

Oversight

SFC announces subsidy for OFCs

May 2021

Introduction

The Securities and Futures Commission (SFC) announced on 10 May the much-anticipated details of the grant scheme available for open-ended fund companies (OFCs) and real estate investment trusts (REITs) (Grant Scheme) which, like its Singapore equivalent for Variable Capital Companies (VCCs), subsidises the establishment of locally domiciled fund vehicles. At the same time as the issuance of the Grant Scheme the SFC published a list of Frequently Asked Questions on the Grant Scheme (FAQs) which provide greater detail.

The Grant Scheme is available for application for three years, from 10 May 2021 to 9 May 2024, on a first-come-first-served basis. The government has allocated HK\$270 million to the Grant Scheme, and the availability period might end sooner if the funding has been fully committed. The grant amount is up to 70% of the eligible expenses (as defined below) for each application, subject to, in the case of the OFCs, a cap of HK\$1 million per OFC and a maximum of three OFCs per manager. In the case of REITs (which must be listed on The Stock Exchange of Hong Kong Limited (SEHK) and authorised by the SFC), the Grant Scheme provides a cap of HK\$8 million per REIT. As usual, each application for the Grant Scheme will be considered on a case-by-case basis, and the SFC may request from time to time additional supporting information deemed necessary for the purpose of determining the merits of the application.

This **Oversight** explores the key features of the Grant Scheme as applicable to OFCs and compares it with the VCC grant scheme in Singapore introduced last year (VCC Scheme). For more information about the OFC regime launched on 30 July 2018, please refer to the [Oversight published in September 2020](#).

As at 18 May 2021, there were 14 OFCs registered in Hong Kong. By contrast, according to a recent press release by the Monetary Authority of Singapore (MAS) on 27 April 2021, more than 260 VCCs have been registered in Singapore since the launch of the VCC regime in January 2020.

OFCs

Eligible Applicants

Managers of an OFC who have successfully incorporated the OFC or re-domiciled a non-Hong Kong fund corporation to Hong Kong as an OFC on or after 10 May 2021 may apply for the Grant Scheme on behalf of the OFC; the effective date of 10 May 2021 means that the Grant Scheme is not available retrospectively to existing OFCs. Managers of OFCs must by definition be SFC licensed corporations under the Securities and Futures Ordinance (SFO) but the OFCs do not need to be authorised for retail distribution under the SFO – in other words the Grant Scheme is available to both private and public OFCs.

Eligible Expenses

The eligible expenses must be expenses paid to Hong Kong-based service providers in relation to the incorporation or re-domiciliation of the OFC. As set out in the FAQs, the service providers include (but are not limited to) law firms or legal advisors, auditors, accountants, tax advisors, fund administrators, corporate service providers, company secretaries, regulatory consultants and listing agents (in the case of listed OFCs). For a full list of examples of eligible expenses, please see “Comparison with the VCC Scheme in Singapore” below.

The following categories of expenses are excluded:

- statutory fees, such as registration or application fees to the SFC and expenses incurred in relation to an application to the SFC for the licensing or registration under the SFO of the fund manager;
- audit fees paid to accounting firms in relation to the annual audit review; and
- costs incurred in the establishment of (subsequent) sub-funds under a pre-existing umbrella OFC, and listing fees to the SEHK (i.e. whilst OFC ETFs are eligible in general, listing fees are not reimbursable).

Application Process

The application form for the Grant Scheme (Application Form) together with the requisite supporting information and documents, including the certificate of incorporation or re-domiciliation issued by the Companies Registry of Hong Kong and proof of payment (altogether, the Supporting Information), must be submitted within three months from:

- (for private OFCs) the date of certificate of incorporation or re-domiciliation; or
- (for public OFCs) the SFC authorisation date under Section 104 of the SFO.

For public OFCs, a Confirmation of Intention to Apply for a Grant under the Grant Scheme (Confirmation) should also be submitted to the SFC as part of the fund's authorisation application. In the Application Form, the applicant would be asked to specify the date of submission of the Confirmation.

In terms of the formalities, it is not a requirement to submit hard copies of the Application Form, the Confirmation and the Supporting Information. For the signing requirement, the SFC accepts either:

- submission of an un-signed copy of the Application Form (and for public OFCs, the Confirmation) together with an email confirmation from a person who meets the signatory requirements (Signatory) that all information and, where applicable, confirmations and undertakings contained therein are true and accurate; or
- submission of a scanned copy of the Application Form (and for public OFCs, the Confirmation) signed by the Signatory.

It should be noted that a Signatory is expected to be a senior-ranking executive of the OFC manager (or an appropriate person designated by such senior-ranking executive) with overall responsibility of the Grant Scheme application.

Where it is satisfied that all relevant documents have been submitted and that the application is within the timeframe as set out above, in general the Investment Products Division of the SFC will issue an acknowledgement letter within two business days from the date of receipt of the Application Form and the Supporting Information as an indication that it will process the application accordingly. If, on the other hand, the SFC considers that the documents submitted are incomplete, not in good order or otherwise not suitable for clearance, it will return the package to the applicant and the application will not be taken up. Therefore, in order to secure priority (see below) and in general to facilitate the application process, it is important for the applicants to ensure that the Application Form, the Supporting Information and the Confirmation (if applicable) are duly completed.

Priority

In view of the limited availability of the grant, priority is an important issue. Interest in establishing OFCs has increased following the publication of the details of the Grant Scheme; it is anticipated that there will be a growing momentum on the Grant Scheme in the future. Eligible applicants are therefore encouraged to submit the application earlier to the extent practicable.

The applications will be processed on a first-come-first-served basis based on the following:

- (for private OFCs) the submission time of the Application Form; or
- (for public OFCs) the time of take-up of the fund's authorisation application where the Confirmation is submitted.

Minimum Operation Condition

After obtaining the grant, the OFC cannot commence winding-up or apply for termination of registration within two years from the date of its incorporation or re-domiciliation. Otherwise, the government reserves the right to claw back the grant awarded.

Comparison with the VCC Scheme in Singapore

The Singapore Variable Capital Companies Act (VCC Act) came into force in January 2020. Both Hong Kong and Singapore have similar motives in that each wants to promote the respective jurisdiction as a leading asset and wealth management centre. A non-exhaustive comparison between the Grant Scheme and the VCC Scheme in terms of their key features is shown in the table below.

In brief, the Grant Scheme largely matches, in terms of incentive, the VCC Scheme in most respects. In some areas, the Grant Scheme is more appealing – for example, the maximum cap of the grant for the Grant Scheme is higher than that of the VCC Scheme. On the other hand, the VCC Scheme offers more flexibility in terms of the minimum operation condition – which might make the scheme more attractive to, for example, start-up fund corporations investing in non-traditional assets, hence being exposed to greater uncertainties.

	Grant Scheme	VCC Scheme
Grant amount	<p>70% of the eligible expenses, subject to a cap of HK\$1 million per OFC; and a maximum of 3 OFCs per manager.</p> <p>The scheme only covers expenses relating to the incorporation or re-domiciliation of OFCs. Costs of setting up sub-funds, without accompanying any incorporation or re-domiciliation of OFCs, will not be reimbursed.</p>	<p>70% of the eligible expenses, subject to a cap of S\$150,000 (equivalent to around HK\$850,000) per VCC; and a maximum of 3 VCCs per manager.</p> <p>Similar to the Grant Scheme, the VCC Scheme only covers expenses relating to the incorporation or re-domiciliation of VCCs. Costs of setting up sub-funds, without accompanying any incorporation or re-domiciliation of VCCs, will not be reimbursed.</p>

	Grant Scheme	VCC Scheme
Eligible applicants	<p>Managers who have successfully incorporated an OFC or re-domiciled a non-Hong Kong fund corporation in Hong Kong as an OFC on or after 10 May 2021.</p>	<p>Qualifying Fund Managers who have successfully incorporated a VCC or have successfully re-domiciled a foreign fund to Singapore as a VCC.</p> <p>A Qualifying Fund Manager includes a holder of a capital markets service license for fund management, a registered fund management company, or an entity which is exempt from licensing or registration but which is nonetheless regulated by the MAS, such as banks licensed under the Singapore Banking Act or companies licensed under the Singapore Insurance Act.</p> <p>The VCC Scheme was launched concurrently with coming into force of the VCC Act and expires on 15 January 2023.</p>
Eligible expenses	<p>Expenses paid to Hong Kong-based service providers for work done in Hong Kong in relation to the incorporation or re-domiciliation of the OFC. Examples include the following:</p> <p>Legal services</p> <ul style="list-style-type: none"> Fees charged by law firms or legal advisers for legal work in relation to the incorporation or re-domiciliation of an OFC, including (i) the drafting of legal documents and offering documents of the OFC and (ii) work done in relation to the authorisation of an OFC with the SFC <p>Accounting and/or tax services</p> <ul style="list-style-type: none"> Fees charged by auditors, accountants or tax advisors for accounting and/or tax services in relation to the incorporation or re-domiciliation of an OFC 	<p>Expenses paid to Singapore-based service providers for work done in Singapore in relation to the incorporation or re-domiciliation of the VCC. Examples include the following:</p> <p>Legal services</p> <ul style="list-style-type: none"> Fees charged by law firms for legal work in relation to the incorporation or registration of a VCC, including but not limited to the drafting of legal documents (e.g. VCC constitution, offering memorandum or equivalent, subscription agreements, investment management agreements etc.) Work done in relation to the authorisation or notification of the VCC's prospectus with the MAS <p>Tax services</p> <ul style="list-style-type: none"> Fees charged by tax advisors, fund administrators, corporate secretaries, law firms or other Singapore-based service providers for tax advice connected with the incorporation or registration of a VCC, including but not limited to tax opinions on the incorporation or registration of a VCC as well as relating to any tax incentive applications

	Grant Scheme	VCC Scheme
Eligible expenses	<p>Administration and regulatory compliance services</p> <ul style="list-style-type: none"> • Fees charged by fund administrators, corporate service providers or company secretaries for incorporation/ re-domiciliation services in relation to the set-up of an OFC, including work done for all filings necessary for the incorporation/ re-domiciliation or registration of an OFC • Fees charged by regulatory consultants for work done in relation to the incorporation/ re-domiciliation of an OFC and the authorisation of an OFC with the SFC <p>Listing services (for listed OFCs)</p> <ul style="list-style-type: none"> • Fees charged by listing agents in the case of listed OFCs 	<p>Administration and regulatory compliance services</p> <ul style="list-style-type: none"> • Fees charged by fund administrators, corporate service providers or company secretaries for work done including for incorporation or registration services in relation to the set up of a VCC, appointment of directors and all filings necessary for the incorporation or registration of the VCC • Fees charged for work done by regulatory consultants in relation to the authorisation or registration of the VCC with MAS or setting up a compliance framework or any services listed above
Excluded expenses	<p>The following categories of expenses are excluded:</p> <ul style="list-style-type: none"> • statutory fees, such as registration or application fees to the SFC; • expenses incurred in relation to an application to the SFC for the licensing or registration of a manager; • audit fees paid to accounting firms in relation to the annual audit review; and • costs incurred in the establishment of (subsequent) sub-funds under a pre-existing umbrella OFC, and listing fees to the SEHK 	<p>The following categories of expenses are excluded:</p> <ul style="list-style-type: none"> • statutory fees, including all filing fees; • fees for work done in relation to the licensing of the Qualifying Fund Manager; • costs incurred in the establishment of sub-funds without any accompanying incorporation or transfer of registration of a VCC (e.g. establishing subsequent sub-funds under a pre-existing umbrella VCC); • fees for work performed outside Singapore; and • incidentals, such as printing expenses
Application period	<p>Within three months from:</p> <ul style="list-style-type: none"> • (for private OFCs) the date of certificate of incorporation or re-domiciliation; or • (for public OFCs) the SFC authorisation date 	<p>Within three months from:</p> <ul style="list-style-type: none"> • (for newly incorporated VCCs) the date on the notice of incorporation issued by the Accounting and Corporate Regulatory Authority (ACRA); or • (for foreign corporate entity re-domiciled in Singapore as VCC) the date of ACRA's approval of the VCC's evidence of de-registration in the foreign jurisdiction

	Grant Scheme	VCC Scheme
Minimum operation period	<p>Two years from the date of its incorporation or re-domiciliation.</p> <p>The Government reserves the right to claw back the grant awarded if the OFC commences winding-up or applies for termination of registration within the two-year period.</p>	<p>One year from the registration date, as specified in the notice of incorporation or notice of transfer of registration issued by ACRA.</p> <p>If the VCC is wound up within the first year from the registration date, the Qualifying Fund Manager must inform the MAS promptly and in any event no later than by the end of one week from the date of winding-up application or the passing of resolution for a voluntary winding-up.</p> <p>The MAS reserves the right to claw back the grant awarded if the VCC is wound up within the one-year period, and/or if the Qualifying Fund Manager fails to inform MAS of the winding up within the one-week timeframe.</p>
Other requirements	<p>N/A, but note that the FAQs may be updated and revised from time to time, possibly setting out other expectations from the SFC.</p>	<p>The set up of the VCC cannot be simultaneously funded by other government grants/ incentives with respect to the same set of qualifying costs and commitments.</p>

Conclusion

Although the Grant Scheme follows in the wake of the highly successful VCC Scheme (on which it is clearly based), it is to be welcomed. The Grant Scheme is yet another example of Hong Kong seeking to build a more domestic fund management industry and to encourage the use of Hong Kong domiciled fund vehicles. Seen together with other helpful initiatives, including the unified profits tax fund exemption, the launch of limited partnership funds and the recently created carried interest tax concession regime, Hong Kong is seeking increase its competitive advantage.

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