

What's inside?

Deadlines loom for compliance with the SFC's climate-related risks requirements	1
Hong Kong's first offshore funds re-domiciliation case	1 - 2
Hong Kong SFC licensing and compliance hints	2 - 3
Recent publications	3

Deadlines loom for compliance with the SFC's climate-related risks requirements

Joyce Li

Type 9 licensed corporations (**LCs**) with investment management discretion in respect of collective investment schemes (**funds**) will soon be required to comply with the Securities and Futures Commission's (**SFC's**) new climate-related risks requirements. The SFC has adopted a two-tier approach, whereby all in-scope LCs must comply with the baseline requirements. In-scope LCs that qualify as large fund managers (i.e. LCs with funds under discretionary management equal to or in excess of HK\$8 billion) are required to comply with enhanced standards in addition to the baseline requirements.

Large fund managers have until 20 August 2022 to comply with the baseline requirements and 20 November 2022 to comply with the enhanced standards. Other in-scope LCs must comply with the baseline requirements by 20 November 2022.

We have linked below the key SFC materials plus two bulletins by Deacons which describe the regime and the steps that LCs should be taking towards compliance.

Key materials:

- [Consultation Conclusions on the Management and Disclosure of Climate-related Risks by Fund Managers](#) (SFC, 20 August 2021)
- Amendments to the Fund Manager Code of Conduct – set out in Appendices B and C of the above
- [Circular](#) (SFC, 20 August 2021) with [Appendix 1](#) and [Appendix 2](#)
- [FAQs](#) (SFC, 20 August 2021)
- [Climate-related risk requirements for fund managers](#) (Deacons, 30 August 2021)
- [Unpacking the SFC's requirements on the management and disclosure of climate-related risks for fund managers](#) (Deacons, 26 October 2021)

Hong Kong's first offshore funds re-domiciliation case

Fiona Fong and Sarah Lau

The Securities and Futures (Amendment) Ordinance 2021 (the **Ordinance**), which took effect on 1 November 2021, enables a foreign corporate structured investment fund established outside of Hong Kong to re-domicile and register in Hong Kong as an open-ended fund company (**OFC**).

The move to Hong Kong is attractive to fund managers with existing offshore investment funds to take advantage of annual compliance cost savings (no annual fund or director registration fees and minimum outsourcing needs such as registered office, AML officers, overseas legal counsel and overseas auditors) and the simplicity of dealing with a single legal and regulatory jurisdiction. Also, the Securities and Futures Commission (**SFC**) currently offers a grant scheme to cover up to 70% of local service providers' fees (up to a maximum of HK\$1 million per foreign fund and subject to a quota of three funds for each SFC licensed asset manager) for the re-domiciliation process to Hong Kong as an OFC.

Deacons recently worked on the first re-domiciliation case, successfully bringing a standalone fund established in the Cayman Islands to Hong Kong as a standalone OFC. As provided under the Ordinance, there is no change in either the legal entity or the existing tracking record of the fund upon re-domiciliation, and any contracts, rights and obligations it has entered into will not be affected by making the move to Hong Kong.

The process for re-domiciliation can be split into three stages:

Stage 1 – this involves, amongst other things, ensuring that the constitutive documents of the non-Hong Kong fund and the laws of its place of incorporation do not prohibit the proposed re-domiciliation and the intended de-registration of the fund in such place of incorporation. The approval of existing shareholders would also typically be required by way of special resolutions depending on the terms of the constitutive documents.

Stage 2 – upon receiving the existing shareholders' consent for the re-domiciliation by way of continuation, an application may be made to the SFC for the re-domiciliation by submitting the requisite forms and confirmations and the proposed Instrument of Incorporation for the OFC upon re-domiciliation. Basic information on the key operators (namely the directors, the investment manager and the custodian(s)) needs to be submitted to the SFC – this is similar to a new OFC incorporation application. For a re-domiciliation application, the SFC requires additional documents and confirmation, such as a confirmation that the re-domiciliation approval in stage 1 has been obtained. For further details, you may refer to the application form and information checklist for registration of a non-Hong Kong fund corporation as a re-domiciled OFC which are available from the SFC's website (<https://www.sfc.hk/en/Regulatory-functions/Products/Open-ended-fund-companies>).

If the SFC is satisfied with the application, it will then register the non-Hong Kong fund as an OFC and will notify the Register of Companies (**RoC**). The RoC will issue a certificate of re-domiciliation, and a business registration with the Inland Revenue Department will be conducted in the same manner. The de-registration process in the fund's original place of incorporation can also commence and must be completed within 60 days (subject to any extension to be granted upon application to the SFC).

Stage 3 – which can take place concurrently with Stage 1 and Stage 2, the offering documents of the entity need to be updated and be issued to shareholders to reflect the new OFC structure and to comply with disclosure requirements under the Securities and Futures Ordinance, the Code on Open-Ended Fund Companies and the Securities and Futures (Open-ended Fund Companies) Rules. A copy of the offering documents needs to be filed with the SFC as soon as reasonably practicable following its issuance.

Hong Kong SFC licensing and compliance hints

Lilian Lai

Mandatory online submission of corporate licence applications

From 1 April 2022, the Securities and Futures Commission (**SFC**) has ceased accepting paper corporate licence application forms or regulatory filings. All corporate and individual licence applications, notifications and regulatory filings must be submitted online via the digitalised licensing platform on WINGS.

Guidance on handling client complaints

Noting the large number of complaints against intermediaries and market activities in the recent years, and cases where licensed corporations failed to handle client complaints appropriately, the SFC issued a [circular](#) on 31 March 2022 to remind licensed corporations of the requirement to have policies and procedures in place to handle complaints in a timely and appropriate manner. The expected regulatory standards, techniques and good practices for handling client complaints are set out in the [appendix](#).

In the circular, the SFC reminded senior management of the following expected standards of conduct, and their primary responsibility to ensure adherence to the internal controls:

- (i) A Manager-In-Charge should be designated to oversee complaint handling and be available to respond to the SFC's enquiries on the complaint handling practice.
- (ii) Dedicated resources should be allocated to handle client complaints e.g. forming a complaints committee, particularly for licensed corporations servicing a large retail client base.
- (iii) Serious cases should be escalated internally to senior management, and reported to the SFC without delay if it involves suspected breaches of regulatory requirements.

Be aware of business email compromise

The SFC issued a [circular](#) on 24 March 2022 alerting licensed corporations of business email compromise whereby fraudsters pretend to be known business contacts and make seemingly legitimate requests to obtain confidential information or instruct fund transfers. Licensed corporations are reminded to establish policies and procedures to vigilantly monitor and mitigate such risks. Such measures may include verifying clients' identities, contact information and their requests independently, and adopt surveillance tools to block suspicious e-mails and unauthorised access to internal systems.

Recent publications

[CSSF FAQs on measures to address liquidity due to Ukraine/Russia conflict](#)

[Profits tax alert: Interposing business model held not taxable as profits-generating activity](#)

Want to know more?

Jeremy Lam

Partner

jeremy.lam@deacons.com

+852 2825 9732

Su Cheen Chuah

Partner

sucheen.chuah@deacons.com

+852 2825 9651

Pinky Siu

Partner

pinky.siu@deacons.com

+852 2825 9568

Taylor Hui

Partner

taylor.hui@deacons.com

+852 2826 5368

Fiona Fong

Partner

fiona.fong@deacons.com

+852 2826 5316

Joyce Li

Partner

joyce.li@deacons.com

+852 2825 9318

Alwyn Li

Partner

alwyn.li@deacons.com

+852 2825 9627

Ming Chiu Li

Partner

mingchiu.li@deacons.com

+852 2825 9752

Scott Carnachan

Consultant

scott.carnachan@deacons.com

+852 2825 9265

The information contained herein is for general guidance only and should not be relied upon as, or treated as a substitute for, specific advice. Deacons accepts no responsibility for any loss which may arise from reliance on any of the information contained in these materials. No representation or warranty, express or implied, is given as to the accuracy, validity, timeliness or completeness of any such information. All proprietary rights in relation to the contents herein are hereby fully reserved.

0422 © Deacons 2022
www.deacons.com