LICENCE APPLICATION WITH THE SECURITIES AND FUTURES COMMISSION

The licensing regime under the Securities and Futures Ordinance August 2020



This publication provides an overview of the Securities and Futures Commission's ("SFC") licensing regime, key features of licensing requirements and major assessment criteria of the SFC for any corporation or person who wishes to apply for a licence to conduct regulated activities ("RAs") under the Securities and Futures Ordinance ("SFO") in Hong Kong.

I. THE SFC LICENSING REGIME

Corporations which are not authorized institutions and are intended to conduct RAs in Hong Kong are required to be licensed as Licensed Corporations ("LCs") under the SFO. The SFO empowers the SFC to supervise these regulated activities conducted by LCs.

Depending on the nature of the business, a corporation or a person may apply for one or more RA licences that suits its business activities. There are 10 different types of RAs under the SFO as set out below:

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
Type 10: Providing credit rating services

I. THE SFC LICENSING REGIME (CONT'D)

The SFO requires an entity to obtain an RA licence if such entity carries on or holds itself out as carrying on any "regulated activities" in Hong Kong, or actively markets (whether by itself or another person on its behalf and whether in Hong Kong or outside Hong Kong) such services to the Hong Kong public.

Some notable exemptions (not exhaustive) from the licensing requirements are highlighted below:

- Dealing in securities on a proprietary basis
- Giving investment advice or providing asset management services to "wholly-owned" group companies

II. MAJOR REQUIREMENTS FOR LICENSING

The SFC shall reject the application if an applicant fails to satisfy the SFC's fit and proper requirements. The key approval criteria under the SFC's "Licensing Handbook" are listed below:

Legal Structure

- Has to be a Hong Kong incorporated company or an overseas company registered with the Hong Kong Companies Registry

Fit and Proper

- Possess proper business structure, internal controls and qualified personnel etc. to conduct the regulated activities
- Assessment will be undertaken by the SFC with reference to the business plan, internal control documentation, compliance policies etc. submitted by the applicant

Substantial Shareholders and Associated Personnel

- All substantial shareholders (i.e. those with >10% interest or voting rights) and all associated personnel are fit and proper

Responsible Officers ("ROs")

- At least two ROs to directly supervise each RA, with at least one of them being available at all times to supervise the business
- ROs possess relevant qualification and experience and passed local regulatory framework paper(s)
- All executive directors must seek SFC's approval as ROs of the corporate applicant

II. MAJOR REQUIREMENTS FOR LICENSING (CONT'D)

Senior Management

- Bear primary responsibility for maintenance of appropriate standards of conduct and adherence to proper procedures
- Includes directors, ROs, and Managers-In-Charge of Core Functions

Licensed Representatives ("LRs")

- All personnel carrying out RAs need to be licensed as LRs

Financial Resources

- Maintain sufficient financial resources by establishing paid-up capital and liquid capital
- Have sufficient financial resources to commence and maintain business operation

III. REQUIREMENTS FOR ASSESSING A LICENSED CORPORATION'S COMPETENCE

The following is a (non-exhaustive) list of matters that the SFC will consider when assessing the competence of a corporation applying to carry on an RA.

Corporate Governance

- The presence of an organizational structure with clear lines of responsibility and authority
- Board of directors, board committees and senior management are composed of individuals with appropriate range of skills and experience to understand and run the corporation's proposed activities
- Board of directors, board committees and senior management are organised in a way that enables it to address and control the activities of the corporation

Business Profile and Risk Profile

- Information on the proposed lines of business
- Information on target clientele, products, and service types
- Extent of system automation
- Analysis of risks inherent in the key lines of business

III. REQUIREMENTS FOR ASSESSING A LICENSED CORPORATION'S COMPETENCE (CONT'D)

Risk Management and Control Strategy

- Clear risk management strategy with reference to the proposed lines of business
- The setting of proper exposure limits for each key line of business
- The anticipated risks being supported by the available capital (typically demonstrated by a projected liquid capital calculation)
- The timing of review of established policies
- Risk management and control strategy for branch operations (where applicable)

Risk Management Policy and Procedures

- Appointment of an independent risk manager with appropriate qualifications to oversee and monitor the risk exposures and systems
- The presence of clear reporting lines for the independent risk manager
- The way risk exposure limits are set and communicated to responsible persons
- The way risks are being measured and monitored
- The procedures to deal with exceptions to risk limits
- Processes to ensure stress testing is carried out regularly using appropriate measures
- Board of directors, board committees and senior management are organised in a way that enable them to address and control the activities of the corporation

Reporting and Control Functions

- The presence of reliable reporting systems
- The presence of control procedures to ensure data integrity

Internal Audit and Compliance Functions

- Audit personnel have appropriate qualifications and working experience to understand the corporate activities and risk profile
- Independent of core business functions and reporting directly to an independent and sufficiently high level of authority
- Perform periodic risk assessment and ascribe various levels of risk to an appropriate audit cycle
- All audit findings and compliance issues that are not resolved within established time frames must be reported to senior management

III. REQUIREMENTS FOR ASSESSING A LICENSED CORPORATION'S COMPETENCE (CONT'D)

Internal Control System

- Adequate internal control systems set up in accordance with the relevant codes and guidelines
- Ensure that proper audit trails are maintained
- Procedures to deal with non-compliance
- Proper documentation of all operational and control procedures

Conflict of Interest

- Policies and procedures to address conflict of interest issues arising from carrying on more than one type of RAs concurrently in the corporation or in its group companies
- Controls in place to address other conflict of interest issues, e.g. employee dealing and client priority

Information Technology Support

- Appointment of an independent information technology manager with appropriate experience to maintain the integrity of the operating systems
- Assign suitably qualified staff to handle internet communication and transactions
- Sufficient capital resources to meet necessary technological maintenance and improvements

Qualified Staff

- The presence of policies and procedures to ensure suitably qualified staff are in post
- All supervisory staff for both front and back offices should have not less than 3 years relevant experience and appropriate qualifications

Training Policies

- Arrangements to ensure operational and control policies and procedures are communicated to new recruits
- Arrangements to ensure updated operational and control manuals are distributed to staff and being accessible at all times
- Arrangements to ensure any changes to operational and control policies and procedures are communicated to staff
- The presence of appropriate staff on-going training policies and procedures

IV. HOW CAN MAZARS HELP?

At Mazars, we have extensive experience working with the diversity of financial services players. We assist major financial institutions including brokerage houses, asset managers, investment and corporate banks, retail and private banks, central banks, and national regulators in dealing with business and regulatory issues with multiple impacts, domestic and international.

Mazars is here to assist you in every step of the licensing process and beyond. Depending on the scope, coverage and specifics of your needs, our services would typically involve one or more of the following:

PRELIMINARY CONSULTATION

- ✓ Provide preliminary advice to management on the regulatory approval process
- ✓ Assist in identifying and capturing regulatory issues / hurdles that may arise during the application process
- ✓ Advise on the key areas considered by the SFC in granting the licence (e.g. governance and control arrangements, proposed business activities, financial projections, risk management controls, etc.)
- ✓ Assist in the initial discussion with the SFC
- ✓ Advise on practical questions during the application process

SUBMISSION OF APPLICATION

Review / provide compilation advice for submission to the SFC (including the tailoring of documentation which is currently available with your institution to a standard acceptable by the SFC):

- ✓ Review and provide compilation advice on business plan
- ✓ Review and provide compilation advice on financial projection and pro-forma liquid capital calculation
- ✓ Review and provide advice on organisation chart and staff plan (including qualification of RO candidates) against regulatory expectations
- ✓ Review and provide advice on internal control systems against planned business operation and industry good practice e.g. risk management policy, anti-money laundering guideline, structure of management committees and their respective authorities, etc.
- ✓ Review and provide advice on the overall consistency of the application documents and drafting of cover letter

FURTHER INFORMATION REQUEST

- ✓ Provide assistance and advice in responding to further information requests from the SFC
- ✓ Accompany management to meetings with the SFC to address any issues and concerns arising during the approval process

PROJECT MANAGEMENT

- ✓ Set-up of project governance framework, structure and reporting arrangements
- ✓ Design of project plan including milestones and working committee involvement
- ✓ Ensure timely delivery of pre-determined targets
- ✓ Tracking of application status with regulators

We are flexible in our approach and offerings. Please feel free to contact us with any enquiries.

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