other form;
 - (b) require the document to be delivered by post or any other means;
 - (c) specify requirements as to the address to which the document is to be delivered; and
 - (d) in the case of a document to be delivered by electronic means, specify requirements as to the hardware and software to be used and the technical specifications.
- (6) This rule does not empower the Registrar to require a document to be delivered to the Registrar by electronic means.
- (7) Requirements specified under this rule are not subsidiary legislation.

30. Registrar may agree to delivery by electronic means (for rule 28(1)(c))

- (1) The Registrar may enter into an agreement with an open-ended fund company to provide that any document, or any class of document, that relates to the company, and is required or authorized to be delivered to the Registrar under Part IVA of the Ordinance or these Rules—
- (a) will be delivered by electronic means, except as provided for in the agreement; and
 - (b) will conform to the requirements—
 - (i) specified in the agreement; or
 - (ii) specified by the Registrar in accordance with the agreement.
- (2) An agreement with an open-ended fund company may also provide that any document, or any class of document,

that relates to the company, and is required or authorized to be delivered by the Registrar to it under Part IVA of the Ordinance or these Rules, will be delivered by electronic means.

- (3) The Registrar may specify a standard form for an agreement and the extent to which the form is to be used.

31. Registrar may refuse to accept or register document

- (1) If the Registrar is of the opinion that a document delivered for registration under Part IVA of the Ordinance or these Rules is unsatisfactory, the Registrar—
 - (a) may refuse to accept the document; or
 - (b) may, after having accepted the document, exercise the powers specified in subrule (2) or (3).
- (2) The Registrar may refuse to register the document and return the document to the person who delivered it for registration.
- (3) The Registrar may also advise that—
 - (a) the document be appropriately amended or completed, and redelivered for registration with or without a supplementary document; or
 - (b) a fresh document be delivered for registration in its place.
- (4) If the Registrar—
 - (a) refuses to accept a document under subrule (1)(a);
 - (b) has not received a document; or
 - (c) refuses to register a document under subrule (2),

the document is to be regarded as not having been delivered to the Registrar in satisfaction of the provision of Part IVA of the Ordinance or these Rules that requires or authorizes the document to be delivered to the Registrar.

32. Registrar may withhold registration of document pending further particulars etc.

For the purpose of determining whether the powers specified in rule 31(2) and (3) are exercisable in relation to a document, the Registrar may—

- (a) withhold the registration of the document pending compliance with the request under paragraph (b); and
- (b) request the person who is required or authorized to deliver the document to the Registrar for registration under Part IVA of the Ordinance or these Rules to do any or all of the following within a period specified by the Registrar—
 - (i) to produce any other document, information or evidence that, in the Registrar's opinion, is necessary for the Registrar to determine the question as to whether the document is unsatisfactory;
 - (ii) to appropriately amend or complete the document, and redeliver it for registration with or without a supplementary document;
 - (iii) to apply to the court for any order or direction that the Registrar thinks necessary and to conduct the application diligently;
 - (iv) to comply with other directions of the Registrar.

33. Appeal against Registrar's decision to refuse registration

- (1) If a person is aggrieved by a decision of the Registrar to refuse to register a document under rule 31(2), the person may, within 42 days after the decision, appeal to the Court against the decision.
- (2) The Court may make any order that it thinks fit, including an order as to costs.
- (3) If the Court makes an order as to costs against the Registrar under subrule (2), the costs are payable out of the general revenue, and the Registrar is not personally liable for the costs.

34. Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar

- (1) This rule applies if—
 - (a) a document is delivered to the Registrar for registration under Part IVA of the Ordinance or these Rules; and
 - (b) the Registrar refuses to register the document under rule 31(2).
- (2) The Registrar must send a notice of the refusal, and the reasons for the refusal, to—
 - (a) the person who is required to deliver the document to the Registrar for registration under Part IVA of the Ordinance or these Rules or, if there is more than one person who is so required, any of those persons; or
 - (b) if another person delivers, on behalf of the person so required, the document to the Registrar for registration, that other person.

- (3) If a notice is sent to a person under subrule (2) with respect to a document, the period specified in subrule (4) is to be disregarded for the purpose of calculating the daily penalty under Part IVA of the Ordinance or these Rules that makes it an offence for failing to comply with a requirement to deliver the document and that imposes a penalty for each day during which the offence continues.
- (4) The period is one beginning on the date on which the document was delivered to the Registrar and ending with the 14th day after the date on which the notice is sent under subrule (2).

Division 4—Registrar’s Powers in Relation to Keeping OFC Register

- 35. Registrar may require open-ended fund company to resolve inconsistency with OFC register**
- (1) If it appears to the Registrar that the information contained in a document registered by the Registrar in respect of an open-ended fund company is inconsistent with other information relating to the company on the OFC register, the Registrar may give notice to the company—
 - (a) stating in what respect the information contained in the document appears to be inconsistent with other information on the OFC register; and
 - (b) requiring the company to take steps to resolve the inconsistency.
 - (2) For the purposes of subrule (1)(b), the Registrar may require the company to deliver to the Registrar within the period specified in the notice—
 - (a) information required to resolve the inconsistency; or

- (b) evidence that proceedings have been commenced by the company in the Court for the purpose of resolving the inconsistency and that the proceedings are being conducted diligently.
- (3) If an open-ended fund company fails to comply with a requirement under subrule (1)(b), the company commits an offence, and is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If an open-ended fund company is charged with an offence under subrule (3) for failure to comply with a requirement, it is a defence to establish that the company took all reasonable steps to secure compliance with the requirement.

36. Registrar may require further information for updating etc.

- (1) For the purpose of ensuring that a person's information on the OFC register is accurate or bringing the information up to date, the Registrar may send a notice to the person requiring the person to give the Registrar, within a period specified by the Registrar, any information about the person, being information of the kind that is included on the OFC register.
- (2) If a person fails to comply with the requirement under subrule (1), the person commits an offence, and is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (3) If a person is charged with an offence under subrule (2) for failure to comply with a requirement, it is a defence to establish that the person took all reasonable steps to secure compliance with the requirement.

37. Registrar may rectify typographical or clerical error in OFC register

- (1) The Registrar may, on the Registrar's own initiative, rectify a typographical or clerical error contained in any information on the OFC register.
- (2) The Registrar may, on application by an open-ended fund company, rectify a typographical or clerical error contained in any information relating to the company on the OFC register.
- (3) If, in relation to an application for the purposes of subrule (2), a document showing the rectification is delivered to the Registrar for registration, the Registrar may rectify the error by registering the document.

38. Registrar must rectify information on OFC register on order of Court

- (1) The Court may, on application by any person, by order direct the Registrar to rectify any information on the OFC register or to remove any information from it if the Court is satisfied that—
 - (a) the information derives from anything that—
 - (i) is invalid or ineffective; or
 - (ii) has been done without the open-ended fund company's authority; or
 - (b) the information—
 - (i) is factually inaccurate; or
 - (ii) derives from anything that is factually inaccurate or forged.

- (2) If, in relation to an application for the purposes of subrule (1), a document showing the rectification is filed with the Court, the Court may require the Registrar to rectify the information by registering the document.
- (3) The Court must not order the removal of any information from the OFC register under subrule (1) unless it is satisfied that—
 - (a) even if a document showing the rectification in question is registered, the continuing presence of the information on the OFC register will cause material damage to the company; and
 - (b) the company's interest in removing the information outweighs the interest of other persons in the information continuing to appear on the OFC register.
- (4) If the Court makes an order for the rectification of any information on or the removal of any information from the OFC register under subrule (1), the Court may make any consequential order that appears to it to be just with respect to the legal effect (if any) to be accorded to the information by virtue of its having appeared on the OFC register.
- (5) If the Court makes an order for the removal of any information from the OFC register under subrule (1), the Court may direct—
 - (a) that a note made under rule 40(1) in relation to the information is to be removed from the OFC register;
 - (b) that the order is not to be made available for public inspection as part of the OFC register; and
 - (c) that—

- (i) no note is to be made under rule 40(1) as a result of the order; or
 - (ii) any such note is to be restricted to providing information in relation to the matters specified by the Court.
- (6) The Court must not give a direction under subrule (5) unless it is satisfied that—
 - (a) any of the following may cause damage to the company—
 - (i) the presence on the OFC register of the note or an unrestricted note;
 - (ii) the availability for public inspection of the order; and
 - (b) the company's interest in non-disclosure outweighs the interest of other persons in disclosure.
- (7) If the Court makes an order under this rule, the person who made the application must deliver an office copy of the order to the Registrar for registration.

39. Registrar may appear in proceedings for rectification

- (1) In any proceedings before the Court for the purposes of rule 38, the Registrar—
 - (a) is entitled to appear or be represented, and be heard; and
 - (b) must appear if so directed by the Court.
- (2) Whether or not the Registrar appears in those proceedings, the Registrar may submit to the Court a written statement signed by the Registrar, giving particulars of the matters relevant to the proceedings and within the Registrar's knowledge.

- (3) Unless otherwise directed by the Court, a statement submitted under subrule (2) is to be regarded as forming part of the evidence in the proceedings.

40. Registrar may annotate OFC register

- (1) The Registrar may make a note in the OFC register for the purpose of providing information in relation to—
- (a) a rectification of an error contained in any information on the OFC register under rule 37;
 - (b) a rectification of any information on the OFC register under rule 38;
 - (c) a removal of any information from the OFC register under rule 38; or
 - (d) any other information on the OFC register.
- (2) For the purposes of Part IVA of the Ordinance and these Rules, a note made under subrule (1) is part of the OFC register.
- (3) The Registrar may remove a note if the Registrar is satisfied that it no longer serves any useful purpose.

Division 5—Inspection of OFC Register

41. Registrar must make OFC register available for public inspection

- (1) The Registrar must make the OFC register available for public inspection at all reasonable times so as to enable any member of the public—
- (a) to ascertain whether the member of the public is dealing with—
 - (i) an open-ended fund company or its directors, in matters of or connected with any act of the company;

- (ii) a director of an open-ended fund company, in matters of or connected with the administration of the company, or of its property;
 - (iii) a person who has entered into possession of the property of an open-ended fund company as mortgagee;
 - (iv) a person who is appointed as liquidator in the winding up of an open-ended fund company under Part 11; or
 - (v) a person who is appointed as the receiver or manager of the property of an open-ended fund company; and
- (b) to ascertain the particulars of the company, its directors, or its former directors (if any), or the particulars of any person mentioned in paragraph (a)(iii), (iv) or (v).
- (2) For the purposes of subrule (1), the Registrar must, on receiving the applicable fee, allow a person to inspect any information on the OFC register in any form that the Registrar thinks fit.
- (3) For the purposes of subrule (1), the Registrar may, on receiving the applicable fee, produce to a person a copy or a certified true copy of any document or information on the OFC register, in so far as the document or information may be made available for public inspection, in any form that the Registrar thinks fit.

Note—

See section 45 of the Companies Ordinance (Cap. 622) for inspection of records of disqualification orders made under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (*Cap. 32*) and liquidators appointed in the winding up of an open-ended fund company under Part X of Cap. 32.

42. Registrar's certified true copy admissible as evidence

In any proceedings—

- (a) a document purporting to be a copy of any information produced under rule 41(3), and purporting to be certified by the Registrar as a true copy of the information, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document is proof of the information in the absence of evidence to the contrary.

43. Information excluded from public inspection by law or court order

The Registrar must not make available for public inspection under rule 41 any information excluded from public inspection by or under an Ordinance or by an order of the court.

Division 6—Miscellaneous

44. Registrar may issue certificates in any manner

- (1) The Registrar may issue a certificate under Part IVA of the Ordinance or these Rules in any manner the Registrar thinks fit.
- (2) Without limiting the powers of the Registrar under subrule (1), the Registrar may issue a certificate in the form of an electronic record.

45. Immunity

- (1) Where, for the purposes of Part IVA of the Ordinance or these Rules, a protected person provides a service by means of which information in electronic form is supplied to the public, or supplies information by means of

magnetic tapes or any electronic mode, the protected person is not personally liable for any loss or damage suffered by a user of the service or information by reason of an error or omission appearing in the information if the error or omission—

- (a) was made in good faith and in the ordinary course of the discharge of the protected person's duties; or
 - (b) has occurred or arisen as a result of any defect or breakdown in the service or in any equipment used for the service or for supplying the information.
- (2) Where, for the purposes of Part IVA of the Ordinance or these Rules, a protected person provides a service or facility by means of which documents may be delivered to the Registrar by electronic means, the protected person is not personally liable for any loss or damage suffered by a user of the service or facility by reason of an error or omission appearing in a document delivered to the Registrar by means of the service or facility if the error or omission—
- (a) was made in good faith and in the ordinary course of the discharge of the protected person's duties; or
 - (b) has occurred or arisen as a result of any defect or breakdown in the service or facility or in any equipment used for the service or facility.
- (3) The protection given to a protected person by subrules (1) and (2) in respect of an error or omission does not affect any liability of the Government in tort for the error or omission.
- (4) In this rule—
- protected person*** (受保障人) means a person authorized by the Registrar to supply the information or provide the service or facility.

Division 7—Enquiry by Registrar

- 46. Registrar may require production of records and documents etc.**
- (1) For the purpose of enquiring into whether any specified act has been done, if each of the conditions specified in subrule (2) is satisfied, the Registrar may, by notice in writing, require a person—
 - (a) to produce, within the time and at the place specified in the notice, any record or document specified in the notice; and
 - (b) if the record or document is produced, to provide any information or explanation in respect of the record or document.
 - (2) Subject to subrule (3), the conditions are—
 - (a) that the Registrar has reason to believe that—
 - (i) a specified act has been done;
 - (ii) the record, document, information or explanation is relevant to the enquiry; and
 - (iii) the person is in possession of the record or document; and
 - (b) that it is so certified in writing by the Registrar.
 - (3) Subrule (2)(a)(iii) does not apply if the person who is to be required to produce the record or document is—
 - (a) the body corporate to which the act relates; or
 - (b) an officer of the body corporate.
 - (4) The Registrar must not require an authorized financial institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subrule (1) unless—

- (a) the Registrar has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and
 - (b) the Registrar is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.
- (5) If an authorized financial institution produces a record or document relating to the affairs of its customer in compliance with a requirement imposed under subrule (1), the Registrar may also require that customer to provide any information or explanation in respect of the record or document.
- (6) If a person produces a record or document in compliance with a requirement imposed under subrule (1), the Registrar may make copies, or otherwise record the details, of the record or document.
- (7) In this rule—
- specified act* (指明作為) means the making of a statement in any document provided to the Registrar under Part IVA of the Ordinance or these Rules that would constitute an offence under rule 195(1).

47. Registrar may delegate powers under rule 46

The Registrar may delegate in writing any or all of the powers conferred under rule 46 to any public officer.

48. Offences for failing to comply with requirements under rule 46 etc.

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under rule 46.

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- (2) A person commits an offence if the person, with intent to defraud, fails to comply with a requirement imposed on the person under rule 46.
- (3) An officer or employee of a body corporate on which a requirement is imposed under rule 46 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to fail to comply with the requirement.
- (4) A person commits an offence if the person—
 - (a) in purported compliance with a requirement imposed on the person under rule 46—
 - (i) produces any record or document that is false or misleading in a material particular; or
 - (ii) provides any information or explanation that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under rule 46—
 - (a) produces any record or document that is false or misleading in a material particular; or
 - (b) provides any information or explanation that is false or misleading in a material particular.
- (6) An officer or employee of a body corporate on which a requirement is imposed under rule 46 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to, in purported compliance with the requirement—

- (a) produce any record or document that is false or misleading in a material particular; or
 - (b) provide any information or explanation that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed on the person under rule 46 only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subrule (1) is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (9) A person who commits an offence under subrule (2), (3), (5) or (6) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) A person who commits an offence under subrule (4) is liable—
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

49. Use of incriminating evidence in proceedings

- (1) If the Registrar or a delegate of the Registrar requires a person, under rule 46, to provide any information or

explanation in respect of any record or document produced, the Registrar or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subrule (2) on the admissibility in evidence of—

- (a) the Registrar's or delegate's requirement; and
 - (b) the information or explanation provided by the person.
- (2) If the conditions specified in subrule (3) are satisfied, the Registrar's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation—
- (a) under rule 48(4), (5) or (6);
 - (b) under Part V of the Crimes Ordinance (Cap. 200); or
 - (c) for perjury.
- (3) The conditions are—
- (a) that the information or explanation might tend to incriminate the person; and
 - (b) that the person so claims before providing the information or explanation.

50. Protection in relation to certain disclosures

- (1) If—
- (a) a person makes a disclosure to the Registrar or a delegate of the Registrar otherwise than in compliance with a requirement made by the Registrar or delegate under rule 46; and

- (b) the disclosure satisfies each of the conditions specified in subrule (2),
the person is not liable in any proceedings relating to a breach of duty of confidentiality by reason only of the disclosure.
- (2) The conditions are—
- (a) that the disclosure is of a kind that the person could be required to make under rule 46;
 - (b) that the person makes the disclosure in good faith and in the reasonable belief that the disclosure is capable of assisting the Registrar or delegate in the enquiry under rule 46;
 - (c) that the information disclosed is not more than is reasonably necessary for the purpose of assisting the Registrar or delegate in the enquiry under rule 46; and
 - (d) that the disclosure is not prohibited by virtue of any enactment.
- (3) Subrule (1) does not apply to a disclosure made by a person in the capacity as a banker or lawyer in respect of information to which the person owes a duty of confidentiality in that capacity.

51. Protection of informers etc.

- (1) Any information concerning the identity of a protected person is not admissible in evidence in any proceedings before a court or tribunal.
- (2) In those proceedings, a witness is not obliged—
 - (a) to disclose the name or address of a protected person who is not a witness in those proceedings; or

- (b) to state any matter that would lead, or would tend to lead, to discovery of the name or address of a protected person who is not a witness in those proceedings.
- (3) If a book, document or paper that is in evidence, or liable to inspection, in those proceedings contains an entry—
- (a) in which a protected person is named or described; or
- (b) that might lead to discovery of a protected person, the court or tribunal must cause the entry to be concealed from view, or to be obliterated, so far as may be necessary to protect the identity of the protected person from discovery.
- (4) In those proceedings, the court or tribunal may, despite subrule (1), (2) or (3), permit inquiry, and require full disclosure, concerning a protected person if—
- (a) it is of the opinion that justice cannot be fully done between the parties to the proceedings without disclosure of the name of the protected person; or
- (b) it is satisfied that the protected person made a material statement that the person—
- (i) knew or believed to be false; or
- (ii) did not believe to be true.
- (5) In this rule—

protected person (受保障人士) means—

- (a) an informer who has given information to the Registrar or a delegate of the Registrar with respect to an enquiry under rule 46; or
- (b) a person who has assisted the Registrar or a delegate of the Registrar with respect to such an enquiry.

52. Production of information in information systems etc.

(1) If—

- (a) the Registrar or a delegate of the Registrar requires any record or document to be produced under rule 46; and
- (b) any information or matter contained in the record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the Registrar or delegate may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

(2) If—

- (a) the Registrar or a delegate of the Registrar requires any record or document to be produced under rule 46; and
- (b) any information or matter contained in the record or document is recorded in an information system,

the Registrar or delegate may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

53. Lien claimed on records or documents

If a person claims a lien on any record or document in the person's possession that is required to be produced under rule 46—

- (a) the lien does not affect the requirement to produce the record or document;

- (b) no fee is payable for or in respect of the production;
and
- (c) the production does not affect the lien.

54. Offence for destruction of documents etc.

- (1) A person commits an offence if—
 - (a) the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that is required to be produced under rule 46; and
 - (b) the person does so with intent to conceal, from the Registrar or a delegate of the Registrar by whom the requirement was imposed, facts or matters capable of being disclosed by the record or document.
- (2) A person who commits an offence under subrule (1) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

55. Inspection of records or documents seized etc.

- (1) This rule applies if the Registrar or a delegate of the Registrar has taken possession of any record or document under rule 46.
- (2) The Registrar or delegate must, subject to any reasonable conditions the Registrar or delegate may impose as to security or otherwise, permit a person who would be entitled to inspect the record or document had the

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Registrar or delegate not taken possession of it, at all reasonable times—

- (a) to inspect it; and
 - (b) to make copies or otherwise record details of it.
-

Part 4

Share Capital

Division 1—Nature of Shares, Rights etc.

56. Shares

- (1) An open-ended fund company may issue more than one class of shares.
- (2) The scheme property of an open-ended fund company belongs exclusively to the company and no shareholder of the company has any interest in the scheme property of the company.
- (3) The rights that attach to each share of any given class are—
 - (a) the right, in accordance with the company's instrument of incorporation, to participate in or receive profits, income or other returns arising from the acquisition, holding, management or disposal of the scheme property or any part of the scheme property, or sums represented to be paid or to be likely to be paid out of these profits, income or other returns;
 - (b) the right, if provided in, and in accordance with, the company's instrument of incorporation, to vote at any general meeting of the company or at any relevant class meeting; and

- (c) any other rights as may be provided for, in relation to shares of that class, in the company's instrument of incorporation.

57. Varying class rights

Rights attached to shares in a class of shares in an open-ended fund company may be varied only in accordance with provisions in the company's instrument of incorporation for the variation of those rights.

58. Nature and transferability of shares

- (1) A share or other interest of a shareholder of an open-ended fund company is personal property.
- (2) A share or other interest of a shareholder of an open-ended fund company is transferable in accordance with the company's instrument of incorporation.

59. Provision for different amounts to be paid on shares

If authorized by its instrument of incorporation to do so, an open-ended fund company may—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any shareholder the whole or part of the amount remaining unpaid on any shares held by the shareholder, although no part of that amount has been called up; and
- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Division 2—Transfer of Shares

60. Requirement for instrument of transfer

- (1) An open-ended fund company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company.
- (2) Subrule (1) does not affect any power of an open-ended fund company to register as a shareholder a person to whom the right to shares has been transmitted by operation of law.

61. Registration of transfers

- (1) The transferee or transferor of shares in an open-ended fund company may lodge the instrument of transfer with the company.
- (2) The company must, within 2 months after the instrument of transfer is lodged, either—
 - (a) register the transfer; or
 - (b) send the transferee and the transferor notice of refusal to register the transfer.
- (3) If an open-ended fund company refuses to register the transfer, the transferee or transferor may request a statement of the reasons for the refusal.
- (4) The company must, within 28 days after receiving a request under subrule (3)—
 - (a) send the person who made the request a statement of the reasons; or
 - (b) register the transfer.
- (5) This rule does not apply if the open-ended fund company is entitled to refuse to register the transfer under rule 62(1) or (3).

- (6) If an open-ended fund company contravenes subrule (2) or (4), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

62. Refusal to register transfer of shares

- (1) An open-ended fund company may, within 2 months after the instrument of transfer is lodged, refuse to register the transfer if—
- (a) there exists a minimum requirement as to the number or value of shares that are to be held by a shareholder of the open-ended fund company, and the transfer would result in either the transferor or the transferee holding less than the required minimum; or
 - (b) the transfer would result in a contravention of a provision of the open-ended fund company's instrument of incorporation, or would produce a result inconsistent with any provision of the company's offering documents.
- (2) If an open-ended fund company refuses to register a transfer under subrule (1), the company must, within 2 months after the instrument of transfer is lodged, give the transferor and the transferee notice in writing of the refusal.
- (3) However, an open-ended fund company is not required to register a transfer or to give notice to any person if registering the transfer or giving the notice would result in a contravention of any applicable law.

- (4) If an open-ended fund company contravenes subrule (2), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

63. Transfer by personal representative

A transfer of a share or other interest of a deceased shareholder of an open-ended fund company by the shareholder's personal representative is as valid as if the personal representative had been the registered holder of the share or interest immediately before the transfer.

64. Transmission of shares by operation of law

- (1) This rule applies if—
- (a) the right to shares in an open-ended fund company is transmitted to a person by operation of law; and
 - (b) the person notifies the company in writing that the person wishes to be registered as a shareholder of the company in respect of the shares.
- (2) The company must, within 2 months after receiving the notification, either—
- (a) register the person, in its register of shareholders, as a shareholder of the company in respect of the shares; or
 - (b) send the person notice of refusal of registration.
- (3) If an open-ended fund company refuses registration, the person may request a statement of the reasons for the refusal.

- (4) If a person makes a request under subrule (3), the company must, within 28 days after receiving the request—
 - (a) send the person the statement; or
 - (b) register the person, in its register of shareholders, as a shareholder of the company in respect of the shares.
- (5) If an open-ended fund company contravenes subrule (2) or (4), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

65. Compensation regarding forged share transfers

- (1) An open-ended fund company may—
 - (a) pay compensation to a person for loss arising from a transfer of shares in the company under a forged transfer or a transfer under a forged power of attorney;
 - (b) provide, by insurance, reservation of capital or accumulation of income, a fund to meet claims for compensation;
 - (c) borrow on the security of its property for the purpose of paying compensation; and
 - (d) impose any reasonable restrictions on the transfer of its shares or with respect to powers of attorney for the transfer of its shares that the company considers necessary to guard against losses arising from forgery.

- (2) An open-ended fund company that pays compensation to a person under this rule has the same rights and remedies against the person liable for the loss as the person compensated would have had.
- (3) If the shares in an open-ended fund company have, by amalgamation or otherwise, become shares in another open-ended fund company, the other company has the same powers under this rule as the first company would have had if it had continued.

66. Treatment of redeemed shares

Shares of an open-ended fund company that have been redeemed or bought back by or otherwise transferred to the company are to be regarded as cancelled and the amount of the issued share capital of the company is reduced by the amount of consideration paid by the company for the shares.

Division 3—Register of Shareholders

67. Register of shareholders

- (1) An open-ended fund company must keep in the English or Chinese language a register of shareholders.
- (2) An open-ended fund company must enter in the register of shareholders—
 - (a) the names and addresses of its shareholders;
 - (b) the date on which each person is entered in the register as a shareholder; and
 - (c) the date on which any person ceases to be a shareholder.
- (3) An open-ended fund company must enter in the register of shareholders, with the names and addresses of the shareholders, a statement of—

- (a) the shares held by each shareholder, distinguishing each share by its number (if it has one), and the sub-fund (if any) and share class (if any) of such sub-fund to which the share belongs; and
 - (b) the amount paid or agreed to be considered as paid on the shares of each shareholder.
- (4) If an open-ended fund company issues a share to any person and the name of the person is not already entered in the register of shareholders, the company must, within 2 months after the date of issue of the share, enter in the register, in respect of the person, the particulars required under subrules (2) and (3).
- (5) An open-ended fund company must enter in the register of shareholders the particulars required under subrules (2) and (3) within 2 months after the company has received notice of the particulars concerned.
- (6) In the case of a person mentioned in subrule (2)(c), all entries in the register relating to the person on the date on which the person ceased to be a shareholder may be destroyed after the end of 10 years from that date.
- (7) If an open-ended fund company contravenes subrule (1), (4) or (5), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

68. Place where register must be kept

- (1) An open-ended fund company must keep its register of shareholders—
- (a) at the company's registered office; or
 - (b) at an alternative place in Hong Kong notified to the Registrar under subrule (2).

- (2) An open-ended fund company must notify the Registrar of the place at which the register of shareholders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.
- (3) Subrule (2) does not require an open-ended fund company to notify the Registrar of the place at which the register of shareholders is kept if the register has, at all times since it came into existence, been kept at the company's registered office.
- (4) An open-ended fund company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of shareholders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.
- (5) If an open-ended fund company contravenes subrule (1), (2) or (4), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

69. Right to inspect and request copy

- (1) A shareholder of an open-ended fund company is entitled, on request and without charge—
 - (a) to inspect the entries in the register of shareholders of the company relating to the shareholder; and
 - (b) to be provided with a copy of the entries.
- (2) A person specified in subrule (3) (*specified person*) is entitled, on request and without charge, to inspect the register of shareholders of an open-ended fund company.

- (3) Each of the following persons is a specified person for the purposes of subrule (2)—
 - (a) the custodian of the company;
 - (b) the investment manager of the company;
 - (c) the Commission;
 - (d) any public body or public officer that needs to inspect the register in order to properly perform the body's or officer's functions.
- (4) A specified person is entitled, on request and without charge, to be provided with a copy of the register, or any part of it.

70. Power to close register of shareholders

An open-ended fund company may, on giving notice in accordance with the provisions of its instrument of incorporation, close its register of shareholders, or the part of it relating to shareholders holding shares of any class, for any period or periods not exceeding in the whole 30 days in each year.

71. Power of Court to rectify register

- (1) If—
 - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of shareholders of an open-ended fund company; or
 - (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a shareholder,

a person aggrieved, or any shareholder of the company, or the company, may apply to the Court for rectification of the register.

- (2) If an application is made under subrule (1), the Court may—
 - (a) refuse the application; or
 - (b) make any of the following orders—
 - (i) an order to rectify the register;
 - (ii) an order on the company to pay damages for any loss sustained by any party aggrieved.
- (3) On an application made under subrule (1), the Court—
 - (a) may decide any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises—
 - (i) between shareholders or alleged shareholders; or
 - (ii) between shareholders or alleged shareholders on the one hand and the open-ended fund company on the other hand; and
 - (b) generally may decide any question necessary or expedient to be decided for rectification of the register.

72. Register to be proof in absence of contrary evidence

In the absence of evidence to the contrary, the register of shareholders of an open-ended fund company is proof of any matters that are by these Rules required or authorized to be entered in it.

Part 5

Meetings and Resolutions

Division 1—General Meetings

73. Directors' power to call general meeting

The directors of an open-ended fund company may call a general meeting of the company.

74. Shareholders' power to request directors to call general meeting

- (1) The shareholders of an open-ended fund company may request the directors of the company to call a general meeting of the company.
- (2) The directors are required to call a general meeting if the company has received requests to do so from shareholders of the company representing at least 10% of the total voting rights of all the shareholders having a right to vote at general meetings.
- (3) The directors must call a meeting within 21 days after the date on which they become subject to the requirement under subrule (2).
- (4) A meeting called under subrule (3) must be held on a date not more than 28 days after the date of the notice convening the meeting.
- (5) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution and other contents as may be required under the company's instrument of incorporation.

- (6) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subrule (5).
- (7) If the resolution is to be proposed as a special resolution, the directors are to be regarded as not having duly called the meeting unless the notice of the meeting includes the text of the resolution and specifies the intention to propose the resolution as a special resolution.

75. Calling of extraordinary general meetings by shareholders

- (1) If the directors of an open-ended fund company are required under rule 74(2) to call a general meeting and do not do so in accordance with rule 74(3), the shareholders of the company who requested the meeting, or any of them representing more than one-half of the total voting rights of all of them, may themselves call a general meeting.
- (2) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.
- (3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.
- (4) The meeting must be called in the same manner, as nearly as possible, as that in which a meeting is required to be called by the directors.
- (5) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subrule (2).

- (6) Any reasonable expenses incurred by the shareholders of the company requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.
- (7) Any sum so reimbursed must be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration in respect of the services of the directors who were in default.

76. Shareholders' power to call general meeting when there is no director, etc.

- (1) If at any time an open-ended fund company does not have any director, or does not have sufficient directors capable of acting to form a quorum, any director, or any 2 or more shareholders of the company representing at least 10% of the total voting rights of all the shareholders having a right to vote at general meetings, may call a general meeting in the same manner, as nearly as possible, as that in which general meetings may be called by the directors of the company.
- (2) Subrule (1) has effect in so far as the company's instrument of incorporation does not make other provision in that behalf.

77. Power of Court to order meeting

- (1) This rule applies if, for any reason, it is impracticable—
 - (a) to call a general meeting of an open-ended fund company in any manner in which general meetings of the company may be called; or
 - (b) to conduct the meeting in the manner prescribed by the company's instrument of incorporation or these Rules.

- (2) The Court may, either of its own motion or on application—
 - (a) by a director of the open-ended fund company; or
 - (b) by a shareholder of the open-ended fund company who would be entitled to vote at the meeting, order a general meeting of the company to be called, held and conducted in the manner the Court thinks fit.
- (3) If the order is made, the Court may give ancillary or consequential directions that the Court thinks expedient.
- (4) Directions given under subrule (3) may include a direction that 1 shareholder of the company present at the meeting in person or by proxy is to be regarded as constituting a quorum.
- (5) A general meeting called, held and conducted in accordance with an order under subrule (2) is to be regarded for all purposes as a general meeting of the company duly called, held and conducted.
- (6) The legal personal representative of a deceased shareholder of the company is to be regarded in all respects, for the purposes of this rule, as a shareholder of the company having the same rights with respect to attending and voting at a meeting of the company as the deceased shareholder would, if living, have had.

Division 2—Notice of Meetings

78. Notice of general meetings

- (1) A general meeting of an open-ended fund company must be called in accordance with the company's instrument of incorporation.

- (2) A general meeting (other than an adjourned meeting) of an open-ended fund company must be called by notice of—
 - (a) at least 14 days; or
 - (b) a longer period specified in the company's instrument of incorporation.
- (3) Notice of a general meeting of an open-ended fund company—
 - (a) must contain the particulars set out in the company's instrument of incorporation; and
 - (b) must be given in the manner set out in that instrument.

79. Persons entitled to receive notice of general meeting

- (1) Notice of a general meeting of an open-ended fund company must be given to—
 - (a) every shareholder of the company;
 - (b) every director of the company;
 - (c) the investment manager of the company; and
 - (d) the custodian of the company.
- (2) In subrule (1), the reference to a shareholder includes any person who is entitled to a share in consequence of the death or bankruptcy of a shareholder, if the company has been notified of that person's entitlement.

80. Duty to give notice of general meeting to auditor

- (1) If notice of a general meeting of an open-ended fund company or any other document relating to the general meeting is required to be given to a shareholder of the company, the company must give a copy of it to its

auditor at the same time as the notice or the other document is given to the shareholder.

- (2) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable on conviction to a fine at level 3.

81. Contents of notice of general meeting

- (1) An open-ended fund company must ensure that a notice of a general meeting of the company—
 - (a) specifies the date and time of the meeting;
 - (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
 - (c) states the general nature of the business to be dealt with at the meeting; and
 - (d) if a resolution is intended to be moved at the meeting—
 - (i) includes notice of the resolution; and
 - (ii) includes or is accompanied by a statement containing the information and explanation (if any) that is reasonably necessary to indicate the purpose of the resolution.
- (2) Subrule (1)(a), (b) and (c) has effect subject to the company's instrument of incorporation.
- (3) Subrule (1)(d) does not apply in relation to a resolution of which notice has been included in the notice of meeting under rule 74(5) or 75(2).
- (4) The validity of a resolution, if passed at a general meeting of an open-ended fund company, is not affected by a contravention of subrule (1)(d).

- (5) Subrule (4) does not affect any common law rules or equitable principles, or the provisions of any other Ordinance, as regards the validity of a resolution.

82. Resolution requiring special notice

- (1) If, by these Rules, special notice is required to be given of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the open-ended fund company at least 28 days before the meeting at which it is moved.
- (2) The company must, if practicable, give its shareholders notice of the resolution at the same time and in the same manner as it gives notice of the meeting.
- (3) If that is impracticable, the company must give its shareholders notice of the resolution at least 14 days before the meeting—
- (a) by advertisement in a newspaper circulating generally in Hong Kong; or
 - (b) in any other manner allowed by the company's instrument of incorporation.
- (4) If, after notice of the intention to move the resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is to be regarded as having been properly given, though not given within the time required.

83. Accidental omission to give notice of meeting or resolution

- (1) If an open-ended fund company gives notice of—
- (a) a general meeting; or
 - (b) a resolution intended to be moved at a general meeting,

any accidental omission to give notice to, or any non-receipt of notice by, any person entitled to receive notice must be disregarded for the purpose of determining whether notice of the meeting or resolution is duly given.

- (2) Except in relation to notice given under rule 74 or 75, subrule (1) has effect subject to the company's instrument of incorporation.

Division 3—Procedure at Meetings and Resolutions

84. Interpretation

In this Division—

circulation date (傳閱日期), in relation to a written resolution or a proposed written resolution, means the date on which copies of the resolution are sent to the shareholders under rule 90(6) or if copies are sent to shareholders on different days, the first of those days.

85. Representation of body corporate at meetings

- (1) A body corporate may, by resolution of its directors or other governing body—
 - (a) if it is a shareholder of an open-ended fund company, authorize any person it thinks fit to act as its representative at any meeting of the company; and
 - (b) if it is a creditor of an open-ended fund company, authorize any person it thinks fit to act as its representative at a meeting of creditors of the company.
- (2) A person authorized under subrule (1) is entitled to exercise the same powers on behalf of the body corporate as that body corporate could exercise if it were an individual shareholder or creditor of the company.

86. Representation of recognized clearing house at meetings

- (1) A recognized clearing house may, if it or its nominee is a shareholder of an open-ended fund company, authorize any person it thinks fit to act as its representative at any meeting of the company.
- (2) If more than one person is authorized under subrule (1), the authorization must specify the number and class of shares in respect of which each person is so authorized.
- (3) A person authorized under subrule (1) is entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee) as that clearing house (or its nominee) could exercise if it were an individual shareholder of the company.

87. Resolutions at meetings

- (1) A resolution of an open-ended fund company is validly passed at a general meeting if—
 - (a) notice of the meeting and of the resolution is given;
 - (b) the meeting is held and conducted; and
 - (c) the resolution is passed,in accordance with this Part and the company's instrument of incorporation.
- (2) For the purposes of subrule (1), if there is any inconsistency between a provision of this Part and a provision of the open-ended fund company's instrument of incorporation, unless otherwise provided in the provision of this Part, the provision of this Part prevails over the provision of the instrument of incorporation to the extent of the inconsistency.

88. Ordinary resolution

- (1) An ordinary resolution of the shareholders (or of a class of shareholders) of an open-ended fund company means a resolution that is passed by a simple majority.
- (2) A resolution passed at a general meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of the total of the following—
 - (a) the number of the shareholders who (being entitled to do so) vote in person on the resolution;
 - (b) the number of the persons who vote on the resolution as duly appointed proxies of shareholders entitled to vote on it.
- (3) A resolution passed on a poll taken at a general meeting is passed by a simple majority if it is passed by shareholders representing a simple majority of the total voting rights of all the shareholders who (being entitled to do so) vote in person or by proxy on the resolution.
- (4) Anything that may be done by an ordinary resolution may also be done by a special resolution.

89. Special resolution

- (1) A special resolution of the shareholders (or of a class of shareholders) of an open-ended fund company means a resolution that is passed by a majority of at least 75%.
- (2) A resolution passed at a general meeting on a show of hands is passed by a majority of at least 75% if it is passed by at least 75% of the total of the following—
 - (a) the number of the shareholders who (being entitled to do so) vote in person on the resolution;

- (b) the number of the persons who vote on the resolution as duly appointed proxies of shareholders entitled to vote on it.
- (3) A resolution passed on a poll taken at a general meeting is passed by a majority of at least 75% if it is passed by shareholders representing at least 75% of the total voting rights of all the shareholders who (being entitled to do so) vote in person or by proxy on the resolution.
- (4) If a resolution is passed at a general meeting—
 - (a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and
 - (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

90. Written resolutions

- (1) Anything that may be done by a resolution passed at a general meeting of an open-ended fund company may be done, without a meeting and without any previous notice being required, by a written resolution of the shareholders of the company.
- (2) Anything that may be done by a resolution passed at a meeting of a class of shareholders of an open-ended fund company may be done, without a meeting and without any previous notice being required, by a written resolution of that class of shareholders of the company.
- (3) A resolution may be proposed as a written resolution by—
 - (a) the directors of an open-ended fund company; or

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- (b) shareholders of the company representing not less than the requisite percentage of the total voting rights of all the shareholders entitled to vote on the resolution.
- (4) The requisite percentage mentioned in subrule (3)(b) is 5% or a lower percentage specified for this purpose in the open-ended fund company's instrument of incorporation.
- (5) If a resolution is required by these Rules to be passed as an ordinary resolution or a special resolution, the resolution may be passed as a written resolution; and a reference in these Rules to an ordinary resolution or a special resolution includes a written resolution.
- (6) If a resolution is proposed as a written resolution under subrule (3), the company must send a copy of the resolution to every shareholder of the company in hard copy form or in electronic form or, send such a copy to all shareholders by making the copy available on a website.
- (7) A reference in any Ordinance to the date of passing of a resolution or the date of a meeting is, in relation to a written resolution, the date on which the written resolution is passed under rule 92.
- (8) A written resolution of an open-ended fund company has effect as if passed by—
 - (a) the company at a general meeting; or
 - (b) a meeting of the relevant class of shareholders of the company,
and a reference in these Rules to a meeting at which a resolution is passed or to shareholders voting in favour of a resolution is to be construed accordingly.
- (9) This rule does not apply to—

- (a) a resolution removing an auditor before the end of the auditor's term of office; or
- (b) a resolution removing a director before the end of the director's term of office.

91. Company's duty to notify auditor, custodian and investment manager of proposed written resolution

- (1) If an open-ended fund company is required to send a copy of a resolution to a shareholder of the company under rule 90(6), it must, on or before the circulation date, send to the auditor, the custodian and the investment manager of the company a copy of—
 - (a) the resolution; and
 - (b) any other document relating to the resolution that is to be sent to a shareholder together with that resolution.
- (2) The validity of the resolution, if passed, is not affected by a contravention of subrule (1).

92. Procedure for signifying agreement to proposed written resolution

- (1) A written resolution is passed when all eligible shareholders of an open-ended fund company have signified their agreement to it.
- (2) A shareholder signifies agreement to a proposed written resolution when the open-ended fund company receives from the shareholder (or from someone acting on the shareholder's behalf) a document—
 - (a) identifying the resolution to which it relates; and
 - (b) indicating the shareholder's agreement to the resolution.

- (3) A shareholder's agreement to a written resolution, once signified, may not be revoked.
- (4) For the purposes of this rule, the eligible shareholders of an open-ended fund company are the shareholders of the company who would have been entitled to vote on the proposed written resolution on the circulation date of the resolution.

93. Period for agreeing to proposed written resolution

- (1) A proposed written resolution lapses if it is not passed before the end of—
 - (a) the period specified for this purpose in the open-ended fund company's instrument of incorporation; or
 - (b) if none is specified, the period of 28 days beginning on the circulation date.
- (2) The agreement of a shareholder to a proposed written resolution is ineffective if signified after the end of that period.

94. Company's duty to notify shareholders, auditor, investment manager and custodian that written resolution has been passed

If a resolution of an open-ended fund company is passed as a written resolution, the company must, within 15 days after the resolution is passed, send a notice of this fact to—

- (a) every shareholder of the company;
- (b) the auditor of the company;
- (c) the investment manager of the company; and
- (d) the custodian of the company.

95. Relationship between rules 90, 91, 92, 93 and 94 and provisions of company's instrument of incorporation

- (1) A provision of an open-ended fund company's instrument of incorporation is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an Ordinance could not be proposed and passed as a written resolution.
- (2) Nothing in rules 90, 91, 92, 93 and 94 affects any provision of an open-ended fund company's instrument of incorporation authorizing the company to pass a resolution without a meeting, otherwise than in accordance with those rules.
- (3) Subrule (2) applies only if the resolution has been agreed to by all the shareholders of the open-ended fund company who are entitled to vote on the resolution.

Division 4—Records of Resolutions and Meetings

96. Records of resolutions and meetings

- (1) An open-ended fund company must keep records comprising—
 - (a) copies of all resolutions of shareholders passed otherwise than at general meetings; and
 - (b) minutes of all proceedings of general meetings.
- (2) An open-ended fund company must keep the copies of resolutions or minutes of proceedings under subrule (1) for at least 10 years from the date of the resolution or meeting.
- (3) A record of a resolution kept under subrule (1) is evidence of the passing of the resolution.

- (4) The minutes of proceedings of a general meeting of an open-ended fund company are evidence of the relevant proceedings.
- (5) If an open-ended fund company contravenes subrule (1) or (2), the company commits an offence and is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

97. Registration of and requirements relating to certain resolutions, etc.

- (1) This rule applies to—
 - (a) a resolution of an open-ended fund company for the purpose of or in relation to the winding up of the company under Part 11;
 - (b) a resolution varying any matter in, or provision of, the instrument of incorporation of an open-ended fund company;
 - (c) an order of the Court that alters the instrument of incorporation of an open-ended fund company; and
 - (d) an order of the Court that alters a resolution referred to in paragraph (a) or (b).
- (2) The open-ended fund company must deliver a copy of the resolution or order under subrule (1) to the Registrar for registration within 14 days after it is passed or made.
- (3) The company must ensure that a copy of the resolution or order of the Court that is for the time being in force is included in or annexed to every copy of its instrument of incorporation issued—
 - (a) after the passing of the resolution; or
 - (b) after the making of the order of the Court.

- (4) If the resolution is not in writing, a reference to a copy of the resolution in subrules (2) and (3) is to be construed as a written memorandum setting out the terms of the resolution.
- (5) If an open-ended fund company contravenes subrule (2), the company, and a liquidator of the company who authorizes or permits, or participates in the contravention, commit an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (6) If an open-ended fund company contravenes subrule (3), the company, and a liquidator of the company who authorizes or permits, or participates in the contravention, commit an offence and is liable on conviction to a fine at level 3.

98. Place where records must be kept

- (1) An open-ended fund company must keep its records of resolutions and meetings at the company's registered office or an alternative place in Hong Kong notified to the Registrar.
- (2) An open-ended fund company must notify the Registrar of the place at which the records mentioned in subrule (1) are kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the records are first kept at that place.
- (3) An open-ended fund company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the records mentioned in subrule (1) are kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

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- (4) Subrule (2) does not require an open-ended fund company to notify the Registrar of the place at which the records mentioned in subrule (1) are kept if they have at all times been kept at the company's registered office.
 - (5) If an open-ended fund company contravenes subrule (1), (2) or (3), the company commits an offence and is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
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Part 6

Operators

Division 1—Preliminary

99. Interpretation

In this Part—

non-Hong Kong custodian (非香港保管人) means a custodian incorporated outside Hong Kong;

registered non-Hong Kong company (註冊非香港公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

required details (所需細節), in relation to a process agent, means the name of the process agent and—

- (a) if the process agent is an individual, the process agent's usual residential address in Hong Kong;
- (b) if the process agent is a company, the address of the company's registered office in Hong Kong; or
- (c) if the process agent is a partnership, the principal place of business of the partnership in Hong Kong.

Division 2—Directors

Subdivision 1—Appointment and Removal

100. Eligibility for appointment

The experience and expertise of the persons appointed as directors of an open-ended fund company, taken together, must be appropriate for carrying on the business of the company.

101. Appointment of directors

- (1) With effect from the date of incorporation of an open-ended fund company, the first directors of the company are the persons referred to in section 112U(2) of the Ordinance.
- (2) Any subsequent appointment of a director of an open-ended fund company must be made—
 - (a) if the company is required to hold an annual general meeting under its instrument of incorporation—by the company by way of ordinary resolution passed at a general meeting, except that the directors may appoint a person to act as a director to fill any vacancy until the next annual general meeting; or
 - (b) if there is no requirement for an annual general meeting under the company's instrument of incorporation—by the directors of the company.
- (3) An appointment under this rule or rule 103 must not be made unless the Commission has given its approval to the appointment.
- (4) An appointment of a director in contravention of subrule (3) or rule 100 is of no effect.

102. Non-resident director to have process agent

- (1) A non-resident director of an open-ended fund company must have a process agent.
- (2) Any process or notice required to be served on a non-resident director is sufficiently served if—
 - (a) it is addressed to the director's process agent; and
 - (b) it is left at, or sent by post to, the process agent's address contained in the record kept by the company under subrule (3).

- (3) An open-ended fund company must keep a record of every person who is a process agent of a non-resident director (*record*) at the place at which the register of directors of the company is kept under rule 104(2).
- (4) The record must, in respect of each process agent of a non-resident director, contain the required details.
- (5) Any person is entitled, on request made in the manner specified by the open-ended fund company and without charge, to inspect the record, and on payment of such reasonable fee as the company determines, to be provided with a copy of the record, or any part of it.
- (6) If there is a change in the particulars in the record, the company must, within 15 days after the change, deliver to the Registrar for registration, a notice in the specified form containing the particulars of the change and the date on which it occurred.
- (7) A non-resident director of an open-ended fund company must give notice to the company of any matters relating to a process agent of the director that are required for the purposes of subrules (3), (4) and (6).
- (8) If a person contravenes subrule (1), (3), (6) or (7), the person commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

103. Removal of directors

- (1) An open-ended fund company may, by ordinary resolution passed at a general meeting, remove a director before the end of the director's term of office, despite anything in the company's instrument of incorporation or in any agreement between the company and the director.

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- (2) Subrules (3), (4), (5) and (6) apply in relation to the removal of a director of an open-ended fund company by resolution.
- (3) Special notice is required of a resolution—
 - (a) to remove a director of an open-ended fund company; or
 - (b) to appoint a person in place of a director so removed at the meeting at which the director is removed.
- (4) A vacancy created by the removal of a director of an open-ended fund company, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- (5) A person appointed in place of a removed director is to be regarded, for the purpose of determining the time at which the person or any other director is to retire, as if the person had become a director on the day on which the person removed was last appointed a director.
- (6) In relation to a resolution to remove a director of an open-ended fund company before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (7) This rule is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of—
 - (a) the person's appointment as director; or
 - (b) any appointment terminating with that as director.
- (8) An open-ended fund company must, within 14 days after passing a resolution to remove a director, give notice in writing to the Commission of the resolution.

Subdivision 2—Register and Index of Directors

104. Register of directors

- (1) An open-ended fund company must keep in the English or Chinese language a register of directors.
- (2) An open-ended fund company must keep the register of directors—
 - (a) at the company’s registered office; or
 - (b) at an alternative place in Hong Kong notified to the Registrar under subrule (3).
- (3) An open-ended fund company must notify the Registrar of the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.
- (4) An open-ended fund company must notify the Registrar of any change (other than a change of the address of the company’s registered office) in the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.
- (5) Subrule (3) does not require an open-ended fund company to notify the Registrar of the place at which the register of directors is kept if the register has at all times been kept at the company’s registered office.
- (6) An open-ended fund company must enter in the register of directors the following particulars of each person who is a director of the company—
 - (a) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (b) the usual residential address; and

- (c) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.
- (7) If an open-ended fund company contravenes subrule (1), (2), (3), (4) or (6), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (8) In subrule (6)—
- forename** (名字) includes a Christian or given name;
- residential address** (住址)—
- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this rule, to have no other permanent address; and
- (b) does not include a post office box number;
- surname** (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (9) In this rule, a reference to a former forename or surname does not include—
- (a) in relation to a person—
- (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
- (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
- (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and

- (c) in relation to a married woman, a name or surname by which she was known before her marriage.

105. Right to inspect and request copy

- (1) A shareholder of an open-ended fund company is entitled, on request made in the manner specified in the company's instrument of incorporation and without charge, to inspect the register of directors of the company.
- (2) Any other person is entitled, on request and on payment of such reasonable fee as the open-ended fund company determines, to inspect the register.
- (3) A person is entitled, on request and on payment of such reasonable fee as the company determines, to be provided with a copy of the register, or any part of it.

106. Duty to notify Registrar of appointment of director etc.

- (1) If a person is appointed as a director of an open-ended fund company otherwise than under section 112U(2) of the Ordinance, the company must, within 15 days after the appointment, deliver to the Registrar for registration, in the manner specified in subrule (2), a notice in the specified form containing—
 - (a) the director's particulars specified in its register of directors;
 - (b) a statement that the person has accepted the appointment;
 - (c) a statement that the person has attained the age of 18 years; and
 - (d) if the person is a non-resident director, the required details of the director's process agent.

- (2) The manner of delivery referred to in subrule (1) is delivery to the Commission.
- (3) The Commission must, as soon as reasonably practicable after receiving the notice specified in subrule (1), send the notice to the Registrar.
- (4) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

107. Duty to notify Registrar of cessation of appointment etc.

- (1) If a person ceases to be a director of an open-ended fund company or there is any change in the particulars contained in the register of directors of the company, the company must, within 15 days after the cessation or change, deliver to the Registrar for registration, a notice in the specified form containing—
 - (a) the particulars of cessation or change and the date on which it occurred; and
 - (b) other matters that are specified in the form.
- (2) If a director of the open-ended fund company resigns as director and has reasonable grounds for believing that the company will not deliver the notice under subrule (1), the director resigning must deliver to the Registrar for registration, a notice of the resignation in the specified form.
- (3) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

108. Duty of director to make disclosure

- (1) A director of an open-ended fund company must give notice to the company of matters relating to the director that are required for the purposes of rules 104(6), 106 and 107.
- (2) A director who contravenes subrule (1) commits an offence and is liable on conviction to a fine at level 4.

109. Registrar to keep index of directors

- (1) The Registrar must keep an index of every person who is a director of an open-ended fund company.
- (2) The particulars contained in the index must, in respect of each director, include—
 - (a) the name and address of the director, and the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director;
 - (b) the latest particulars sent under rules 106(1)(a) and 107(1) to the Registrar in respect of the director; and
 - (c) the name of each open-ended fund company of which the director can be identified as a director.

Subdivision 3—Material Interests and Directors' Meetings

110. Director must declare material interests

- (1) If a director of an open-ended fund company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other

directors in accordance with rule 111 and the provisions of the company's instrument of incorporation.

- (2) This rule does not require a director of an open-ended fund company to declare an interest—
 - (a) if the director is not aware of the interest or the transaction, arrangement or contract in question; or
 - (b) if, or to the extent that, the interest concerns the terms of the director's service contract that have been or are to be considered by—
 - (i) a meeting of the directors; or
 - (ii) a committee of the directors appointed for the purpose under the company's instrument of incorporation.
- (3) For the purposes of subrule (2)(a), a director is to be regarded as being aware of matters of which the director ought reasonably to be aware.
- (4) This rule does not affect the operation of any other Ordinance or rule of law restricting a director of an open-ended fund company from having any interest in a transaction, arrangement or contract with the company.
- (5) A director who contravenes subrule (1) commits an offence and is liable on conviction to a fine at level 6.

111. Declaration to directors

- (1) A declaration of interest under rule 110 in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable.
- (2) A declaration of interest under rule 110 in a proposed transaction, arrangement or contract must be made before the open-ended fund company enters into the transaction, arrangement or contract.

- (3) A declaration of interest under rule 110 must be made—
 - (a) at a directors' meeting;
 - (b) by notice in writing sent by the director to the other directors; or
 - (c) by notice in writing sent to the open-ended fund company.
- (4) If a declaration of interest to directors under rule 110 is made by notice in writing—
 - (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
 - (b) rule 112 applies as if the declaration had been made at the meeting.

112. Minutes of directors' meetings

- (1) An open-ended fund company must cause the following to be recorded—
 - (a) minutes of all proceedings at meetings of its directors; and
 - (b) all resolutions passed by its directors without a meeting.
- (2) An open-ended fund company must keep the records under subrule (1) for at least 10 years from—
 - (a) the date of the meeting; or
 - (b) the date of the passing of the resolution without a meeting.

113. Minutes as evidence

- (1) Minutes recorded in accordance with rule 112, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.
- (2) If the proceedings at a meeting of directors are evidenced by minutes under subrule (1), then, unless there is evidence to the contrary—
 - (a) the meeting is to be regarded as having been duly held and convened;
 - (b) all proceedings at the meeting are to be regarded as having duly taken place; and
 - (c) all appointments at the meeting are to be regarded as valid.
- (3) Subrule (2)(c) is subject to sections 112V(2) and 112W(2) of the Ordinance.

Division 3—Custodians and Sub-custodians

Subdivision 1—Appointment and Rights

114. Appointment of custodian

- (1) With effect from the date of incorporation of an open-ended fund company, the person named in the application made under section 112D of the Ordinance in respect of the company as custodian is deemed to be appointed as the company's custodian for the purposes of section 112ZA(1) of the Ordinance.
- (2) Any subsequent appointment of a custodian of an open-ended fund company must be made by the directors of the company.

- (3) An appointment under subrule (2) must not be made unless the Commission has given its approval to the appointment.
- (4) An appointment made in contravention of subrule (3) is of no effect.
- (5) A person who makes an appointment in contravention of subrule (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

115. Non-Hong Kong custodian to have process agent

- (1) A non-Hong Kong custodian of an open-ended fund company must have a process agent.
- (2) Any process or notice required to be served on a non-Hong Kong custodian is sufficiently served if—
 - (a) it is addressed to the custodian's process agent; and
 - (b) it is left at, or sent by post to, the process agent's address contained in the record kept by the open-ended fund company under subrule (3).
- (3) An open-ended fund company must keep a record of every person who is a process agent of a non-Hong Kong custodian (*record*) at the place at which the register of directors of the company is kept under rule 104(2).
- (4) The record must, in respect of a process agent of a non-Hong Kong custodian, contain the required details.

- (5) Any person is entitled, on request made in the manner specified by the open-ended fund company and without charge, to inspect the record and, on payment of such reasonable fee as the company determines, to be provided with a copy of the record, or any part of it.
- (6) A custodian of an open-ended fund company must give notice to the company of any matters relating to a process agent of the custodian that are required for the purposes of subrules (3) and (4).
- (7) This rule does not apply to a non-Hong Kong custodian that is a registered non-Hong Kong company.
- (8) If a person contravenes subrule (1), (3) or (6), the person commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Note—

For the service of process or notice on a non-Hong Kong custodian that is a registered non-Hong Kong company—see section 803 of the Companies Ordinance (Cap. 622).

116. Rights of custodian

A custodian of an open-ended fund company is entitled—

- (a) to be given all notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to be given;
- (b) to attend any general meeting of the company;
- (c) to be heard at any general meeting of the company that the custodian attends on any part of the business of the meeting that concerns the custodian as custodian of the company;

- (d) to request in writing the directors to convene a general meeting of the company when the custodian sees fit;
- (e) to require from the company's officers information and explanations that the custodian thinks necessary for the performance of the custodian's functions; and
- (f) to have access, except in so far as they concern the appointment or removal of the custodian, to any reports, statements or other papers that are to be considered at any meeting held by the directors of the company (when acting in their capacity as such), at any general meeting of the company or at any meeting of holders of shares of any particular class.

117. Sub-custodians

A sub-custodian of an open-ended fund company must take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the company that is entrusted to the sub-custodian.

Subdivision 2—Change of Custodian

118. Resignation etc. of custodian

- (1) A person may resign as custodian of an open-ended fund company by giving the company a notice in writing that is accompanied by a statement required to be given under rule 119(1).
- (2) If a person ceases to be a custodian of an open-ended fund company, other than by virtue of an order of the Court made under section 213 of the Ordinance, the company must, within 15 days after the cessation, give notice in writing of the cessation to the Commission.

- (3) If an open-ended fund company contravenes subrule (2), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

119. Statement by custodian ceasing to hold office

- (1) If a person ceases to hold office as custodian of an open-ended fund company other than by virtue of an order of the Court made under section 213 of the Ordinance, the person must give the company—
 - (a) if the person considers that there are circumstances connected with the person's ceasing to hold office that should be brought to the attention of the company's shareholders or creditors, a statement of those circumstances; or
 - (b) if the person considers that there are no such circumstances, a statement to that effect.
- (2) The person must send a copy of the statement under subrule (1) to the Commission at the same time the person gives the statement to the company under the subrule.
- (3) Despite that the person giving the statement has ceased to hold office as custodian, the person has the rights conferred by rule 116(a), (b) and (c) in relation to the general meeting of the company following the date on which the statement was given under subrule (1).
- (4) The reference in rule 116(c) to business of the meeting that concerns the custodian as custodian of the company is, in relation to a custodian who has ceased to hold office, a reference to business of the meeting that concerns the custodian as former custodian of the company.

120. Open-ended fund company's and aggrieved person's responses to statement of circumstances

- (1) If an open-ended fund company is given a statement of circumstances under rule 119(1)(a), the company must, within 14 days beginning on the date on which the company receives the statement—
 - (a) send a copy of the statement to every shareholder of the company; or
 - (b) apply to the Court for an order directing that copies of the statement are not to be sent under paragraph (a).
- (2) If an open-ended fund company makes an application under subrule (1)(b), it must give notice of the application to the person who has given the statement of circumstances to the company.
- (3) A person who claims to be aggrieved by a statement of circumstances may, within 14 days beginning on the date on which the company receives the statement, apply to the Court for an order directing that copies of the statement are not to be sent under subrule (1)(a).
- (4) If a person makes an application under subrule (3), the person must give notice of the application to—
 - (a) the company; and
 - (b) the person who has given the statement of circumstances to the company.
- (5) If—
 - (a) a person gives an open-ended fund company a statement of circumstances; and

- (b) within 21 days beginning on the date on which the company receives the statement, the person has not received notice of an application under subrule (2) or (4),

the person must, within the next 7 days, deliver to the Registrar for registration, a copy of the statement.

121. Offences relating to rule 120

- (1) If an open-ended fund company contravenes rule 120(1), the company commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) If a person contravenes rule 120(5), the person commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) If a person is charged with an offence under subrule (2) for contravening rule 120(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that rule.

122. Court may order statement of circumstances not to be sent

- (1) This rule applies if an application has been made under rule 120(1)(b) or (3) in relation to a statement of circumstances given by a person to an open-ended fund company under rule 119(1)(a).
- (2) If the Court is satisfied that the person who gave the statement of circumstances has abused the use of the statement, or is using the statement to secure needless publicity for defamatory matter, the Court—

- (a) must direct that copies of the statement are not to be sent under rule 120(1)(a); and
 - (b) may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subrule (2)(a), the open-ended fund company must, within 15 days beginning on the date on which the directions are given—
- (a) send a notice setting out the effect of the directions to—
 - (i) every shareholder of the company; and
 - (ii) unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and
 - (b) deliver to the Registrar for registration, a copy of the notice.
- (4) If the Court decides not to grant the application, the open-ended fund company must, within 15 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—
- (a) give notice of the decision to the person who has given the statement of circumstances to the company; and
 - (b) send a copy of the statement of circumstances to every shareholder of the company and to that person.
- (5) Within 7 days beginning on the date on which a person receives a notice under subrule (4)(a), the person must deliver to the Registrar for registration, a copy of the statement of circumstances.

123. Offences relating to rule 122

- (1) If an open-ended fund company contravenes rule 122(3) or (4), the company commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person who contravenes rule 122(5) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) If a person is charged with an offence under subrule (2) for contravening rule 122(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that rule.

124. Qualified privileges

- (1) In the absence of malice, a person is not liable to any action for defamation at the suit of any person in respect of the making of a statement of circumstances and giving the statement to an open-ended fund company under rule 119.
- (2) This rule does not limit or affect any other right, privilege or immunity that a custodian of an open-ended fund company, or any other person, has as defendant in an action for defamation.

Division 4—Investment Manager

125. Appointment of investment manager

- (1) With effect from the date of incorporation of an open-ended fund company, the person named in the application made under section 112D of the Ordinance in respect of the company as investment manager is deemed to be appointed as the company's investment manager for the purposes of section 112Z(1) of the Ordinance.
- (2) Any subsequent appointment of an investment manager of an open-ended fund company must be made by the directors of the company.
- (3) An appointment under subrule (2) must not be made unless the Commission has given its approval to the appointment.
- (4) An appointment in contravention of subrule (3) is of no effect.

126. Rights of investment manager

An investment manager of an open-ended fund company is entitled—

- (a) to be given all notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to be given;
- (b) to attend any general meeting of the company; and
- (c) to be heard at any general meeting of the company that the investment manager attends on any part of the business of the meeting that concerns the investment manager as investment manager of the company.

127. Resignation etc. of investment manager

- (1) If a person ceases to be an investment manager of an open-ended fund company, other than by virtue of an order of the Court made under section 213 or 214A of the Ordinance, the company must, within 15 days after the cessation, give notice in writing of the cessation to the Commission.
- (2) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Division 5—Auditor

Subdivision 1—Appointment of Auditor

128. Eligibility for appointment

- (1) Only a practice unit is eligible for appointment as auditor of an open-ended fund company.
- (2) The following are disqualified for appointment as auditor of an open-ended fund company—
 - (a) a person who is an officer or employee of the company;
 - (b) a person who is a partner or employee of a person mentioned in paragraph (a).
- (3) In subrule (1)—

practice unit (執業單位) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).

- (4) In subrule (2)(a), a reference to an officer or employee of an open-ended fund company does not include an auditor of the company.

129. Effect of appointing firm as auditor

If a firm is appointed, by the firm name, as auditor of an open-ended fund company, the appointment is to be regarded as an appointment of those persons who are—

- (a) the partners in the firm from time to time during the currency of the appointment; and
- (b) eligible, and not disqualified, for appointment as auditor of the company under this Subdivision.

130. Appointment of auditor by directors

Subject to any provision of the instrument of incorporation of an open-ended fund company for the appointment of an auditor of the company, the directors of an open-ended fund company may appoint an auditor for the company.

131. Appointment to fill casual vacancy

- (1) The directors of an open-ended fund company may appoint a person to fill a casual vacancy in the office of auditor of the company.
- (2) If the directors have not done so within 1 month after the casual vacancy occurs, the shareholders of the company may, by a resolution passed at a general meeting of the company, appoint a person to fill the casual vacancy.

132. Auditor's remuneration

- (1) The remuneration of an auditor of an open-ended fund company appointed by the directors of the company must be fixed by the directors when making the appointment.
- (2) The remuneration of an auditor of an open-ended fund company appointed by the shareholders of the company may be fixed—
 - (a) by a resolution passed at a general meeting of the company; or
 - (b) in the manner as specified in such a resolution.
- (3) In this rule—
remuneration (酬金), in relation to an auditor of an open-ended fund company, includes any sum paid by the company in respect of the expenses of the auditor.

Subdivision 2—Auditor's Rights and Privileges, etc.

133. Rights of auditor in relation to general meeting

- (1) A person appointed as auditor of an open-ended fund company is entitled—
 - (a) to attend any general meeting of the company; and
 - (b) to be heard at any general meeting of the company that the person attends on any part of the business of the meeting that concerns the person as auditor of the company.
- (2) A person's entitlement under subrule (1)(a) or (b) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.

134. Rights of auditor in relation to information

- (1) An auditor of an open-ended fund company has a right of access to the company's accounting records.
- (2) An auditor of an open-ended fund company may require a person that is a related entity of the company, or was a related entity of the company at the time to which the information or explanation relates, to provide the auditor with any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.
- (3) If an auditor has required a person to provide any information or explanation under subrule (2), the person must provide the information or explanation as soon as reasonably practicable after being required.
- (4) A statement made by a person in response to a requirement under subrule (2) may not be used in evidence against the person in any criminal proceedings except proceedings for an offence under rule 135.
- (5) This rule does not compel a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (6) In this rule—
related entity (有關連實體), in relation to an open-ended fund company, means—
 - (a) an officer of the company;
 - (b) a custodian of the company; or
 - (c) a person holding or accountable for any of the accounting records of the company.

135. Offences relating to rule 134

- (1) A person who contravenes rule 134(3) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (2) If a person is charged with an offence under subrule (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.
- (3) A person commits an offence if—
 - (a) the person makes a statement to an auditor of an open-ended fund company that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, under rule 134(2);
 - (b) the statement is misleading, false or deceptive in a material particular; and
 - (c) the person knows that, or is reckless as to whether or not, the statement is misleading, false or deceptive in a material particular.
- (4) A person who commits an offence under subrule (3) is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) This rule does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under rule 134.

136. Auditor may provide information to incoming auditor without contravening duties

- (1) A person who is, or has been, an auditor of an open-ended fund company does not contravene any duty owed by the person as such auditor in law by reason only that the person gives work-related information to another person—
 - (a) who is an auditor of the company;
 - (b) who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - (c) to whom the company has offered the position as auditor but who has not yet been appointed.
- (2) Subrule (1) does not apply unless the person who gives work-related information to another person—
 - (a) does so in good faith; and
 - (b) reasonably believes that the information is relevant to the performance of that other person's duties as auditor of the open-ended fund company.
- (3) In this rule—

work-related information (工作資料), in relation to a person who is, or has been, an auditor of an open-ended fund company, means information of which the person became aware in the capacity of auditor.

137. Qualified privileges

- (1) In the absence of malice, an auditor of an open-ended fund company is not liable to any action for defamation at the suit of any person in respect of any statement made by the auditor in the course of performing duties as auditor of the company.

- (2) In the absence of malice, a person is not liable to any action for defamation at the suit of any person in respect of the publication of any document—
 - (a) prepared by an auditor of an open-ended fund company in the course of performing duties as auditor of the company; and
 - (b) required by the Ordinance—
 - (i) to be delivered to the Registrar; or
 - (ii) to be sent to a shareholder of the company or any other person.
- (3) This rule does not limit or affect any other right, privilege or immunity that an auditor of an open-ended fund company, or any other person, has as defendant in an action for defamation.
- (4) In this rule, a reference to performing duties as auditor of an open-ended fund company includes—
 - (a) making a cessation statement, giving the statement to the company, and requesting the company to comply with the requirement specified in rule 143(4) in relation to the statement; and
 - (b) making a statement of circumstances and giving the statement to the company.

Subdivision 3—Termination of Auditor’s Appointment

138. Resignation of auditor

- (1) A person may resign from the office of auditor of an open-ended fund company by giving the company a notice in writing that is accompanied by a statement required to be given under rule 144.
- (2) The person’s term of office expires—

- (a) at the end of the day on which the notice is given to the company under subrule (1); or
 - (b) if the notice specifies a time on a later day for the purpose, at that time.
- (3) Within 15 days beginning on the date on which an open-ended fund company receives a notice of resignation under subrule (1), the company must deliver to the Registrar for registration, a notice in specified form of that fact.
 - (4) If an open-ended fund company contravenes subrule (3), the company commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

139. Cessation of office

- (1) If, while holding office as auditor of an open-ended fund company, a person ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under this Division, the person—
 - (a) immediately ceases to be an auditor of the company; and
 - (b) must notify the company of the cessation in writing within 14 days from the date of the cessation.
- (2) A person who contravenes subrule (1)(b) commits an offence and is liable on conviction to a fine at level 4.
- (3) If a person is charged with an offence under subrule (2), it is a defence to establish that the person did not know, and had no reason to believe, that the person had ceased to be eligible, or had become disqualified, for appointment as

auditor of the open-ended fund company under this Division.

140. Removal of auditor

- (1) An open-ended fund company may, by an ordinary resolution passed at a general meeting of the company, remove a person from the office of auditor despite—
 - (a) anything in any agreement between the person and the company; or
 - (b) anything in the company's instrument of incorporation.
- (2) Special notice is required for an ordinary resolution proposed for the purposes of subrule (1).
- (3) On receipt of a special notice, the open-ended fund company must send a copy of it to the person proposed to be removed.
- (4) If an ordinary resolution for the removal is passed, the company must, within 15 days beginning on the date on which it is passed, deliver to the Registrar for registration, a notice of the removal in specified form.
- (5) If an open-ended fund company contravenes subrule (4), the company commits an offence and is liable on conviction to a fine at level 3, and in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

141. Removed auditor not deprived of compensation, etc.

Rule 140 does not deprive a person of compensation or damages payable to the person in respect of the person ceasing—

- (a) to hold office as auditor of an open-ended fund company; or
- (b) to hold any appointment that is terminated with the termination of the person's appointment as auditor.

Subdivision 4—Outgoing Auditor's Right to Requisition General Meeting

142. Resigning auditor may requisition meeting

- (1) If a person gives under rule 138 a notice of resignation that is accompanied by a statement of circumstances given under rule 144(1)(a), the person may, by another notice given to the open-ended fund company with the notice of resignation, require the directors to convene a general meeting of the company for receiving and considering the explanation of the circumstances connected with the resignation that the person places before the meeting.
- (2) Within 21 days beginning on the date on which the company receives that other notice, the directors of the company must convene a general meeting for a date falling within 28 days after the date on which the notice convening the meeting is given.
- (3) If the directors of an open-ended fund company contravene subrule (2), every director who failed to take all reasonable steps to secure that a general meeting of the company was convened as required by that subrule commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

143. Cessation statement in relation to, and attendance at, general meeting

- (1) If a general meeting of an open-ended fund company is convened under rule 142, the person who resigns from the office of auditor—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the resignation;
 - (b) may request the company to comply with the requirement specified in subrule (4) in relation to the statement; and
 - (c) is entitled—
 - (i) to be given all such notices of, and other communications relating to, the general meeting of the company as a shareholder of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard, at the general meeting, on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (2) If special notice is given under rule 140(2) for an ordinary resolution for removing a person from the office of auditor, the person—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the proposed removal; and
 - (b) may request the company to comply with the requirement specified in subrule (4) in relation to the statement.

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- (3) A person's entitlement under subrule (1)(c)(ii) or (iii) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.
- (4) The requirement specified for the purposes of subrules (1)(b) and (2)(b) is—
 - (a) if the open-ended fund company receives the statement on a date that is more than 2 days before the last day on which notice may be given under rule 78 to call the general meeting, the requirement—
 - (i) to state, in every notice of the meeting given to the shareholders, that the statement has been made; and
 - (ii) to send a copy of the statement to every shareholder to whom a notice of the meeting is or has been given; or
 - (b) if the open-ended fund company has not sent a copy of the statement to every shareholder to whom a notice of the general meeting is or has been given, the requirement to ensure that the statement is read out at the meeting.
- (5) Unless exempted by an order under subrule (6), the open-ended fund company must comply with a request made under subrule (1)(b) or (2)(b).
- (6) On application by the company or by anyone who claims to be aggrieved, the Court may order that the open-ended fund company is exempted from complying with the request, if it is satisfied that the person who has given a statement and made a request under subrules (1)(a) and (b) or (2)—
 - (a) has abused the right to do so; or

- (b) has used such a right to secure needless publicity for defamatory matter.
- (7) If an open-ended fund company contravenes subrule (5), the company commits an offence and is liable on conviction to a fine at level 5.

Subdivision 5—Outgoing Auditor’s Statement of Circumstances

144. Duty of resigning auditor to give statement

- (1) A person who resigns from office under rule 138(1) must, on the resignation, give the open-ended fund company—
 - (a) if the person considers that there are circumstances connected with the resignation that should be brought to the attention of the company’s shareholders or creditors, a statement of those circumstances; or
 - (b) if the person considers that there are no such circumstances, a statement to that effect.
- (2) The person referred to in subrule (1) must, at the time of giving the open-ended fund company a statement under subrule (1)(a) or (b), send a copy of the statement to the Commission.

145. Open-ended fund company’s and aggrieved person’s responses to statement of circumstances

- (1) If an open-ended fund company is given a statement of circumstances under rule 144(1)(a), the company must, within 14 days beginning on the date on which it receives the statement—
 - (a) send a copy of the statement to every shareholder of the company; or

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- (b) apply to the Court for an order directing that copies of the statement are not to be sent under paragraph (a).
- (2) If an open-ended fund company makes an application under subrule (1)(b), it must give notice of the application to the person who has given the statement of circumstances to the company.
- (3) A person who claims to be aggrieved by a statement of circumstances may, within 14 days beginning on the date on which the open-ended fund company receives the statement, apply to the Court for an order directing that copies of the statement are not to be sent under subrule (1)(a).
- (4) If a person makes an application under subrule (3), the person must give notice of the application to—
 - (a) the open-ended fund company; and
 - (b) the person who has given the statement of circumstances to the company.
- (5) If—
 - (a) a person gives an open-ended fund company a statement of circumstances; and
 - (b) within 21 days beginning on the date on which the company receives the statement, the person has not received notice of an application under subrule (2) or (4),the person must, within the next 7 days, deliver to the Registrar for registration, a copy of the statement.
- (6) If an open-ended fund company contravenes subrule (1), the company commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or

- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) If a person contravenes subrule (5), the person commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (8) If a person is charged with an offence under subrule (7), it is a defence to establish that the person took all reasonable steps to secure compliance with subrule (5).

146. Court may order statement of circumstances not to be sent

- (1) This rule applies if an application has been made under rule 145(1)(b) or (3) in relation to a statement of circumstances given by a person to an open-ended fund company under rule 144(1)(a).
- (2) If the Court is satisfied that the person has abused the use of the statement of circumstances or is using the statement to secure needless publicity for defamatory matter, the Court—
 - (a) must direct that copies of the statement are not to be sent under rule 145(1)(a); and
 - (b) may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subrule (2)(a), the open-ended fund company must, within 15 days beginning on the date on which the directions are given—
 - (a) send a notice setting out the effect of the directions to—
 - (i) every shareholder of the company; and

- (ii) unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and
 - (b) deliver to the Registrar for registration, a copy of the notice.
- (4) If the Court decides not to grant the application, the open-ended fund company must, within 15 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—
- (a) give notice of the decision to the person who has given the statement of circumstances to the company; and
 - (b) send a copy of the statement of circumstances to every shareholder of the company and to that person.
- (5) Within 7 days beginning on the date on which a person receives a notice under subrule (4)(a), the person must deliver to the Registrar for registration, a copy of the statement of circumstances.

147. Offences relating to rule 146

- (1) If an open-ended fund company contravenes rule 146(3) or (4), the company commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person who contravenes rule 146(5) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

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- (3) If a person is charged with an offence under subrule (2) for contravening rule 146(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that rule.
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Part 7

Financial Statements and Financial Reports

Division 1—Financial Year

148. Financial year

- (1) An open-ended fund company's first financial year begins on the first day of its first accounting reference period and ends on the last day of that period.
- (2) Every subsequent financial year of an open-ended fund company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined.

149. Accounting reference period

- (1) An open-ended fund company's first accounting reference period begins on the date of its incorporation and ends on its primary accounting reference date.
- (2) Every subsequent accounting reference period of an open-ended fund company is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date, unless the accounting reference period is shortened or extended by the directors after consultation with the auditors of the company.
- (3) The directors must not extend the accounting reference period so as to extend the period to longer than 18 months.

- (4) Subject to subrule (5), an open-ended fund company's accounting reference date is the anniversary of a company's primary accounting reference date.
- (5) Subject to subrule (6), the directors of an open-ended fund company may specify a new accounting reference date in relation to the company's accounting reference period and every subsequent accounting reference period.
- (6) The directors of an open-ended fund company must not specify a new accounting reference date in relation to an accounting reference period so as to extend the period to longer than 18 months.

150. Primary accounting reference date

- (1) An open-ended fund company's primary accounting reference date is—
 - (a) a date specified by the company's directors before the relevant date for the purposes of this rule; or
 - (b) in the absence of such a specified date, the relevant date.
- (2) A date specified for the purposes of subrule (1)(a) must fall within 18 months after the date of the company's incorporation.
- (3) In this rule—

relevant anniversary (有關周年日), in relation to an open-ended fund company's incorporation, means the anniversary of the company's incorporation;

relevant date (有關日期) means the last day of the month in which the relevant anniversary of the open-ended fund company's incorporation falls.

Division 2—Financial Statements and Reports

151. Annual report

- (1) An open-ended fund company's directors must prepare a report (*annual report*) for each financial year.
- (2) The company must publish the annual report and provide, on request, a copy of the report free of charge to any shareholder.
- (3) On application by the company, the Commission may, if it considers appropriate in the circumstances, exempt the directors from the requirement under subrule (1) and the company from the requirement under subrule (2).

152. Accounts in annual report

- (1) An annual report of an open-ended fund company must, in respect of the financial year to which it relates, contain—
 - (a) the financial statements of the company; and
 - (b) the auditor's report on the financial statements referred to in rule 153(1).
- (2) The financial statements for a financial year must—
 - (a) give a true and fair view of the financial position and financial performance of the company as at the end of the financial year;
 - (b) comply with the accounting standards applicable to the financial statements;
 - (c) if, in relation to any of the financial statements, compliance with paragraph (b) would be insufficient to give a true and fair view under paragraph (a)—contain all additional information necessary for that purpose; and

- (d) if, in relation to any of the financial statements, compliance with paragraph (b) would be inconsistent with a requirement to give a true and fair view under paragraph (a)—
 - (i) depart from paragraph (b) to the extent necessary for it to give a true and fair view; and
 - (ii) contain the reasons for, and the particulars and effect of, the departure.
- (3) The accounting standards applicable to the financial statements for the purposes of subrule (2) are the accounting standards specified for this purpose in the OFC code.

Division 3—Auditor’s Reports and Accounting Records

153. Auditor’s report

- (1) An open-ended fund company’s auditor must prepare a report for the shareholders of the company on any financial statements prepared by the directors and included in the annual report of the company during the auditor’s term of office.
- (2) An auditor’s report under subrule (1) must state, in the auditor’s opinion—
 - (a) whether the financial statements have been properly prepared in compliance with these Rules; and
 - (b) in particular, whether the financial statements give a true and fair view of the financial position and financial performance of the open-ended fund company.

154. Auditor's opinion on other matters

- (1) In preparing an auditor's report under rule 153(1), the auditor must carry out an investigation that will enable the auditor to form an opinion as to—
 - (a) whether adequate accounting records have been kept by the open-ended fund company; and
 - (b) whether the financial statements are in agreement with the accounting records.
- (2) An open-ended fund company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that—
 - (a) adequate accounting records have not been kept by the company; or
 - (b) the financial statements are not in agreement with the accounting records in any material respect.
- (3) If an open-ended fund company's auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report.

155. Offences relating to contents of auditor's report

- (1) Every person specified in subrule (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under rule 154(2)(b) or (3) to be omitted from the report.
- (2) The persons are—
 - (a) if the auditor who prepares the auditor's report is a natural person—
 - (i) the auditor; and

- (ii) every employee and agent of the auditor who is eligible for appointment as auditor of the open-ended fund company;
 - (b) if the auditor who prepares the auditor's report is a firm—every partner, employee and agent of the auditor who is eligible for appointment as auditor of the open-ended fund company; or
 - (c) if the auditor who prepares the auditor's report is a body corporate—every officer, shareholder, employee and agent of the auditor who is eligible for appointment as auditor of the open-ended fund company.
- (3) A person who commits an offence under subrule (1) is liable on conviction to a fine of \$150,000.

156. Auditor's reports to be signed

- (1) An auditor's report must be signed—
 - (a) if the auditor is a natural person—by the auditor; or
 - (b) if the auditor is a firm or body corporate—by a natural person authorized to sign the auditor's name on the auditor's behalf.
- (2) An auditor's report must state the auditor's name.
- (3) An open-ended fund company must ensure that every copy of an auditor's report laid before the company in general meeting, or otherwise circulated, published or issued by the company, states the auditor's name.
- (4) If an open-ended fund company contravenes subrule (3), the company commits an offence and is liable on conviction to a fine at level 4.

157. Open-ended fund company must keep accounting records

- (1) An open-ended fund company must keep accounting records that comply with subrules (2) and (3).
- (2) The accounting records must be sufficient—
 - (a) to show and explain the company's transactions;
 - (b) to disclose with reasonable accuracy the company's financial position and financial performance; and
 - (c) to enable the directors to ensure that the financial statements comply with these Rules.
- (3) In particular, the accounting records must contain—
 - (a) daily entries of all sums of money received and expended by the open-ended fund company, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the company's assets and liabilities.
- (4) A director of an open-ended fund company who fails to take all reasonable steps to secure compliance with subrule (1) commits an offence and is liable on conviction to a fine of \$300,000.
- (5) A director of an open-ended fund company who wilfully fails to take all reasonable steps to secure compliance with subrule (1) commits an offence and is liable on conviction to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subrule (4), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

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- (a) was charged with the duty of ensuring that subrule (1) was complied with; and
 - (b) was in a position to discharge that duty.
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Part 8

Sub-funds—Requirements and Other Matters

158. **Implied terms implied in contracts with open-ended fund company with sub-funds**

The following terms are implied in every contract, agreement, arrangement or transaction entered into by an open-ended fund company with sub-funds—

- (a) a party contracting with the company agrees not to seek, in any proceedings or by any other means, to have recourse to any assets of any sub-fund of the company in the discharge of all or any part of a liability that was not incurred on behalf of the sub-fund;
- (b) if a party contracting with the company succeeds by any means in having recourse to any assets of any sub-fund of the company in the discharge of all or any part of a liability that was not incurred on behalf of the sub-fund, the party is liable to the company to pay a sum equal to the value of the benefit that the party obtained as a result;
- (c) if a party contracting with the company succeeds in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of the company in respect of a liability that was not incurred on behalf of the sub-fund, the party will hold those assets or the direct or indirect proceeds of the sale of those assets on trust for the company and will keep those assets or proceeds separate and identifiable as trust property.

159. Cross sub-fund investment

Despite any rule of law that prohibits or restricts a corporation from acquiring its own shares, an open-ended fund company with sub-funds may, for the account of any of its sub-funds, acquire by subscription or transfer for consideration shares of any class or classes, however described, representing other sub-funds of the same open-ended fund company.

160. New sub-funds and termination of sub-funds

- (1) An open-ended fund company must not establish a sub-fund of the company unless the Commission has given its approval for the company to establish the sub-fund.
- (2) Subrule (1) does not apply to a sub-fund of an open-ended fund company established on the date of incorporation of the company.
- (3) An open-ended fund company must not terminate a sub-fund of the company unless the Commission has given its approval for the company to terminate the sub-fund.

161. Change of name of sub-fund

An open-ended fund company must not change the name of a sub-fund of the company unless the Commission has given its approval for the company to change the name of the sub-fund.

Part 9

Arrangements and Compromises

162. Interpretation

In this Part—

arrangement (安排) includes a reorganization of a company's share capital by consolidation of shares of different classes, or by division of shares into different classes, or both;

company (公司) means an open-ended fund company.

163. Application

This Part applies if an arrangement or compromise is proposed to be entered into by a company with either or both of the following—

- (a) the creditors, or any class of the creditors, of the company;
- (b) the shareholders, or any class of the shareholders, of the company.

164. Court may order meeting of creditors or shareholders to be summoned

- (1) The Court may, on application made for the purposes of this subrule, order a meeting specified in subrule (2)(a), or a meeting specified in subrule (2)(b), or both, to be summoned in any manner that the Court directs.
- (2) The meeting is—
 - (a) if the arrangement or compromise is proposed to be entered into—

- (i) with the creditors of the company, a meeting of those creditors; or
 - (ii) with a class of the creditors of the company, a meeting of that class of creditors; and
- (b) if the arrangement or compromise is proposed to be entered into—
 - (i) with the shareholders of the company, a meeting of those shareholders; or
 - (ii) with a class of the shareholders of the company, a meeting of that class of shareholders.
- (3) Subject to subrule (4), an application for the purposes of subrule (1) may be made only by—
 - (a) in the case of a meeting of creditors—the company or any of the creditors;
 - (b) in the case of a meeting of a class of creditors—the company or any creditor of that class;
 - (c) in the case of a meeting of shareholders—the company or any of the shareholders; or
 - (d) in the case of a meeting of a class of shareholders—the company or any shareholder of that class.
- (4) If the company is being wound up, an application for the purposes of subrule (1) may be made only by the liquidator.
- (5) An application for the purposes of subrule (1) must be made in a summary way.

165. Explanatory statements to be issued or made available to creditors or shareholders

- (1) If a meeting is summoned under rule 164—

- (a) every notice summoning the meeting that is sent to a creditor or shareholder must be accompanied by an explanatory statement complying with subrules (3) and (4); and
- (b) every notice summoning the meeting that is given by advertisement—
 - (i) must include an explanatory statement complying with subrules (3) and (4); or
 - (ii) must state where and how a creditor or shareholder entitled to attend the meeting may obtain a copy of the explanatory statement.
- (2) If a notice given by advertisement states that a creditor or shareholder entitled to attend the meeting may obtain a copy of an explanatory statement, the company must provide a copy of the statement, free of charge, to a creditor or shareholder applying in the manner specified in the notice.
- (3) An explanatory statement—
 - (a) must explain the effect of the arrangement or compromise; and
 - (b) must state—
 - (i) any material interests of the company's directors, whether as directors or as shareholders or as creditors of the company or otherwise, under the arrangement or compromise; and
 - (ii) the effect of the arrangement or compromise on those interests, in so far as the effect is different from the effect on the like interests of other persons.
- (4) If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement

must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.

- (5) If subrule (1) or (2) is contravened, all of the following persons commit an offence—
- (a) the company;
 - (b) every officer of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;
 - (c) a liquidator of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;
 - (d) a trustee of a deed for securing the issue of the company's debentures who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.
- (6) A person who commits an offence under subrule (5) is liable on conviction to a fine at level 5.
- (7) If a person is charged with an offence under subrule (5) for a contravention of subrule (1), it is a defence to establish that the contravention was due to the refusal of another person, who was a director of the company or a trustee for debenture holders of the company, to supply the necessary particulars of that other person's interests.

166. Directors and trustees must notify company of interest under arrangement or compromise etc.

- (1) If a meeting is summoned under rule 164, a director of the company, or a trustee for debenture holders of the company, must give notice to the company of any matters relating to the director or trustee that may be necessary for the purposes of rule 165.

- (2) A person who contravenes subrule (1) commits an offence and is liable on conviction to a fine at level 5.

167. Court may sanction arrangement or compromise

- (1) This rule applies if the creditors or the class of creditors, or the shareholders or the class of shareholders, or both, with whom the arrangement or compromise is proposed to be entered into, agree or agrees to the arrangement or compromise.
- (2) The Court may, on application made for the purposes of this subrule, sanction the arrangement or compromise.
- (3) Subject to subrule (4), an application for the purposes of subrule (2) may be made only by—
- (a) in the case of an arrangement or compromise proposed to be entered into with the creditors of a company—the company or any of the creditors;
 - (b) in the case of an arrangement or compromise proposed to be entered into with a class of creditors of a company—the company or any creditor of that class;
 - (c) in the case of an arrangement or compromise proposed to be entered into with the shareholders of a company—the company or any of the shareholders; or
 - (d) in the case of an arrangement or compromise proposed to be entered into with a class of shareholders of a company—the company or any shareholder of that class.
- (4) If the company is being wound up, an application for the purposes of subrule (2) may be made only by the liquidator.

- (5) An arrangement or compromise sanctioned by the Court under subrule (2) is binding—
 - (a) on the company or, if the company is being wound up, on the liquidator and contributories of the company; and
 - (b) on the creditors or the class of creditors, or the shareholders or the class of shareholders, or both, with whom the arrangement or compromise is proposed to be entered into.
- (6) An order made by the Court under subrule (2) has no effect until an office copy of the order is registered by the Registrar under Part 3.
- (7) If the order of the Court amends the company's instrument of incorporation, or any resolution to which rule 97 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subrule (6) must be accompanied by a copy of the instrument of incorporation, or the resolution, as amended.
- (8) If subrule (7) is contravened, the company commits an offence and is liable on conviction to a fine at level 3.

168. Provision supplementary to rule 167(1): agreement to arrangement or compromise

For the purposes of rule 167(1)—

- (a) the creditors agree to the arrangement or compromise if, at a meeting of the creditors summoned under rule 164, a majority in number representing at least 75% in value of the creditors present and voting, in person or by proxy, agree to the arrangement or compromise;
- (b) a class of creditors agrees to the arrangement or compromise if, at a meeting of the class of creditors

summoned under rule 164, a majority in number representing at least 75% in value of the class of creditors present and voting, in person or by proxy, agree to the arrangement or compromise;

- (c) the shareholders agree to the arrangement or compromise if, at a meeting of the shareholders summoned under rule 164—
 - (i) shareholders representing at least 75% of the voting rights of the shareholders present and voting, in person or by proxy, agree to the arrangement or compromise; and
 - (ii) unless the Court orders otherwise, a majority in number of the shareholders present and voting, in person or by proxy, agree to the arrangement or compromise; and
- (d) a class of shareholders agrees to the arrangement or compromise if, at a meeting of the class of shareholders summoned under rule 164—
 - (i) shareholders representing at least 75% of the voting rights of the class of shareholders present and voting, in person or by proxy, agree to the arrangement or compromise; and
 - (ii) unless the Court orders otherwise, a majority in number of the class of shareholders present and voting, in person or by proxy, agree to the arrangement or compromise.

169. Court's additional powers to facilitate reconstruction or amalgamation

- (1) This rule applies if—

- (a) an application is made for the purposes of rule 167(2) to sanction the arrangement or compromise; and
 - (b) it is shown to the Court that—
 - (i) the arrangement or compromise is proposed for the purpose of, or in connection with, a scheme for the reconstruction of one or more companies, or for the amalgamation of 2 or more companies; and
 - (ii) under the scheme, the property or undertaking of any company concerned in the scheme, or any part of that property or undertaking, is to be transferred to another company.
- (2) If the Court sanctions the arrangement or compromise, it may, by the order or a subsequent order, make provision for any or all of the following—
- (a) the transfer of the transferor's property, undertaking or liabilities, or any part of it or them, to the transferee;
 - (b) the allotting or appropriation by the transferee of any shares, debentures, policies, or other like interests in the transferee which, under the arrangement or compromise, are to be allotted or appropriated by the transferee to or for any person;
 - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
 - (d) the dissolution, without winding up, of the transferor;

- (e) the provision to be made for any person, who within the time, and in the manner, that the Court directs, dissents from the arrangement or compromise;
 - (f) the transfer or allotting of any interest in property to any person concerned in the arrangement or compromise;
 - (g) any incidental, consequential and supplemental matters that are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order provides for the transfer of property under subrule (2)—
- (a) the property is, by virtue of the order, transferred to, and vests in, the transferee; and
 - (b) where the order so directs, the property vests freed from any charge that is to cease to have effect by virtue of the arrangement or compromise.
- (4) If an order provides for the transfer of liabilities under subrule (2), the liabilities are, by virtue of the order, transferred to, and become liabilities of, the transferee.
- (5) If the Court, by an order, makes provision for any matter under subrule (2), the order has no effect to the extent to which it purports to make the provision until an office copy of the order is registered by the Registrar under Part 3.
- (6) If the order of the Court amends the company's instrument of incorporation, or any resolution to which rule 97 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subrule (5) must be accompanied by a copy of the instrument of incorporation, or the resolution, as amended.

(7) If subrule (6) is contravened, the company commits an offence and is liable on conviction to a fine at level 3.

(8) In this rule—

liabilities (法律責任) includes—

- (a) duties of a personal character and incapable of being assigned or performed vicariously under the law; and
- (b) duties of any other description;

property (財產) includes—

- (a) rights and powers of a personal character and incapable of being assigned or performed vicariously under the law; and
- (b) rights and powers of any other description;

transferee (受讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company to which another company's property, undertaking or liabilities, or any part of it or them, is to be transferred under the scheme;

transferor (出讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company whose property, undertaking or liabilities, or any part of it or them, is to be transferred to another company under the scheme.

170. Instrument of incorporation to be accompanied by order of Court

- (1) Every copy of the company's instrument of incorporation issued by the company after an order is made for the purposes of rule 167 or 169 must be accompanied by a copy of the order, unless the effect of the order, and the effect of the arrangement or compromise to which the

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order relates, has been incorporated into the instrument of incorporation by alteration to that instrument of incorporation.

- (2) If subrule (1) is contravened, the company commits an offence and is liable on conviction to a fine at level 3.

Part 10

Receivers and Managers

Division 1—Requirements for Appointment of Receivers and Managers, etc.

171. Interpretation

In this Part—

Cap. 32 (第32章) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

relevant provisions of Cap. 32 (第32章的有關條文) means—

- (a) section 2 of Cap. 32;
- (b) section 79(1), (1A), (2) and (3) of Cap. 32;
- (c) Part VI of Cap. 32 except sections 298, 298A(3), 300(3), 300A(8) and 300B(7);
- (d) Part XIII of Cap. 32 except sections 349, 351A, 359A and 360; and
- (e) every item in the Twelfth Schedule to Cap. 32 providing for an offence under a relevant provision specified in paragraph (c);

subject provisions of Part 11 (第11部的標的條文) means the provisions referred to in rule 177(1).

172. Receivers and managers

- (1) The provisions (*subject provisions*) made for receivers and managers of the property of open-ended fund companies are the same as those relevant provisions of Cap. 32, subject to the necessary modifications and the modifications specified in rule 173.

- (2) Accordingly—
 - (a) a reference to any of the subject provisions in relation to the application of these Rules may be expressed in any document in the form of a reference to a relevant provision of Cap. 32; and
 - (b) the reference must be read subject to subrule (1).
- (3) A reference to a relevant provision of Cap. 32 (however described) in rule 173 in respect of which modification is required under that rule is a reference to a provision that is the same as the relevant provision.
- (4) A reference to a relevant provision of Cap. 32 (however described) in the subject provisions is a reference to a subject provision that is the same as the relevant provision.

173. Modifications

- (1) For the purposes of the subject provisions—
 - (a) a reference to a company in a relevant provision of Cap. 32 is to be read as a reference to an open-ended fund company;
 - (b) a reference to a member of a company in a relevant provision of Cap. 32 is to be read as a reference to a shareholder of an open-ended fund company; and
 - (c) a reference in a relevant provision of Cap. 32 to Cap. 32 (however described) is to be read as a reference to the subject provisions.
- (2) The references in section 79(1), (1A) and (2) of Cap. 32 to the provisions of Part V are to be read as a reference to the subject provisions of Part 11.

- (3) The references in section 79(1) and (1A) of Cap. 32 to section 265 are to be read as a reference to the subject provision of Part 11 that is the same as section 265 of Cap. 32.

Division 2—Notice of Appointment and Cessation of Appointment

174. Notice of appointment of receiver or manager, etc.

- (1) If a person obtains an order for the appointment of a receiver or manager of the property of an open-ended fund company or appoints such a receiver or manager under the powers contained in an instrument, the person must, within 7 days after the date of the order or of the appointment under the powers (as the case requires), deliver to the Registrar for registration, a notice including a statement of that fact.
- (2) A notice under subrule (1) must include—
- (a) the name and address of the person appointed as receiver or manager; and
 - (b) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person.
- (3) If a person enters into possession of the property of an open-ended fund company as mortgagee, the person must, within 7 days after the date of entering into possession, deliver to the Registrar for registration, a notice including a statement of that fact.
- (4) A notice under subrule (3) must include—
- (a) if the person is a natural person—

- (i) the person's name and address; and
 - (ii) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or
- (b) if the person is a body corporate—its name and the address of its registered or principal office.
- (5) A notice under subrule (1) or (3) must be—
- (a) in the specified form; and
 - (b) accompanied by the applicable fee (if any).
- (6) If a person contravenes subrule (1) or (3), the person commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

175. Notice of cessation of appointment, etc.

- (1) If a person appointed as receiver or manager under rule 174(1) ceases to act as receiver or manager, the person must, within 7 days after the date of the cessation, deliver to the Registrar for registration, a notice including a statement of the cessation.
- (2) If a person mentioned in rule 174(3) goes out of possession of the property, the person must, within 7 days after going out of possession, deliver to the Registrar for registration, a notice including a statement of that fact.
- (3) If there is any change to the particulars of the person included in a notice delivered to the Registrar under rule 174(1) or (3), the person must, within 15 days after the date of the change, deliver to the Registrar for registration, a notice including a statement of the change.

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- (4) Subrule (3) does not apply to—
 - (a) a person mentioned in rule 174(1) who has ceased to act as receiver or manager and has delivered to the Registrar a notice under subrule (1); or
 - (b) a person mentioned in rule 174(3) who has gone out of possession of the property and has delivered to the Registrar a notice under subrule (2).
 - (5) A notice under subrule (1), (2) or (3) must be in the specified form.
 - (6) If a person contravenes subrule (1), (2) or (3), the person commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
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Part 11

Winding Up and Dissolution of Open-ended Fund Companies

Division 1—Voluntary Winding Up of Open-ended Fund Companies

176. Interpretation

(1) In this Part—

Cap. 32 (第32章) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

relevant provisions of Cap. 32 (第32章的有關條文) means—

- (a) section 2 of Cap. 32;
- (b) Subdivision 2 of Division 1 of Part V of Cap. 32;
- (c) Division 3 of Part V of Cap. 32 except sections 228A(18) and (19) and 233(5), (6) and (7);
- (d) Divisions 4A and 6 of Part V of Cap. 32;
- (e) the provisions of Division 5 of Part V of Cap. 32 applicable to the voluntary winding up of a company, except sections 283(3), 286A and 296;
- (f) Part XIII of Cap. 32 except sections 349, 351A, 359A and 360;
- (g) every item in the Twelfth Schedule to Cap. 32 providing for an offence under a relevant provision of Cap. 32 referred to in paragraphs (c), (d) and (e);
- (h) Schedule 25 to Cap. 32; and

- (i) the provisions of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) (*the Winding-up Rules*) applicable to a voluntary winding up of a company except rule 117 of the Winding-up Rules.
- (2) For the purposes of paragraphs (e) and (i) of the definition of *relevant provisions of Cap. 32*—
voluntary winding up (自動清盤) means a winding up commenced under Division 3 of Part V of Cap. 32.

177. Provisions for winding up

- (1) An open-ended fund company may be wound up under this Part (*voluntary winding up*) and the provisions (*subject provisions*) made for the voluntary winding up of open-ended fund companies and related or incidental matters are the same as those relevant provisions of Cap. 32, subject to the necessary modifications and the modifications specified in Division 2.
- (2) Accordingly—
 - (a) a reference to any of the subject provisions in relation to the application of these Rules may be expressed in any document in the form of a reference to a relevant provision of Cap. 32; and
 - (b) the reference must be read subject to subrule (1).
- (3) A reference to a relevant provision of Cap. 32 (however described) in Division 2 in respect of which modification is required under that Division is a reference to a provision that is the same as the relevant provision.
- (4) A reference to a relevant provision of Cap. 32 (however described) in the subject provisions is a reference to a subject provision that is the same as the relevant provision.

Division 2—Modifications for Purposes of Division 1

178. Modifications to general references

- (1) For the purposes of the subject provisions—
 - (a) a reference to a company in a relevant provision of Cap. 32 is to be read as a reference to an open-ended fund company;
 - (b) a reference to a member of a company in a relevant provision of Cap. 32 is to be read as a reference to a shareholder of an open-ended fund company;
 - (c) a reference to the articles of a company in a relevant provision of Cap. 32 is to be read as a reference to the instrument of incorporation of an open-ended fund company; and
 - (d) a reference to Cap. 32 or the Winding-up Rules (however described) in a relevant provision of Cap. 32 is to be read as a reference to the subject provisions.
- (2) A reference to general rules in sections 243(2) and 283(4) of Cap. 32 and in the item in the Twelfth Schedule to Cap. 32 for an offence under section 283(4) is to be read as a reference to the provisions of the Winding-up Rules referred to in paragraph (i) of the definition of *relevant provisions of Cap. 32*.

179. General meeting to fill vacancy in office of liquidators

The reference in section 236(3) of Cap. 32 to the Companies Ordinance (Cap. 622) is to be read as a reference to these Rules.

180. Power to apply to court to have questions determined or powers exercised

The reference in section 255(1) of Cap. 32 to liquidator or any contributory or creditor is to be read as a reference to liquidator, or the Commission or any contributory or creditor.

181. Saving for rights of creditors and contributories to apply for winding up of OFC as unregistered company

(1) Section 257 of Cap. 32 is to be read as if “as an unregistered company” were inserted after “wound up by the court”.

(2) In this rule—

unregistered company (非註冊公司) has the meaning given by section 326 of Cap. 32.

Note—

For the winding up by the court of an OFC as an unregistered company—see Part X of Cap. 32.

182. Persons disqualified from being appointed etc. as provisional liquidator or liquidator of open-ended fund company, etc.

(1) Section 262B(3) of Cap. 32 is to be read as if—

(a) the full stop were omitted and there were substituted a semicolon; and

(b) the following were added after paragraph (f)—

“(g) the investment manager of the company, or a person who has been an investment manager of the company;

(h) the custodian of the company, or a person who has been a custodian of the company.”.

(2) Section 262D(2)(a) of Cap. 32 is to be read as if—

(a) “or” were omitted in subparagraph (viii); and

- (b) the following were added after subparagraph (ix)—
- “(x) an investment manager of the company, its holding company or its subsidiary; or
 - (xi) a custodian of the company, its holding company or its subsidiary;”.

183. Liability where proper records not kept

The reference in section 274(1) of Cap. 32 to section 373(2) and (3) of the Companies Ordinance (Cap. 622) is to be read as a reference to rule 157.

184. Information as to pending liquidations

The reference in section 284(2) of Cap. 32 to prescribed fee is to be read as a reference to applicable fee.

185. Self-incrimination in relation to direction or requirement under certain subject provisions

The reference in section 286D(3)(a) of Cap. 32 to section 349 is to be read as a reference to rule 195.

186. Electronic communications by liquidators

Section 296B(2)(d) of Cap. 32 is to be read as if—

- (a) “; or” were omitted in subparagraph (v);
- (b) the full stop were replaced by a semicolon in subparagraph (vi); and
- (c) the following were added after subparagraph (vi)—
“(vii) the Commission.”.

187. References, etc. in Companies (Winding-up) Rules

In the Winding-up Rules—

- (a) the definition of *relevant provision* in rule 2(1) is to be read as if paragraphs (a), (b) and (c) were omitted and “the subject provisions” were substituted;
- (b) the reference in rule 58(1)(d) to section 904(1) of the Companies Ordinance (Cap. 622) is to be read as a reference to section 112ZE of the Ordinance; and
- (c) the reference in rule 131 to section 606 or 607 of the Companies Ordinance (Cap. 622) is to be read as a reference to rule 85 or 86.

Division 3—Winding Up of Sub-funds

188. Winding up of sub-fund of open-ended fund company

- (1) Subject to subrules (2) and (3), a sub-fund of an open-ended fund company may be wound up under this Part as if it were a separate open-ended fund company.
- (2) A sub-fund of an open-ended fund company is to be treated as a separate legal person for the purposes of winding up of the sub-fund.
- (3) In relation to the winding up of a sub-fund of an open-ended fund company, the appointment of the liquidator and the powers and duties of the liquidator are confined to the sub-fund that is being wound up and its affairs, business and property.
- (4) For the purposes of subrule (1), a reference in the subject provisions relating to the winding up of an open-ended fund company to the following words is to be read as follows—
 - (a) open-ended fund company is to be read as a reference to the sub-fund;
 - (b) shareholder is to be read as a reference to a shareholder of the shares in the sub-fund; and

- (c) creditor is to be read as a reference to a creditor of the sub-fund.
- (5) An open-ended fund company with sub-funds may not sue or be sued in respect of a sub-fund of the company or exercise any rights of set-off in relation to the sub-fund after the appointment of a liquidator or provisional liquidator in respect of the winding up of the sub-fund.

Division 4—Miscellaneous

189. Duty of liquidator of open-ended fund company to notify Commission

- (1) If the liquidator of an open-ended fund company is required under the subject provisions to summon a general meeting of the company, in the event of the winding up of the company continuing for more than one year, the liquidator must, within 7 days of summoning the meeting, notify the Commission in writing of the meeting.
- (2) If the liquidator of an open-ended fund company is required under the subject provisions to call a general meeting of the company for the purpose of laying before the company an account of the winding up of the company, the liquidator must, within 7 days of summoning the meeting, notify the Commission in writing of the meeting.

190. Official Receiver may disclose information to Commission

The Official Receiver may disclose to the Commission any information concerning an open-ended fund company or a sub-fund of an open-ended fund company obtained or received by the Official Receiver in the course of performing the Official Receiver's functions under these Rules.

191. Registration of open-ended fund company cancelled on dissolution

The registration of an open-ended fund company is regarded as cancelled on dissolution of the company under the subject provisions or Part X of Cap. 32.

**Division 5—Dissolution of Open-ended Fund Company on
Cancellation of Registration**

192. Dissolution of open-ended fund company on cancellation of registration under section 112ZH of Ordinance

- (1) This rule applies if the Commission cancels the registration of an open-ended fund company under section 112ZH of the Ordinance.
- (2) The company is dissolved on the date of the cancellation of the registration of the company or such later date specified by the Commission in a notice of cancellation under section 112ZH of the Ordinance.

193. Dissolution of open-ended fund company on cancellation of registration under section 112ZI of Ordinance

- (1) This rule applies if the Commission cancels the registration of an open-ended fund company under section 112ZI of the Ordinance.
 - (2) The company is dissolved on—
 - (a) the date on which the cancellation has taken effect as a specified decision under section 232 of the Ordinance; or
 - (b) such later date specified by the Commission in a notice of cancellation under section 112ZI of the Ordinance.
-

Part 12

Miscellaneous

194. Application for cancellation of registration of open-ended fund company under section 112ZH of Ordinance

An application by an open-ended fund company under section 112ZH of the Ordinance—

- (a) must be made in the manner specified by the Commission; and
- (b) must be accompanied by any document or information that the Commission requires, and the applicable fee (if any).

195. Offence for false statement

- (1) A person commits an offence if, in any return, report, financial statements, certificate or any other document, required by or for the purposes of Part IVA of the Ordinance or these Rules, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in a material particular.
- (2) Subrule (1) does not apply to the making of a statement that is misleading, false or deceptive in a material particular if the making of the statement would, apart from subrule (1), also constitute an offence under any of the relevant provisions.
- (3) A person who commits an offence under subrule (1) is liable—
 - (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) This rule does not affect the operation of—
 - (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

196. Enforcement of requirements by order of Court

- (1) This rule applies if an open-ended fund company or an officer of an open-ended fund company contravenes—
 - (a) a requirement of these Rules—
 - (i) to send, deliver, supply, forward or produce a document to the Registrar; or
 - (ii) to give notice to the Registrar of any matter; or
 - (b) a requirement of Part 10 or 11 of these Rules other than a requirement in paragraph (a).
- (2) The Registrar, or a shareholder or creditor of the company, may serve a notice on the company or officer requiring the company or officer to comply with the requirement.
- (3) If the company or officer fails to make good the contravention within 14 days after service of the notice under subrule (2), the Court may, on application by the Registrar, or by a shareholder or creditor of the company, make an order—
 - (a) in the case of a contravention by the company—directing the company and any officer of the company to make good the contravention within the time specified in the order; or

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- (b) in the case of a contravention by the officer—
directing the officer to make good the contravention
within the time specified in the order.
 - (4) An order may provide that all costs of and incidental to
the application are to be borne—
 - (a) in the case of a contravention by the company—by
the company, or by any officer of the company
responsible for the contravention; or
 - (b) in the case of a contravention by the officer—by that
officer.
 - (5) This rule does not affect the operation of any Ordinance
imposing penalties on an open-ended fund company or
any officer of an open-ended fund company in respect of
the contravention.
-

Schedule

[r. 5]

Content of Incorporation Form

Part 1

Particulars of Proposed Company

1. Particulars relating to proposed company

The particulars specified for the purposes of rule 5(a) are—

- (a) the name of the proposed company; and
- (b) the address of the proposed company's registered office.

Part 2

Particulars and Statement of Proposed Directors and Process Agents

2. Particulars of directors

The particulars specified for the purposes of rule 5(b) are—

- (a) the person's present forename and surname, former forename or surname (if any), and aliases (if any);
- (b) the person's usual residential address; and
- (c) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person.

3. Statement relating to directors

The statement specified for the purposes of rule 5(b) is a statement by the person that the person—

- (a) has consented to be a director of the open-ended fund company; and
- (b) has attained the age of 18 years.

4. Particulars of process agent of non-resident director

The particulars specified for the purposes of rule 5(c) are—

- (a) the name of the process agent;
- (b) if the process agent is an individual—the process agent's usual residential address in Hong Kong;
- (c) if the process agent is a company—the address of the company's registered office in Hong Kong; and
- (d) if the process agent is a partnership—the principal place of business of the partnership in Hong Kong.

5. Interpretation of this Part

(1) In this Part—

forename (名字) includes a Christian or given name;

residential address (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this Part, to have no other permanent address; and
- (b) does not include a post office box number;

surname (姓氏), for a person usually known by a title different from the person's surname, means that title.

- (2) In this Part, a reference to a former forename or surname does not include—
- (a) in relation to a person—
 - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
 - (ii) a forename or surname that has been changed or ceased to be used for at least 20 years;
 - (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and
 - (c) in relation to a married woman, a name or surname by which she was known before her marriage.

Part 3

Statements Relating to Instrument of Incorporation

6. Statements relating to instrument of incorporation

The statements specified for rule 5(d) are—

- (a) a statement that the proposed company's instrument of incorporation has been signed by every person who is to be a director of the proposed company on the company's incorporation; and
- (b) a statement that the contents of the copy of the proposed company's instrument of incorporation, with or without the part showing the signature and the date of signing as they appear on the original document, are the same as those of the instrument of incorporation.

Securities and Futures (Open-ended Fund
Companies) Rules

L.N. 97 of 2018
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Ashley ALDER
Chief Executive Officer,
Securities and Futures Commission

14 May 2018

Explanatory Note

The purpose of these Rules is to provide for the carrying on of collective investments by means of open-ended fund companies (*OFCs*) and the regulation of *OFCs*, including company formation, the functions of the Registrar of Companies (*Registrar*), matters relating to share capital, meetings and financial statements, the requirements relating to the directors, investment managers and custodians of *OFCs* and the winding up of *OFCs*.

2. The Rules are divided into 12 Parts.

Part 1—Preliminary

3. Rule 1 provides for commencement and rule 2 sets out the definitions to be used in the Rules.

Part 2—Formation of OFC and Related Matters

4. Division 1 mainly sets out the requirements for applications for registration and incorporation by proposed open-ended fund companies, including the content of an incorporation form (rules 3 to 8).
5. Division 2 sets out the requirements for a change of name of an *OFC*.
6. Division 3 is about the capacity and powers of *OFCs* and the power of the directors to bind *OFCs*.

7. Division 4 deals with various matters relating to an OFC's instrument of incorporation. Rule 13 provides for certain requirements relating to the instrument of incorporation of an OFC, including that it must include a statement that the object of the company is the operation of the company as a collective investment scheme. Rules 14 and 15 provide for the alteration of an OFC's instrument of incorporation and notification to the Registrar on alteration.
8. Division 5 deals with matters relating to disclosure of details by OFCs in correspondence and documents and execution requirements of documents by OFCs.
9. Division 6 provides for an OFC's registered office and notification to the Registrar of change of registered office.

Part 3—Registrar's Functions and Register of Open-ended Fund Companies (*OFC register*)

10. Part 3 contains provisions relating to the functions and powers of the Registrar, the maintenance and inspection of the OFC register and the registration of documents by the Registrar.
11. Division 1 deals with the Registrar's powers to specify forms, issue guidelines and authenticate documents.
12. Divisions 2 to 5 deal with the keeping of the OFC register and the registration of documents by the Registrar, the Registrar's powers in relation to keeping the OFC register and inspection of the OFC register.

13. Division 6 deals with the Registrar's powers to issue certificates and contains provisions relating to immunity in connection with the supply of information under the Rules by electronic means.
14. Division 7 provides for the Registrar's powers to enquire whether acts that constitute an offence under rule 195 for false statements have been done. Rule 46 sets out the circumstances in which an enquiry may be made and the Registrar's powers in the enquiry. Rule 47 provides for delegation of powers of the Registrar. Rule 48 contains offence provisions and rule 49 sets out the limitations on the use of incriminating evidence obtained in the enquiry.
15. Rules 50 to 55 deal with miscellaneous matters relating to enquiries by the Registrar such as protection in relation to certain disclosures and protection of informers.

Part 4—Share Capital

16. Division 1 deals with the nature and transferability of shares of an OFC and the rights attached to shares in an OFC and the variation of those rights.
17. Division 2 deals with the transfer of shares and the transmission of shares by operation of law. Rule 60 prohibits registration of a transfer without a proper instrument of transfer. Rules 61, 62 and 63 set out the procedures relating to a transfer of shares, including registration or refusal of registration of a transfer. Rule 64 provides for the transmission of shares by operation of law. Rule 65 permits an OFC to compensate a person who suffers loss arising from a forged share transfer. Rule 66 provides that redeemed shares of an OFC are to be regarded as cancelled.

18. Division 3 contains provisions relating to the register of shareholders of an OFC. Rules 67 and 68 provide for the duty of an OFC to keep a register of shareholders and the place at which it must be kept. Rule 69 provides for the right of inspection and the right to request a copy of the register. Rule 71 provides for the power of the Court of First Instance (*Court*) to rectify the register and rule 72 provides for the evidential value of the register.

Part 5—Meetings and Resolutions

19. Division 1 contains provisions about calling general meetings.
20. Division 2 contains provisions about notice of general meetings. There are provisions dealing with the required notice period and the persons entitled to receive notice and the contents of notice.
21. Division 3 contains provisions about resolutions at meetings and proposing and passing a written resolution.
22. Division 4 provides for the duty of an OFC to keep records of resolutions and meetings.

Part 6—Operators

23. Part 6 contains provisions relating to directors, custodians, investment managers and auditors of OFCs.
24. Division 1 defines certain terms used in Part 6.
25. Division 2 contains provisions relating to directors of OFCs.

26. Subdivision 1 of Division 2 provides for the appointment for and removal of directors. Rules 100 and 101 deal with eligibility for appointment and appointment of directors. Rule 102 provides that a non-resident director must have a process agent in Hong Kong and that the OFC must keep available for public inspection a record of every process agent at the place at which the register of directors of the OFC is kept. Rule 103 deals with how a director may be removed.
27. Subdivision 2 of Division 2 contains provisions relating to registers of directors. Rule 104 provides for the duty of an OFC to keep a register of directors and sets out the particulars to be contained in the register. Rule 105 provides for the right of inspection and the right to request a copy of the register. Rule 106 provides that on the appointment of a director, the OFC must deliver to the Registrar a notice containing the director's particulars. This notice must be delivered to the Registrar through the Securities and Futures Commission (*Commission*) which must send the notice to the Registrar. Rule 107 requires an OFC to notify the Registrar if a person ceases to be a director or if there is any change in the particulars contained in the register of directors. Rule 108 imposes a duty on a director of an OFC to disclose particulars for the purpose of enabling the OFC to comply with its duties to keep a register of directors and to notify the Registrar of the director's particulars or any change in the particulars. Rule 109 requires the Registrar to keep an index of directors.
28. Subdivision 3 of Division 2 deals with a director's duty to disclose material interests in transactions, arrangements or contracts and the keeping of minutes of directors' meetings.
29. Division 3 contains provisions relating to custodians and sub-custodians of OFCs.

30. Subdivision 1 of Division 3 provides for the appointment and rights of custodians. Rule 114 provides that an appointment of a custodian by the directors of an OFC is subject to the Commission's approval. Rule 115 provides that a non-Hong Kong custodian must have a process agent in Hong Kong and that the OFC must keep available for public inspection a record of every process agent at the place at which the register of directors of the OFC is kept. Rule 116 sets out the rights of a custodian of an OFC which include the right to receive notice of any general meeting of the OFC, to attend any general meeting and to be heard on any part of the business of the meeting concerning the custodian. Rule 117 places the duty of reasonable care, skill and diligence on any sub-custodian of an OFC.
31. Subdivision 2 of Division 3 deals with changes of custodians of OFCs. Rule 118 requires an OFC to notify the Commission of a cessation of a person being a custodian of the OFC. Rule 119 provides that a person ceasing to hold office as a custodian of an OFC must give the OFC a statement of circumstances connected with the person ceasing to hold office and send a copy of the statement to the Commission. Rule 120 sets out when an OFC must send a copy of a statement of circumstances given by the custodian to the shareholders or apply to the Court for an order directing that copies of the statement not be sent to the shareholders. A person who claims to be aggrieved by the statement may also apply to the Court for the order. Rule 122 provides for the Court's powers on an application made under rule 120. Rule 124 protects a person from liability for defamation in respect of the making of a statement of circumstances.

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32. Division 4 provides for the appointment, cessation of appointment and the rights of an investment manager of an OFC. Rule 125 provides that an appointment of an investment manager by the directors of an OFC is subject to the Commission's approval. Rule 126 sets out the rights of an investment manager. Rule 127 provides that an OFC must notify the Commission if a person ceases to be an investment manager of the OFC.
33. Division 5 provides for the appointment of auditors, their rights and privileges, and termination of appointment.
34. Subdivision 1 of Division 5 deals with the appointment of auditors and their eligibility for appointment and remuneration.
35. Subdivision 2 of Division 5 sets out an auditor's rights and privileges. Rules 133, 134 and 136 set out the rights of an auditor in relation to performing duties as an auditor. Rule 137 protects an auditor from liability for defamation in respect of any statement made by the auditor in the course of performing duties as an auditor and any person from liability for defamation in respect of the publication of any document prepared by an auditor in the course of performing duties as an auditor.
36. Subdivision 3 of Division 5 provides for the termination of an auditor's appointment. Rule 138 deals with a resignation of an auditor. Rule 139 deals with a cessation of office on ceasing to be eligible, or on becoming disqualified, for the appointment. Rule 140 deals with the removal of an auditor by an OFC.

37. Subdivision 4 of Division 5 provides for an outgoing auditor's rights to requisition a general meeting of an OFC to give a statement explaining the circumstances surrounding the resignation or the auditor's removal from office.
38. Subdivision 5 of Division 5 provides for a resigning auditor's duty to give the OFC a statement of the circumstances connected with the resignation and to send a copy of the statement to the Commission (rule 144). Rule 145 provides for an OFC's duties to send a copy of a statement of circumstances to the shareholders or to apply to the Court for an order directing that copies of the statement not be sent to the shareholders. A person who claims to be aggrieved by the statement may also apply to the Court for the order. Rule 146 provides for the Court's powers on an application made under rule 145.

Part 7—Financial Statements and Financial Reports

39. Part 7 contains provisions relating to the keeping of accounting records, and the preparation and publication of financial statements and auditor's reports.
40. Division 1 deals with the concept of financial year. Rule 148 deals with when an OFC's first financial year, and every subsequent financial year, begins and ends. That is determined by reference to an OFC's accounting reference period and primary accounting reference date which are dealt with in rules 149 and 150.
41. Division 2 provides for the preparation of an OFC's annual report. Rule 152 provides that the annual report must contain the financial statements of the OFC and the auditor's report on

the financial statements. The financial statements must give a true and fair view of the financial position and financial performance of the OFC and comply with the accounting standards applicable to the financial statements.

42. Division 3 provides for the preparation of auditor's reports and the keeping of accounting records by OFCs.

Part 8—Sub-funds—Requirements and Other Matters

43. Part 8 deals with sub-funds of OFCs. Rule 158 sets out terms to be implied in contracts, agreements, arrangements or transactions entered into by an OFC with sub-funds to ensure that the assets of sub-funds are protected. Rule 159 provides that an OFC with sub-funds may, for the account of any of its sub-funds, acquire shares representing other sub-funds of the OFC. Rules 160 and 161 provide that the Commission's approval is required for the establishment, termination or change of name of a sub-fund.

Part 9—Arrangements and Compromises

44. Part 9 contains provisions relating to applications to the Court in respect of schemes of arrangement or compromise by an OFC with creditors or shareholders. Rule 163 sets out the situation to which Part 9 applies: an arrangement or compromise is proposed to be entered into by an OFC with creditors (or any class of them) or shareholders (or any class of them). Rule 164 deals with the Court's powers to order a meeting of the creditors or the shareholders (or any class of the creditors or shareholders). Rules 165 and 166 are supplementary to rule 164. Rule 167 provides for the Court's powers to sanction the arrangement or compromise if the

creditors or shareholders (or the class of creditors or shareholders) agree to the arrangement or compromise. Rule 169 provides for the Court's additional powers in the case of an arrangement or compromise proposed for a scheme for reconstruction or amalgamation of OFCs.

Part 10—Receivers and Managers

45. Part 10 provides for the appointment of receivers and managers of the property of an OFC.
46. Division 1 sets out matters relating to the appointment of receivers and managers, including circumstances in which an appointment is disqualified, notification requirements and the making and submission of a statement of affairs of the OFC. These provisions are the same as the provisions for receivers and managers in Part VI of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (*Cap. 32*).
47. Division 2 sets out the requirements for delivering to the Registrar for registration notices of appointment and cessation of appointment. Rule 174 requires delivery of notices in respect of the appointment of a receiver or manager of the property of an OFC or the entering into possession of the property of an OFC as mortgagee. Rule 175 requires delivery of notices of cessation in the case of a person ceasing to act as receiver or manager or going out of possession of the property of an OFC.

Part 11—Winding Up of OFCs

48. Part 11 provides for the voluntary winding up and dissolution of OFCs.

49. Division 1 provides for the voluntary winding up of an OFC. These provisions are the same as the provisions for voluntary winding up of companies in Part V of Cap. 32.
50. Division 2 sets out modifications to those provisions and other related provisions for the voluntary winding up of OFCs. Rule 178 sets out the modifications to general references in the provisions for winding up an OFC. These include: references to a company are to be read as references to an OFC and references to a member of a company are to be read as references to a shareholder of an OFC.
51. Rule 180 provides that the Commission may, as well as the liquidator, a contributory or a creditor of an OFC, apply to the court to have any question arising in the winding up of the OFC determined. Rule 182 adds the investment manager and custodian of an OFC to the persons specified in section 262B(3) of Cap. 32 as persons who, except with the leave of the court, are disqualified from being appointed as provisional liquidator or liquidator of an OFC.
52. Division 3 provides for the winding up of sub-funds of OFCs. Rule 188 provides that a sub-fund of an OFC may be wound up as if it were an OFC and a sub-fund is to be treated as a separate legal person for the purposes of winding up.
53. Division 4 contains miscellaneous provisions. Rule 189 provides for the duty of a liquidator of an OFC to notify the Commission if it summons a general meeting of an OFC that is being wound up. Rule 190 provides for the power of the Official Receiver to disclose to the Commission information concerning an OFC or a sub-fund of an OFC. Rule 191 provides that an OFC's registration is cancelled on dissolution of an OFC after the company is wound up.

54. Division 5 relates to the dissolution of an OFC on cancellation of the registration. Rules 192 and 193 provide that an OFC is dissolved on the date of the cancellation of the company's registration under section 112ZH or 112ZI of the Securities and Futures Ordinance (Cap. 571) (*Ordinance*).

Part 12—Miscellaneous

55. This Part contains miscellaneous provisions.
56. Rule 194 provides for how an application for cancellation of an OFC's registration under section 112ZH of the Ordinance must be made. Rule 195 sets out an offence of making a false statement in any document required under Part IVA of the Ordinance or these Rules. Rule 196 provides for the Court's power to make an order directing an OFC or an officer of an OFC to make good a contravention.

Schedule

57. The Schedule prescribes the contents of the incorporation form that must accompany an application for incorporation under section 112C of the Ordinance.