
**Approvals and Notifications Required
in Relation to Transfers of Shares of
a Licensed Corporation in Hong Kong**

CHARLTONS
易周律師行
Solicitors

Hong Kong

Shanghai

Beijing

Yangon

www.charltonslaw.com

APPROVALS AND NOTIFICATIONS REQUIRED IN RELATION TO TRANSFERS OF SHARES OF A LICENSED CORPORATION IN HONG KONG

Executive Summary

In Hong Kong, a corporation is not permitted to carry out regulated activities (as defined in Schedule 1 hereto) unless approval of the Securities and Futures Commission (the “SFC”) is obtained under section 116 of the Securities and Futures Ordinance (Cap. 157 of the laws of Hong Kong) (the “SFO”). A corporation which has obtained SFC approval to carry on one or more regulated activities is referred to in this note as a “licensed corporation”.

As an ongoing obligation, when there is a change of certain specified information of a licensed corporation, either prior approval of the SFC is required to be obtained, or in other circumstances, notification to the SFC is required, depending on the type of information. The relevant changes which require prior approval or notification, and the relevant procedures in relation thereto are set out in the SFO, the Securities and Futures (Licensing and Registration) (Information) Rules (Cap 157S of the laws of Hong Kong) (the “**Information Rules**”) and the Licensing Information Booklet issued by the SFC in August 2003 (the “**Booklet**”).

1. Changes that require the prior approval of the SFC

- (a) *Approval to become or continue to be (as the case may be) a substantial shareholder*

Prior approval of the SFC is required for any company or individual to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation in Hong Kong.

Definition of substantial shareholder

For the purpose of the SFO, a person will be a ‘substantial shareholder’ of a corporation under section 6 of Schedule 1 of the SFO if he, either alone or with associates:

- (1) holds an interest in shares of the corporation:
 - (i) equal to 10% or more of the corporation’s issued share capital; or
 - (ii) which entitles him, either alone or with his associates and whether directly or indirectly, to control 10% or more of the voting power at general meetings; or
- (2) holds shares in any other corporation which entitles him, either alone or with his associates and either directly or indirectly, to control the exercise of 35% or more of the voting power at general meetings of that other corporation, or of a further corporation, where that other corporation is itself entitled, alone or with its associates and whether directly or indirectly, to control 10% or more of the voting power at general meetings of the first corporation.

Pursuant to section 6(2) of Schedule 1 of the SFO, a person is regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his/its associates, has an interest in shares in a further corporation which entitles him/it either alone or with any of his/its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further

corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first mentioned corporation.

Procedures for an application to become or continue to be (as the case may be) a substantial shareholder

In order to apply to the SFC for approval as a substantial shareholder, the proposed substantial shareholder or substantial shareholder (as the case may be) should lodge the required application forms together with the prescribed fee, which is currently HK\$3,000. The application forms which should be submitted are:

- Form 4 (Miscellaneous Applications) – Section 13 (Approval as a substantial shareholder); and
- Supplement 2 (Information on Corporate Substantial Shareholder) for a corporate applicant. The information required by Supplement 2 includes the name and percentage shareholding of any substantial shareholder (as defined in the SFO) of the corporate substantial shareholder. The corporate substantial shareholder's individual and corporate directors are also required to submit Supplement 3 (Statement of Personal Information) and Supplement 4 (Information on Corporate Director), respectively; or
- Supplement 3 (Statement of Personal Information) for an individual applicant.

A group chart depicting the related change in shareholding structure including the respective number of shares and percentage of shareholdings is required to be submitted with the application.

The application fee of HK\$3,000 is payable on a per application basis regardless of the number of substantial shareholders proposed.

SFC Approval Conditional upon Notification of Contact Details

An approval granted by the SFC for a person to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation will be conditional upon the substantial shareholder:

- (1) at all times keeping the SFC informed of the particulars of his/its contact details including, in so far as applicable, his/its business address, residential address, telephone and facsimile numbers and electronic mail address; and
- (2) informing the SFC of any change in those particulars within 14 days after the change takes place.

(section 132(5) of the SFO)

Any person who receives SFC approval as a substantial shareholder must therefore notify the SFC of the contact details referred to at (1) above and of any subsequent changes in such details no later than 14 days after the change.

SFC Approval Criteria

A person who applies to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation must satisfy the SFC that he/it is fit and proper.

Definition of “fit and proper”

In considering whether a person is “fit and proper”, the SFC will consider the following (section 129 of the SFO):

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity,

of:

- where the person is an individual, the person himself;
- where the person is a corporation (other than an authorised financial institution), the corporation and any officer of the corporation;
- where the person is an authorised financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155 of the laws of Hong Kong)) and executive officer of the institution.

Accordingly, the application forms require the applicant (and in the case of a corporate substantial shareholder applicant, its directors) to provide information as to: (i) their financial status; (ii) any disciplinary actions to which they have been subject; (iii) any criminal offences with which they have been charged; and (iv) any orders for fraud or dishonesty etc.

Section 129(2) of the SFO sets out other information which the SFC may take into account in determining whether a person is “fit and proper” including:

- (a) a decision made in respect of the person by:
 - (i) the Hong Kong Monetary Authority;
 - (ii) the Insurance Authority;
 - (iii) the Mandatory Provident Fund Schemes Authority of Hong Kong; or
 - (iv) any other authority or regulatory organisation, whether in Hong Kong or elsewhere, which, in the SFC’s opinion, performs a function similar to the functions of the SFC;
- (b) where the person is a corporation in a group of companies, any information in the possession of the SFC, whether provided by the person or not, relating to:
 - (A) any other corporation in the same group of companies; or

- (B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A); and
- (c) the state of affairs of any other business which the person carries on or proposes to carry on.

Further guidance as to what constitutes “fit and proper” are set out in the “Fit and Proper Guidelines” issued by the SFC.

The SFC will also refuse to approve an applicant as a substantial shareholder if it is not satisfied that the licensed corporation will remain a fit and proper person to be licensed if the application is approved (section 132(2) of the SFO).

Consequences of failure to obtain the approval of the SFC to become or continue to become (as the case may be) a substantial shareholder

Under section 131(2) of the SFO, any person who fails to obtain the approval of the SFC to become or continue to be (as the case may be) a substantial shareholder commits an offence and is liable:

- (a) on conviction on indictment to a fine of HK\$ 1 million and to imprisonment for 2 years, and to a further fine of HK\$5,000 for every day during which the person continues to be such substantial shareholder without the approval of the SFC; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of HK\$500 for every day during which the person continues to be such substantial shareholder without the approval of the SFC.

Under section 131(3) of the SFO, it is a defence for person charged with an offence mentioned above to prove:

- (a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and
- (b) where he subsequently became aware of such act or circumstances, that he applied to the SFC as soon as reasonably practicable and in any event within 3 business days after he became so aware, for approval to continue to be a substantial shareholder of the corporation.

If a person becomes a substantial shareholder of a corporation without the prior approval of the SFC by virtue of:

- (a) a transfer of shares;
- (b) an issue of shares; or
- (c) a transfer of the right to be issued with shares,

then, unless and until the SFC approves the person to continue to be a substantial shareholder of the corporation, the voting rights conferred by the shares concerned are not exercisable (section 131(4) of the SFO).

A person who purportedly exercises any voting right that is not exercisable commits an offence and is liable:

- (a) on conviction on indictment to a fine of HK\$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months (section 131(5) of the SFO).

Under section 131(6) of the SFO, it is a defence for a person charged with an offence mentioned above to prove that he:

- (a) did not know; and
- (b) could not have by the exercise of reasonable diligence known, that the voting right which he purportedly exercised is not exercisable.

(b) *Approval to become a responsible officer*

A licensed corporation in Hong Kong is required to appoint two responsible officers approved by the SFC for each type of regulated activity. For each regulated activity, there should be at least one responsible officer available at all times to supervise the business. The same individual may be appointed to be a responsible officer for more than one regulated activity provided that he is fit and proper to be so appointed and there is no conflict in the roles assumed.

At least one of the responsible officers must be an executive director of the licensed corporation and all the executive directors must seek the approval of the SFC as responsible officers.

Under section 126 of the SFO, a person who wishes to become a responsible officer of a licensed corporation, is required to apply to the SFC in the prescribed manner and pay the prescribed fee, which is currently HK\$2,950 per regulated activity.

Test of competence and qualifications of a responsible officer

For the relevant test of competence and qualifications required for an applicant to become a responsible officer, please refer to the “Note on Licensing Regime under the Securities and Futures Ordinance” issued by Charltons, the “Fit and Proper Guidelines” issued by the SFC and the “Guidelines on Competence” issued by the SFC.

Procedures for applying to become a responsible officer

An applicant who is already a licensed representative approved by the SFC, the applicant is required to submit the following forms:

- Form 4 (Miscellaneous Applications); and
- Supplement 10 (Duties and Experience of Responsible Officer).

The application fee for approval to become a responsible officer is HK\$2,950 per regulated activity.

An applicant who is not already a licensed representative approved by the SFC is required to submit the following forms:

- Form 3 (Application for Licence – Representative); and
- Supplement 10 (Duties and Experience of Responsible Officer).

The application fee for approval to become a licensed representative and responsible officer is HK\$1,790 per regulated activity (for approval as a licensed representative) and HK\$2,950 per regulated activity (for approval as a responsible officer).

(c) *Other matters requiring prior approval of the SFC*

Examples of other matters that require the prior approval of the SFC (non-exhaustive) are set out in Schedule 2 hereto.

2. Changes that require notification to the SFC

Section 135 of the SFO and Parts 1 to 3 of Schedule 1 of the Information Rules set out the events which are required to be notified by the relevant licensed persons to the SFC.

(a) *Change in share capital or shareholding structure*

A licensed corporation and its associated entities are required to notify the SFC of any change in share capital or shareholding structure within 7 business days.

(An “associated entity”, in relation to a licensed corporation, means a company, or a non-Hong Kong company complying with the provisions of Part XI of the Companies Ordinance (Cap 32 of the laws of Hong Kong) relating to the registration of documents, which:

- (i) *is in a controlling entity relationship with the licensed corporation; and*
- (ii) *receives or holds in Hong Kong client assets of the licensed corporation.)*

Procedures for notifying the SFC in relation to change in share capital or shareholding structure

In relation to a change in the share capital or shareholding structure of a licensed corporation, a licensed corporation is required to submit Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder) within 7 business days.

In relation to a change in the share capital or shareholding structure of an associated entity, the relevant associated entity is required to submit Form 6 (Notification – Associated Entity) within 7 business days.

(b) *Becoming or ceasing to be a director of a licensed corporation in Hong Kong*

Under section 135(6) of the SFO, where a person becomes or ceases to be a director of a licensed corporation, both the person and the licensed corporation must notify the SFC in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be) within 7 business days.

Procedures for notifying the SFC in relation to becoming or ceasing to be a director of a licensed corporation in Hong Kong

In relation to a change of director or his particulars of a licensed corporation, the relevant licensed corporation should submit Form 5 (Notification - Licensed

Corporation, Registered Institution, Licensed Representative and Substantial Shareholder) within 7 business days.

In relation to a change of director or his particulars of an associated entity, the relevant associated entity should submit Form 6 (Notification – Associated Entity) within 7 business days.

(c) *Ceasing to act as a responsible officer*

Where a person ceases to act as a responsible officer of a licensed corporation, such person and the licensed corporation are required to notify the SFC within 7 business days.

Procedures for notifying the SFC in relation to ceasing to act as a responsible officer

Notification of a person ceasing to act as a responsible officer should be given by submitting Form 5 within 7 business days.

(d) *Ceasing to act as a licensed representative*

Where a person ceases to act as a licensed representative of a licensed corporation, such person and the licensed corporation are required to notify the SFC within 7 business days.

Procedures for notifying the SFC in relation to ceasing to act as a licensed representative

The licensed representative and the licensed corporation should submit Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder) to the SFC within 7 business days.

(e) *Change of name*

When there is change of name of a licensed corporation or its associated entity, the licensed corporation or the associated entity (as the case may be) is required to notify the SFC within 7 business days.

Procedures for notifying the SFC in relation to ceasing to act as a licensed representative

The licensed representative should submit Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder) and the associated entity should submit Form 6 (Notification – Associated Entity) to the SFC within 7 business days. An application fee of HK\$200 is payable for the grant of a new licence or certificate of registration as a result of the change in name.

(f) *Other matters requiring notification to be made to the SFC*

Examples of other matters that require notification to the SFC (non-exhaustive) are set out in Schedule 3 hereto.

JUNE 2009

This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.

Schedule 1

Regulated Activities as defined in Schedule 5 to the SFO

PART 1

The following are regulated activities-

- Type 1 : dealing in securities;
- Type 2 : dealing in futures contracts;
- Type 3 : leveraged foreign exchange trading;
- Type 4 : advising on securities;
- Type 5 : advising on futures contracts;
- Type 6 : advising on corporate finance;
- Type 7 : providing automated trading services;
- Type 8 : securities margin financing;
- Type 9 : asset management.

PART 2

In this Schedule-

"advising on corporate finance" (就機構融資提供意見) means giving advice-

- (a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(a) or (b) of this Ordinance;
- (b) concerning-
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities), but does not include such advice given by-
 - (i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;
 - (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;
 - (iv) an individual-
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and\

- (B) who gives such advice wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (vi) counsel who gives such advice wholly incidental to his practice as such;
- (vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through-
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on futures contracts" (就期貨合約提供意見) means-

- (a) giving advice on-
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts should be entered into; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on-
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts are to be entered into, otherwise than by-
 - (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

- (iv) an individual-
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iva) a person-
 - (A) who is licensed or registered for Type 9 regulated activity;
 - (B) who provides a service of managing a portfolio of futures contracts under a collective investment scheme for another person; and
 - (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); (Added L.N. 197 of 2005)
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through-
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on securities" (就證券提供意見) means-

- (a) giving advice on-
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, securities should be acquired or disposed of; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on-

- (i) whether;
- (ii) which;
- (iii) the time at which; or
- (iv) the terms or conditions on which, securities are to be acquired or disposed of, otherwise than by-
 - (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iv) an individual-
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iva) a person-
 - (A) who is licensed or registered for Type 9 regulated activity;
 - (B) who provides a service of managing a portfolio of securities under a collective investment scheme for another person; and
 - (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B);
 - (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
 - (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
 - (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50);
 - (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
 - (ix) a person who gives such advice or issues such analyses or reports through-

- (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
- (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise, but does not include the giving of such advice that falls within the meaning of "advising on corporate finance";

"asset management" (資產管理) means-

- (a) real estate investment scheme management; or
- (b) securities or futures contracts management;

"automated trading services" (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby-

- (a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;
- (b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or
- (c) transactions-
 - (i) referred to in paragraph (a);
 - (ii) resulting from the activities referred to in paragraph (b); or
 - (iii) effected on, or subject to the rules of, a stock market or futures market, may be novated, cleared, settled or guaranteed, but does not include such services provided by a corporation operated by or on behalf of the overnment;

"dealing in futures contracts" (期貨合約交易), in relation to a person, means-

- (a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
- (b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
- (c) inducing or attempting to induce another person to acquire or dispose of a futures contract, by the person, except where the person-
 - (i) is carrying out his functions as a recognized clearing house;
 - (ii) performs the act referred to in paragraph (a), (b) or (c) through another person ("the futures dealer")-
 - (A) who is licensed or registered for Type 2 regulated activity; or
 - (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity, but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person-

- (I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;
 - (II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;
 - (III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;
 - (IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or
 - (V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;
- (iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap 82);
 - (iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;
 - (v) enters into a market contract;
 - (vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or
 - (vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

"dealing in securities" (證券交易), in relation to a person, means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement-

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

by the person, except where the person-

- (i) is a recognized exchange company operating a stock market;
- (ii) is a recognized clearing house;
- (iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;
- (iv) performs the act through another person ("the securities dealer")-
 - (A) who is licensed or registered for Type 1 regulated activity; or
 - (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity, but the

person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person-

- (I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a) or (b), and communicates it, either in his name or in the name of the third person, to the securities dealer;
 - (II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) or (b) with the securities dealer;
 - (III) effects an agreement referred to in paragraph (a) or (b) on behalf of a third person through the securities dealer;
 - (IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or
 - (V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);
- (v) as principal-
- (A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
 - (B) acquires, disposes of, subscribes for or underwrites securities;
- (vi) enters into a market contract;
- (vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
- (viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which-
- (A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
 - (B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
- (ix) issues a form of application for the shares or debentures of a corporation, together with-
- (A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
 - (B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
- (x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap 32) in relation to a collective investment scheme that is a corporation-
- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and

- (B) the shares in which are exclusively, or primarily, redeemable shares, or issues together with the prospectus a form of application for the shares in the corporation;
- (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
- (xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
- (xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; (Amended L.N. 197 of 2005)
- (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity; or (Amended L.N. 197 of 2005)
- (xv) in any case where each of the parties to the transaction or proposed transaction under which securities are or will be acquired, disposed of, subscribed for or underwritten as described in paragraph (a) is an authorized financial institution, is an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap 155) and performs the act for each of the parties to the transaction or proposed transaction; (Added L.N. 197 of 2005)

"foreign exchange trading" (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to-

- (a) exchange currency with another person;
- (b) deliver an amount of foreign currency to another person; or
- (c) credit the account of another person with an amount of foreign currency, but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of "leveraged foreign exchange trading";

"leveraged foreign exchange contract" (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to-

- (a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;
- (b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or
- (c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

"leveraged foreign exchange trading" (槓桿式外匯交易) means-

- (a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;
- (b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or

- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b), but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement-
- (i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;
 - (ii) where the contract or arrangement is entered into by a corporation-
 - (A) the principal business of which does not include dealing in currency in any form;
 - (B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and
 - (C) with another corporation;
 - (iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap 34);
 - (iv) arranged by an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap 155) and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap 37);
 - (v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;
 - (vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;
 - (vii) arranged by-
 - (A) a body which, in the opinion of the Monetary Authority, is-
 - (I) a central bank; or
 - (II) an institution which performs the functions of a central bank; or
 - (B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);
 - (viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
 - (ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
 - (x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;
 - (xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;
 - (xii) by an authorized financial institution;

- (xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;
- (xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person-
 - (A) receives from another person an offer or invitation to-
 - (I) enter into a leveraged foreign exchange contract; or
 - (II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract, and communicates it, either in his name or in the name of the other person, to the trader;
 - (B) effects an introduction between the trader or its representative and another person, so that the other person may-
 - (I) enter into a leveraged foreign exchange contract with the trader; or
 - (II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or
 - (C) effects the entering into a leveraged foreign exchange contract by another person through the trader, where in this paragraph, "trader" (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or
- (xv) by-
 - (A) a collective investment scheme; or
 - (B) a person in the course of business for the purpose of operating a collective investment scheme, authorized by the Commission under section 104 of this Ordinance;

"securities margin financing" (證券保證金融資) means providing a financial accommodation in order to facilitate-

- (a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and
- (b) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation-
 - (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
 - (ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
 - (iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;
 - (iv) by a collective investment scheme that is a corporation-

- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
 - (B) the shares in which are exclusively, or primarily, redeemable shares, in order to finance investment in any interest in the collective investment scheme of which it is the issuer;
- (v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
 - (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or
 - (vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation; (Amended L.N. 197 of 2005)

"securities or futures contracts management" (證券或期貨合約管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by-

- (a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;
- (c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;
- (d) an individual-
 - (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and
 - (ii) who provides such service wholly incidental to the carrying on of that regulated activity;
- (e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (f) counsel who provides such service wholly incidental to his practice as such;
- (g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); or
- (h) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which provides such service wholly incidental to the discharge of its duty as such.

PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance-

- (a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap 117), or any transaction in securities similar to such a borrowing or return; or

- (b) the provision of financial accommodation-
 - (i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
 - (ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
 - (iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

Schedule 2

Examples of other matters that require the prior approval of the SFC:

Type of change	Applicable to	Form required	Fee required
Addition of regulated activity	Licensed corporation / licensed representative	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) • Supplement 7 (financial resources); • Supplement 8 (business plan and proposed business activities) 	<ul style="list-style-type: none"> • HK\$4,740 per regulated activity other than type 3 (leveraged foreign exchange trading); • HK\$129,730 for type 3
Reduction of regulated activity	Licensed corporation / licensed representative	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$200 per regulated activity
Modification or waiver of licensing or registration condition	Licensed corporation / licensed representative	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$4,000
Change of financial year end	Licensed corporation / licensed representative	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$2,000 (also applicable to associated entities of intermediaries lodging related applications)
Adoption of period exceeding 12 months as financial year	Licensed corporation / associated entity	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$2,000 (also applicable to associated entities of intermediaries lodging related applications)
Extension of deadline for submission of audited accounts	Licensed corporation / associated entity	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$2,000 (also applicable to associated entities of intermediaries lodging related applications)
New premises to be used for keeping records or documents	Licensed corporation	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$1,000 (payable on a per application basis regardless of the number of premises proposed in an application)
Transfer or addition of accreditation	Licensed representative	<ul style="list-style-type: none"> • Form 4 (miscellaneous application) 	HK\$200 per regulated activity

Schedule 3

Examples of other matters that are required to be notified to the SFC:

Type of change / events	Applicable to	Notification time limit	Form required
Cessation of business	Licensed corporation / licensed representative	At least 7 business days in advance for intended cessation of business	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
Change in business address	Licensed corporation	At least 7 business days in advance for intended cessation of business	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
	Associated entity	Within 7 business days	Form 6 (Notification – Associated Entity)
Change in complaints officer or his particulars	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
Change in emergency contact person or his particulars	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
Change in contact information	Licensed corporation / licensed representative / substantial shareholder	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
	Associated entity	Within 7 business days	Form 6 (Notification – Associated Entity)
Change in bank accounts	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
	Associated entity	Within 7 business days	Form 6 (Notification – Associated Entity)

Type of change / events	Applicable to	Notification time limit	Form required
Change in associated entity or its particulars	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
	Associated entity	Within 7 business days	Form 6 (Notification – Associated Entity)
Change in insurance policy maintained under the <i>Securities and Futures (Insurance) Rules</i>	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
Change in auditor's name	Licensed corporation	Within 7 business days	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
Give notice of a motion to change auditor in a general meeting, etc (see section 154 of the SFO)	Licensed corporation	Within 1 business day	Form 5 (Notification - Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder)
	Associated entity	Within 1 business day	Form 6 (Notification – Associated Entity)
Change in executive officer or his particulars	Associated entity	Within 7 business days	Form 6 (Notification – Associated Entity)