

Responsible officers

Can an unlicensed person apply to be approved as a responsible officer?

Posted on 30.08.2004

4.1 No. Only licensed representatives can apply for approval to become responsible officers. However, in practice, a person may apply to be a licensed representative and for approval as responsible officer contemporaneously.

Does the SFO require a licensed corporation to appoint at least 2 responsible officers for each type of regulated activities?

Posted on 17.03.2003

4.2 Yes. In addition, one of them must be an “executive director” as defined under the SFO.

Is “executive director” specifically defined under the SFO?

Posted on 17.03.2003

4.3 Yes. In the licensing context, the term “executive director” is defined in section 113 of the SFO as follows:-

“executive director” in relation to a licensed corporation means a director of the corporation who:-

(a) actively participates in; or

(b) is responsible for directly supervising, the business of a regulated activity for which the corporation is licensed.

Do all directors of a licensed corporation need to be approved as responsible officers?

Posted on 17.03.2003

4.4 No. Only executive directors (see 4.3) need to be licensed as responsible officers. If a director does not participate or is not involved in the day-to-day management of the regulated activity, he is unlikely to be regarded as an executive director for the purposes of licensing. In general, a director responsible merely for the compliance, financial control, internal audit, back-office administration or human resources functions need not apply for approval as a responsible officer.

If a director resides outside Hong Kong and does not participate in the day-to-day management of the licensed corporation, does he need to seek SFC's approval to be a responsible officer?

Posted on 17.03.2003

4.5 It is unlikely that he will be required to be approved as a responsible officer.

Can an executive director reside outside Hong Kong?

Posted on 18.06.2003

4.6 Yes. So long as the executive director is able to satisfactorily discharge his responsibility to supervise the business of regulated activity for which the corporation is licensed. In this regard, factors which the SFC would consider include the frequency of his visit to attend to regulated activities in Hong Kong and the systems of internal controls. In addition, the licensed corporation concerned should have at least one responsible officer who is available at all times to supervise the business of the regulated activity for which the corporation is licensed.

Can an individual be appointed as a responsible officer for more than one principal at the same time?

Posted on 17.03.2003

4.7 Yes. He can if there is no concern about his competence or in relation to other matters such as possible conflicts of interest. In most cases where this is relevant, we would expect that the principals to which the individual is accredited would belong to the same group of companies.

Can a responsible officer supervise more than one regulated activities simultaneously?

Posted on 17.03.2003

4.8 The same individual can be approved as a responsible officer for one or more regulated activities so long as he can satisfy the SFC that he is fit and proper to be so approved and that there is no conflict of interest for him

to carry out the regulated activities concerned at the same time.

Individual not being a director can also become a responsible officer. What are the criteria for assessing his competence, if he is not a member of the board of directors?

Posted on 17.03.2003

4.9 The individual will be subject to the same assessment criteria as that of a director, i.e. having satisfied the relevant experience and examination requirements (see Guidelines on Competence). In addition, he must have sufficient authority within the licensed corporation to carry out his supervisory functions.

The SFO requires that there must be at least 1 responsible officer available at all times to supervise the licensed corporation's business of carrying on a regulated activity. If the 2 responsible officers are out of Hong Kong on a business trip or on leave, but they are accessible by mobile phone or e-mail, does the licensed corporation comply with such requirement?

Posted on 18.06.2003

4.10 Yes, so long as the responsible officer(s) can be contacted (preferably by telephone) whenever necessary and proper internal controls are in place. However, this should be regarded as an interim measure only and the out of town period of both responsible officers should be reasonable for the proper discharge of their duties.

Is a consultant (not being an employee) of a company undertaking to supervise regulated activities eligible to be approved as a responsible officer?

Posted on 17.03.2003

4.11 An employer-employee relationship is not a prerequisite for the approval of a responsible officer. However, that individual must act on behalf of or have an arrangement with the licensed corporation for carrying out the regulated activity. He must also have sufficient authority to carry out his supervisory functions within the licensed corporation.

What documents should I submit to the SFC if I cease to act as a responsible officer but remain a licensed representative of my accredited principal for carrying on the same type of regulated activity?

Posted on 17.03.2009

4.12 If you cease to act as a responsible officer but remain a licensed representative of your accredited principal for carrying on the same type of regulated activity, a notification (Form 5) has to be submitted to the SFC within 7 business days from the date of such cessation. You and your accredited principal should fill in sections 1, 4 (both Part A and Part B) and 18 (both Part A and Part B) of Form 5. Please make sure that sections 4.3 and 4.6 are ticked "no" to indicate that you will remain a licensed representative of your accredited principal.

In light of the change in your licensed role, your original licence and a cheque in the sum of HK\$200 for issuance of a new licence should also be submitted together with Form 5. We are unable to process your request if any of the above three items is missing and the documents submitted will be returned to you.

In due course, the SFC will issue a new licence to you showing your new role as a licensed representative. The effective date of your new role will be the date on which we withdraw our approval of your Responsible Officer status.