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## A reminder to OFCs about annual reports

Fiona Fong and Thean Chiap Khoo

Open-ended fund companies (**OFCs**) with a financial year ending on 31 December should plan ahead for the annual report deadline in 2024. The key date is 30 April 2024.

By this date, unless otherwise exempted, the OFC must publish and file with the Securities and Futures Commission (**SFC**) its annual report, which contains financial statements and the auditor's report. The annual report should also be made available to shareholders on request, free of charge.

According to the Securities and Futures (Open-Ended Fund Companies) Rules, an OFC's directors must prepare an annual report for each financial year. The SFC further requires that annual reports are to be published and filed with the SFC within four months of the end of the OFC's financial year.

Where an OFC, or sub-fund, has not been launched and does not have any investors, the SFC may, upon application, grant an exemption from the annual report requirements. If an OFC falls under this category, it may apply for an exemption from the SFC as soon as the financial year has ended. The SFC encourages OFCs to consult the relevant case officer in advance should they wish to apply to an exemption.

## Filing made easy for LPFs and OFCs

Fiona Fong and Thean Chiap Khoo

The Companies Registry (**CR**) will soon launch the next generation of Integrated Companies Registry Information System (**Revamped ICRIS**). The Revamped ICRIS aims to improve customers' experience through a one-stop online integrated portal for all sorts of interactions with the CR. The Revamped ICRIS will cover company searches, as well as document delivery and registration under various Ordinances including those applicable to open-ended fund companies (**OFCs**) and limited partnership funds (**LPFs**).

Effective from 27 December 2023, upon the launch of the Revamped ICRIS, OFCs and LPFs should utilise the new e-Services Portal ([www.e-services.cr.gov.hk](http://www.e-services.cr.gov.hk)) for all electronic document submissions and registrations. Similar to the current e-filing arrangement, documents to be delivered to the CR for registration under the Securities and Futures (Open-ended Fund Companies) Rules (Chapter 571AQ) and the Limited Partnership Fund Ordinance (Chapter 637) must be in the prescribed electronic or PDF templates, or in PDF files.

Electronically submitted documents must be authenticated, approved or certified electronically by specified persons. For such purposes, the digital signature, or the password of the user account registered with the e-Services Portal, of such person must be affixed to or included in the document.

CR's current e-Registry portal will then be superseded.

## Hong Kong SFC licensing and compliance hints – Some of the key obligations of fund managers when dealing with complex products

Lavita Pong

### Client relationships

The term “client” is defined in the Securities and Futures Ordinance (**SFO**) to mean any person to whom an SFC-licensed corporation provides a form of regulated services.

Where an SFC-licensed fund manager is involved with a private fund which qualifies as a complex product (**Fund**) and either (a) solicits or recommends the Fund to a professional investor (**PI**) or (b) in the absence of any solicitation or recommendation, provides a form of regulated services to a PI in relation to the Fund (for example, execution-only services), in both cases, the PI will be considered as a client of the fund manager under the SFO and hence the SFC Code of Conduct.

### Investor protections such as suitability requirement

Based on the client relationship arising from the above, the conduct requirements under the SFC Code of Conduct including suitability obligations under 5.2 or the suitability requirement relating to complex products under 5.5 would apply to all of the following types of PIs (as well as non-PIs):

- non-consenting Corporate Professional Investors (**CPIs**);
- CPIs that do not pass the relevant CPI assessment; and
- Individual Professional Investors.

The key determining factor as to whether to comply with 5.2 or 5.5 of the SFC Code of Conduct is whether there is a solicitation or recommendation, see the SFC's FAQs below.

FAQ#35 of the FAQs on Guidelines on Online Distribution and Advisory Platforms (the Guidelines) and Paragraph 5.5 of the Code of Conduct (click [here](#)) is extracted below and it is self-explanatory.

*“Q35: If an intermediary (a) solicits the sale of or recommends a complex product; or (b) provides discretionary account services (which involves the making as well as execution of recommendation on a complex product) to a client, does it need to comply with the requirements applicable to complex products under paragraph 5.5 of the Code of Conduct?”*

*A: If an intermediary solicits the sale of or recommends a financial product or provides discretionary account services to a client, it should comply with paragraph 5.2 of the Code of Conduct and ensure that the product is suitable for the client regardless of whether it is complex or non-complex. In this case, there is no further need for the intermediary to comply with paragraph 5.5 of the Code of Conduct. For the avoidance of doubt, intermediaries should comply with all applicable regulatory requirements, including the FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons [of 23 December 2020 (click [here](#))], and provide all relevant material information to clients when discharging their suitability obligations.”*

### Requirement to enter into a written agreement with clients

Even though an investor above may have signed a Fund's subscription documentation, where a fund manager's interactions with such investor amounts to providing a regulated service, it is still required to enter into a separate written agreement with the investor in order to meet the minimum content requirements under paragraph 6 of the Code of Conduct.

The fact that the investor has signed a contract with the Fund as opposed to the fund manager is not a relevant factor in determining whether a client relationship exists under the SFO.

The manager can consider alternative ways in order to comply with the requirement that it needs to enter into a 'written agreement with its client' by making use of any separate documents which such investor will need to sign as part of the interactions with the fund manager, for example, the investor risk profile questionnaire.

### Customer due diligence measures

Separately, the SFC has stated in the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (**SFC AML Guideline**) that for the securities sector, the definition of “customer” as defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AML Ordinance**) adopts the definition of “client” in the SFO.

### Onboarding CDD standards and reliance on an overseas intermediary

A fund manager will also have to conduct customer due diligence (**CDD**) on its “customers” / “clients” as described above, and the Hong Kong CDD standards have to be complied with, unless the manager can rely on a qualified overseas intermediary to conduct onboarding CDD on its behalf in accordance with both section 18 of Schedule 2 of the AML Ordinance and 4.15 of the SFC AML Guideline.

The ability to rely on an overseas intermediary to conduct CDD in these circumstances requires numerous requirements to be satisfied.

Such reliance however does not extend to the ongoing CDD obligations of the fund manager because the HK ongoing CDD obligations under the AML Ordinance and SFC AML Guideline must be strictly complied with, although the fund manager can still rely on that overseas intermediary to provide administrative support (see SFC AML FAQ #18 of 25 May 2023 (click [here](#))).

Finally, the fund manager needs to conduct ongoing monitoring of the performance of any overseas intermediary appointed by it, which includes sample testing of the intermediaries CDD measures. Notwithstanding the appointment of any overseas intermediary, the manager remains ultimately liable for compliance with the CDD obligations.

## Recent publications

[The new regime for reciprocal enforcement of judgments between the Mainland and Hong Kong set to go live](#)

[Quick guide on offering tokenised public funds in Hong Kong](#)

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