

**Date:** 19 June 2014

**To:** Financial Services Branch  
Financial Services and the Treasury Bureau  
[via email: [ofc@fstb.gov.hk](mailto:ofc@fstb.gov.hk)]

**From:** Hong Kong Trustees' Association

**Subject:** HKTA Submission to the FSTB on the Consultation on Open-ended Fund Companies

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### **Overall Comments**

HKTA welcomes the proposals by Financial Services and the Treasury Bureau (“FSTB”) to enhance Hong Kong’s legal infrastructure for investment fund vehicles by introducing a new open-ended fund company (“OFC”) structure to complement the existing unit trust structure in order to provide market participants with additional options and more flexibility in establishing and operating funds in Hong Kong.

In our view,

- For a level playing field, the requirements for publicly offered OFCs should be broadly in line with the SFC authorised unit trusts which are governed by the Code on Unit Trusts and Mutual Funds (“UT Code”).
- Under the current Unit Trust Handbook, a trustee company registered under part VIII of the Trustee Ordinance qualifies to act as trustee/custodian in the current regime, the same should apply to the new OFC regime where a registered trust company can qualify as the custodian.
- Based on this principle, please find below our comments with respect to the relevant questions (i.e. 3, 4, 7, 10, 14, 15, 16, 18, 20) raised in the consultation paper.

## **Response to Questions**

**Question 3: Do you think the proposed scope of the code and guidelines could adequately cater for the OFC regime? If not, what other essential features should the codes and guidelines include?**

*Whilst there is a need to introduce an OFC Code listing out the requirements with reference to other similar international standards as guidelines for adoption by private OFC funds, we consider that for publicly offered OFC funds, the current Code on Unit Trusts and Mutual Funds (“UT Code”) should be adopted and where appropriate introducing explanatory notes to extend the reference of the “mutual fund corporations” to OFC.*

*Reasons as follows:*

- 1. level playing field for both publicly offered unit trusts and OFC;*
- 2. compliance with one single regulatory “Code” by the stake holders and service providers and thus enhancing efficiency and reducing operational costs;*
- 3. easy understanding by the investors that the publicly offered funds are subject to same regulatory Code notwithstanding that they may be in different corporate structure.*

**Question 4: Do you agree with the proposal that the SFC should be the primary regulator of OFCs?**

*Agree with the proposal that the SFC should be the primary regulator of OFC.*

**Question 7: Do you think the features as set out above comprise the essential features of an OFC? If not, what other essential features should an OFC possess?**

*With reference to our answers to Question 3 above, the trustees who are currently acceptable by the SFC to act as trustee for unit trusts should also be acceptable to act as Custodian to the OFC with power to delegate the safe-keeping of assets for OFC to other co-custodians/sub-custodians.*

**Question 10: Do you think the proposal to require a custodian in the OFC structure could foster the protection of investors in an OFC? Do you consider the proposed requirements and duties for a custodian adequate to meet this objective?**

*With reference to our answers to Question 3 and 7 above, the current requirement of the trustee/custodian spelt out under Chapter 4 of the UT Code would be adequate to meet the objective of protection of investors in an OFC. The trustees who are currently acceptable by SFC to act as trustee for unit trusts should also be acceptable to act as Custodian to the OFC with power to delegate the safe-keeping of assets for OFC to other co-custodians/sub-custodians.*

**Question 14: Do you consider the proposed investment scope and strategies could provide a competitive framework for OFCs in Hong Kong with sufficient safeguards for investor protection?**

*With reference to our answers to Question 3, for publicly offered funds, we consider the investment: core requirement under Chapter 7 of the UT Code should be adopted.*

**Question 15: Do you agree with the proposed arrangements in relation to the offer of OFC shares?**

*With reference to our answers to Question 3, for publicly offered funds, we consider that the disclosure requirements under the UT Code be adopted to the extent that it is practicable.*

**Question 16: Do you agree with the proposed arrangements regarding corporate administration?**

- *An OFC should comply with the relevant statutory corporate filing.*
- *For publicly offered funds, other reports, accounts filing, changes of the OFC documents etc should adopt the relevant provisions of the UT Code and*

*guidelines to the extent that it is practicable. The filing requirement with the SFC should not be more onerous than is required of a public unit trust.*

- *We do not consider that it is necessary that an OFC domiciled in Hong Kong must prepare its financial statements in accordance with the Hong Kong Financial Reporting Standards (“HKFRS”). There should be flexibility for the board of directors of the OFC to decide which financial reporting standard to follow, e.g. the International Financial Reporting Standards (“IFRS”).*

**Question 18: Do you agree with the proposed arrangements in relation to protected cells?**

- *Agree with the proposed arrangements in relation to protected cells.*
- *It would be helpful for clarification that ring fencing would not be required for different share classes within a sub-fund and further guidance be issued on merger/amalgamation/restructure of the OFC funds/sub-funds.*

**Question 20: Do you have any comments on the proposed termination, winding up and dissolution arrangements for OFCs, including the proposed power to be given to the custodian to petition to the court to wind up an OFC?**

*Dissolution in other circumstances:*

- *It would be helpful to stipulate such “other circumstances”. The usual provisions and circumstances as defined under the “Termination Clause” of the trust deed of a unit trust may be used as a reference.*
- *If the provisions and circumstances of winding up and termination have been clearly defined, we suggest the requirement to appoint a liquidator should be waived so that the process and timeline for winding up of an OFC would be compatible with the termination of a unit trust.*