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SOLICITORS

THE 10 MOST IMPORTANT THINGS TO KNOW ABOUT HONG KONG SFC LICENSING FOR COMMODITIES RELATED ACTIVITIES



1 WHEN DO YOU NEED A LICENCE?

Any person carrying on regulated activities in Hong Kong has to be licensed or registered with the Securities and Futures Commission (“SFC”) unless it falls within a specific exemption category. You will need a licence if you are not an authorised financial institution (*such as a bank or deposit-taking company*) and you (i) carry on a business in one or more regulated activities; (ii) actively market to the public any services that you provide which could constitute a regulated activity if provided in Hong Kong; or (iii) are an individual performing a regulated function for your principal in relation to any regulated activity.

2 WHAT IS THE KEY LEGISLATION RELATING TO LICENSING?

The principal legislation dealing with the licensing of licensed corporations and persons accredited to them is the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (“SFO”) which is administered by the SFC. The SFC also publishes a number of codes and guidance in relation to licensing matters – some key codes and guidelines are the *Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission*, *Guidelines on Competence, Fit and Proper Guidelines*, and *Management, Supervision and Internal Control Guidelines*.

3 WHAT ACTIVITIES WOULD REQUIRE LICENSING IN HONG KONG?

Schedule 5 to the SFO stipulates 10 types of regulated activity and provides a detailed definition for each of them. The most relevant activities in connection with commodities trading, advisory and management activities include:

- **Type 2** Dealing in futures contracts
- **Type 5** Advising on futures contracts
- **Type 9** Asset management

4 DO YOU NEED A LICENCE FOR EACH REGULATED ACTIVITY?

The SFO promulgates a single licensing regime where a person only needs one licence or registration to carry on different types of regulated activity as defined in Schedule 5 to the SFO provided that he is fit and proper to do so. Within this regime separate authorisations are required for different types of activities.

5 ARE THERE ANY EXEMPTIONS FROM LICENSING REQUIREMENTS?

The SFC specifies certain common situations in which exemption from licensing requirements may apply under the SFO. For example, if you are licensed for type 9 (*asset management*) regulated activity and you wish to carry out type 2 (*dealing in futures contracts*) and/or type 5 (*advising on futures contracts*) regulated activity, you will not need to be separately licensed for these activities provided that they are carried out solely for and incidental to the asset management business. This means that a fund manager who places orders to deal or provide investment advice/research reports would only require a type 9 licence to manage their clients’ portfolios of securities and/or futures contracts. Other exemptions include the professional investor exemption and group company exemption.

6 WHAT WILL THE SFC EXAMINE IN A LICENSING APPLICATION?

A licensed corporation must be a company incorporated in Hong Kong or a non-Hong Kong company registered with the Companies Registry of Hong Kong. It must have a proper business structure, good internal control systems and have qualified personnel to ensure proper management of risks.

In assessing a licensing applicant (*whether an individual or corporation*), the SFC will examine whether the licensing applicant (*and its substantial shareholders in the case of a corporate applicant*) is fit and proper for the purpose of licensing having regard, in addition to any other matters that it may consider relevant, to:

- financial status or solvency
- educational or other qualifications or experience having regard to the nature of the functions to be performed
- ability to carry on the regulated activity concerned competently, honestly and fairly
- reputation, character, reliability and financial integrity of the applicant and other relevant persons as appropriate

Each licensed corporation would also need to appoint two responsible officers to directly supervise the conduct of each regulated activity. At least one of the responsible officers must be an executive director (*i.e. a director who actively participates in is responsible for directly supervising the business*) and at least one of them must be available at all times to supervise the business.

7 WHO CAN BE A RESPONSIBLE OFFICER?

A responsible officer will be responsible for the conduct of regulated activity which he supervises and he must have sufficient authority in the relevant licensed corporation to do so. A responsible officer must possess appropriate ability, skills, knowledge and experience to properly manage and supervise the corporation's business of regulated activities. The experience (including management experience), qualifications, regulatory knowledge and general competence expected from a responsible officer is higher than that as expected from other licensed representatives of the corporation.

8 ARE THERE ANY CAPITAL REQUIREMENTS?

Yes. Depending on the type of regulated activity for which a corporation is licensed, it must maintain at all times paid-up share capital and liquid capital not less than the specified amounts according to the Securities and Futures (Financial Resources)

Rules. For example, a type 5 licensed advisor would be required to have a minimum paid-up share capital of HK\$5 million and minimum liquid capital of HK\$3 million if it holds client assets. If a licensed corporation carries on more than one type of regulated activity, then the highest amount required amongst those regulated activities shall apply.

9 HOW TO GET LICENSED AND HOW LONG DOES IT NORMALLY TAKE TO BECOME LICENSED?

A licensing applicant is required to submit an application together with prescribed fee with all the required supporting documents (including business plan, compliance manual, application forms and supplements) in connection with the licensed applicant and its proposed responsible officers and substantial shareholders. How long the SFC takes to process the application will very much depend on the quality and completeness of the application and supporting documents which are submitted. The SFC has a performance pledge for processing applications and the process time from the date the application is formally accepted by the SFC will vary from time to time and should be checked on the SFC's website. The process times are usually around:

- 15 weeks (for licensed corporation application)
- 8 weeks (for normal licensed representative application)
- 10 weeks (for responsible officer application)

10 ARE THERE ANY ONGOING OBLIGATIONS FOLLOWING OBTAINING OF A LICENCE?

A licensed corporation is required to comply with a number of requirements on an ongoing basis. These include notification or obtaining of prior approval in connection with various changes to the licensed corporation, its directors and substantial shareholders and/or the information previously provided; submission of audited accounts and periodic financial resources returns; and payment of annual fees.

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