
Temporary licence

What is a temporary licence?

Posted on 17.03.2003

7.1 A temporary licence allows a corporation or an individual who is regulated by a relevant overseas regulatory body, to carry on regulated activities in Hong Kong for a short period of time (less than 3 months).

Before granting a temporary licence, will the SFC take into account whether or not the overseas regulator (which regulates the applicant under overseas jurisdiction) also implements a licensing system similar to that in Hong Kong?

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7.2 According to the SFO, the SFC shall refuse to grant a temporary licence to a corporation or an individual unless, in the SFC's opinion, the overseas regulator concerned performs a function similar to the functions of the SFC and that overseas regulator is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong.

Are there any special restrictions for a temporary licence as opposed to a normal licence?

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7.3 Yes. The validity of a temporary licence cannot be more than 3 months and the same person cannot hold temporary licences for more than 6 months in any 24 months. The licensee can only carry out limited types of regulated activity (Types 3, 7, 8 and 9 are excluded) and the licensee cannot hold client assets.

Can an individual apply to become a temporary representative and be accredited to a "full" licensed corporation, which is licensed under section 116 (instead of section 117) of the SFO?

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- 7.4 Yes. The individual needs to satisfy the SFC that:-
- (a) he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity;
 - (b) he is licensed by an overseas authority which performs a function (including being empowered to take disciplinary action) similar to the functions of the SFC;
 - (c) the overseas corporation he acted for is regulated by an authority mentioned in (b); and
 - (d) the overseas corporation mentioned in (c) and the licensed corporation he intends to be accredited to belong to the same group of companies.

What is meant by "accredited" to a local licensed corporation under the requirement for a temporary licence? Does the individual need to have a contractual relationship with the entity?

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- 7.5 It means that the individual has to be attached to a licensed corporation in order to be licensed. He cannot apply to be licensed independently. However, it does not matter whether or not he is an "employee" of the corporation, as long as he acts on behalf of that corporation.

Can an individual apply to become a temporary representative if the overseas regulator in the jurisdiction where he comes from does not directly authorize him?

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7.6 Whilst the law does not specifically provide that an individual who is "indirectly" authorized by an overseas jurisdiction qualifies for being granted a temporary licence, consideration will be given to the person who is subject to some form of regulatory control by the overseas regulator concerned. Specifically, an individual coming from an overseas jurisdiction may apply for a temporary licence if the SFC is satisfied that:

- The overseas regulator has put in place relevant codes or guidelines that set out the entry requirements applicable to individuals joining the industry under its jurisdiction, e.g. education, training, examination, experience and/or other competence requirements;
- The individual is obliged to comply with relevant rules and/or codes or guidelines issued by the overseas regulator that govern his conduct in carrying out regulated activities in the overseas jurisdiction; and

- The overseas regulator has the power to remove and prohibit unsuitable individuals from carrying out regulated activities under its jurisdiction, e.g. revoking an authorization (may it be directly or indirectly granted to an individual by the regulator), issuing banning order from entering the industry, etc.

The list of Acceptable Inspection Regimes (see Appendix A2 of the Code on Unit Trusts and Mutual Funds) serves as a useful reference and benchmark in considering applications for temporary licence as far as acceptable jurisdictions are concerned; however, it is not an exhaustive list for that purpose and consideration has to be given to the above factors in each individual case.