

Client Alert

Financial Services

1 August 2023

Appointment of multiple custodians possible for public open-ended fund company

Pinky Siu and Calvin Li

One of the advantages of adopting the open-ended fund company (**OFC**) for a Hong Kong fund is the flexibility to appoint different custodians for different sub-funds within the same OFC. This position is confirmed in Q23 of the Frequently Asked Questions relating to Open-ended Fund Companies (**FAQ**) published by the Securities and Futures Commission (**SFC**), which supplements the SFC's requirements on private OFCs appointing multiple custodians.

Such arrangement for appointing multiple custodians is also possible for public OFCs (i.e. funds which are authorised by the SFC for sale to the public in Hong Kong). In terms of custody of assets, a public OFC is expected to comply with the requirements in the FAQ, in particular, the Instrument of Incorporation (**Instrument**) and/or custodian agreement of the OFC should include provisions achieving the following:

- (i) ensure that all scheme property must be duly entrusted to the custodian(s) of the OFC;
- (ii) demarcate the rights and liabilities of each custodian clearly as to the respective scheme property that each custodian is entrusted with and responsible for; and
- (iii) provide for a default mechanism to place into custody any scheme property potentially arising at the umbrella-level OFC (such as any assets which may be attributed to the umbrella due to accounting treatment, or otherwise arising) to a specified custodian of the OFC.

Deacons recently worked on the first public OFC with multiple custodians, which appoints different custodians for its sub-funds. The SFC expects each custodian to be appointed as the custodian of the OFC at the umbrella level in addition to being appointed as the custodian of the specific sub-fund it is appointed. Since a public OFC is authorised under the Code on Unit Trusts and Mutual Funds, all custodians are expected to take collective responsibility of the regulatory obligations that cannot be attributed specifically to a sub-fund. Examples of such collective regulatory obligations include certification of umbrella-level amendments to the Instrument, confirmation in the annual report whether the management company has managed the OFC in accordance with the Instrument, etc.

Applicants are encouraged to engage with the SFC early if they intend to adopt multiple custodians structure for a public OFC.

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

Isabella Wong
Partner
isabellahm.wong@deacons.com
+852 2825 9577

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

Scott Carnachan
Consultant
scott.carnachan@deacons.com
+852 2825 9265

Alwyn Li
Partner
alwyn.li@deacons.com
+852 2825 9627

Ming Chiu Li
Partner
mingchiu.li@deacons.com
+852 2825 9752

Vincci Ip
Partner
vincci.ip@deacons.com
+852 2826 5335

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.

0823 © Deacons 2023

www.deacons.com