



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Licensing Information Booklet

發牌資料冊

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Important note

This Booklet provides general information of licensing and registration matters under the Securities and Futures Ordinance (“SFO”) administered by the Securities and Futures Commission (“SFC”).

Whilst it is believed that this Booklet provides an accurate overview of the licensing and registration requirements, it is not intended to deal with all situations. Besides, some technical details have been omitted for the sake of clarity. For more precise guidance, you should consult your own professional advisers and refer to the SFO.

Licensing information is also available at the SFC’s web site at <http://www.hksfc.org.hk>. Answers to some *Frequently Asked Questions* on licensing related matters as updated from time to time are posted on the web site. In addition, you may access to licensing information through the SFC Infoline at 2840-9393. A reference guide to the Infoline is at **Appendix A**.

Enquiries on licensing related matters can be forwarded to the SFC:-

- ❖ By post: Licensing Department
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong
- ❖ By fax: 2501-0375
- ❖ By e-mail: licensing@hksfc.org.hk
- ❖ Via the SFC Infoline (24 hours): 2840-9393

To record your message,
press **2 3 9** after connecting to
the Infoline.

Authorized financial institutions¹ having any query concerning licensing related matters should first contact the responsible case officer in the Banking Supervision Department of the Hong Kong Monetary Authority (“HKMA”).

¹ “Authorized financial institution” means an authorized institution as defined in section 2(1) of the Banking Ordinance (i.e. a bank, a restricted licence bank or a deposit-taking company).

Part 1 Introduction

- 1.1 The SFC administers the SFO which governs the securities and futures markets and the non-bank retail leveraged foreign exchange market in Hong Kong. Part V of the SFO particularly deals with licensing and registration matters.
- 1.2 Any person carrying on regulated activities has to be licensed or registered with the SFC unless specific exemption (see Part 5) is provided. **It is a serious offence to carry out regulated activity in Hong Kong or targeting the investing public of Hong Kong without the required licence or registration.**
- 1.3 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 (see Part 2) provided that he is fit and proper to do so.
- 1.4 This Booklet sets out the basic approval criteria (see Part 6) and application procedures for corporations and individuals who wish to carry out regulated activities (see Part 7). It also provides information on other licensing related matters such as on-going obligations of intermediaries (see Part 10) and possible disciplinary sanctions against improper acts of an intermediary (see Part 12).

Part 2 Types of regulated activity

- 2.1 Persons conducting business in regulated activities are generally required to be licensed or registered with the SFC (see Parts 3 and 5 for more information). The regulated activities that they are permitted to carry out are specified on their licences or certificates of registration.
- 2.2 Schedule 5 to the SFO stipulates **9 types** of regulated activity and provides detailed definition for each of them. These activities include:-
- ❖ 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
- 2.3 A corporation licensed for Type 8 regulated activity is subject to a sole-business condition whereby the corporation normally shall not carry on business other than securities margin financing (section 118(1)(d)(i) of the SFO).
- 2.4 For ease of reference, the definition of each type of regulated activity under the SFO is extracted at **Appendix B**.

Part 3 Do you need a licence or registration?

3.1 Broadly speaking, you need a **licence** if you are not an authorized financial institution¹ and:-

- ❖ you carry on a business in a regulated activity or hold out as carrying on a business in a regulated activity. In this case, you have to be a *licensed corporation*² (section 114(1) and (2) of the SFO);
- ❖ you actively market, whether by yourself or another person on your behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that you provide, which would constitute a regulated activity if provided in Hong Kong. In this case, you have to be a *licensed corporation*² (section 115 of the SFO); or
- ❖ you are an individual performing a regulated function³ for your principal which is a licensed corporation in relation to a regulated activity carried on as a business or you hold out as performing such function. In that case, you have to be a *licensed representative* accredited to your principal (section 114(3) and (4) of the SFO). In addition, if you are an executive director⁴ of

² Sole proprietorship or partnership is not an acceptable form of business structure for the purposes of licensing.

³ "Regulated function", in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier.

⁴ "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.

that corporation, you also need to be approved as a *responsible officer* (section 125(1)(a) of the SFO).

3.2 You need a **registration** if you are an authorized financial institution¹ and:-

- ❖ you carry on a business of regulated activity⁵ or hold out as carrying on a business in a regulated activity. In that case, you have to be a *registered institution* (section 114(1) and (2)); or
- ❖ you actively market, whether by yourself or another person on your behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that you provide, which would constitute a regulated activity if provided in Hong Kong. In this case, you have to be a *registered institution* (section 115 of the SFO).

Notes for attention

Relevant individuals of registered institutions

3.3 Relevant individuals who perform regulated functions in relation to regulated activities for registered institutions (e.g. bank staff working in the securities dealing department) are not required to be licensed or registered with the SFC. However, their names have to be entered in the register maintained by the HKMA if they are to perform regulated activities⁵. That register is available on the HKMA's web site (see paragraph 11.3).

⁵ Other than Type 3 (leveraged foreign exchange trading) and Type 8 (securities margin financing) regulated activities for which authorized financial institutions are not required to be registered to carry out those activities.

- 3.4 It is a statutory condition of registration for every registered institution that its relevant individuals are fit and proper. To that end, all relevant individuals are required, among other things, to fulfil the same competence requirements as licensed representatives or responsible officers (as the case may be) of licensed corporations (see paragraphs 6.10.6 and 6.10.7 for more information).

Provision of financial information on the Internet or on-line trading services

- 3.5 If you intend to provide financial information on the Internet or any on-line trading services, please refer to **Appendix C** for more information on related licensing requirements.

Promotional schemes

- 3.6 Intermediaries offering promotional schemes organized in conjunction with their affiliates should pay special attention to the licensing requirements. In particular, care should be taken to ensure that the marketing activities do not cause the affiliates (which may not be licensed or registered) to engage in dealing in securities, dealing in futures contracts or other regulated activities.

Incentive schemes

- 3.7 The implementation of incentive schemes, whereby any member of the public (as conducting a business himself) would be remunerated in the form of commission, rebate, etc. after successfully introducing clients to a licensed person or a registered institution, is generally unacceptable. Such practice could potentially result in the introducing party engaging in unlicensed regulated activities. The licensed person or registered institution concerned could also be liable for aiding and abetting the offence. It is of concern that the clients so introduced may not receive the appropriate protection afforded by the regulatory regime. In addition, the introducing party may not be fit and proper to carry out that function.

Part 4 Types of intermediary⁶

4.1 Licensed corporation

It is a corporation (not being an authorized financial institution) which is granted a licence to carry on one or more than one regulated activity under section 116 of the SFO.

Please see paragraph 6.4 for more information.

4.2 Temporary licensed corporation

It is a corporation (not being an authorized financial institution) which is granted a temporary licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity⁷ under section 117 of the SFO.

Please see paragraph 6.5 for more information.

4.3 Responsible officer

He is a licensed representative (see paragraph 4.4) who is also approved as a responsible officer under section 126 of the SFO to supervise the regulated activity of the licensed corporation to which he is accredited.

Please see paragraph 6.6 for more information.

⁶ For simplicity, the term “intermediary” in this Part broadly refers to any person licensed by or registered with the SFC. This coverage is wider than the relevant provisions under Part 1 of Schedule 1 to the SFO where “intermediary” is defined to mean a licensed corporation or a registered institution only.

⁷ Other than Type 3 (leveraged foreign exchange trading), Type 7 (providing automated trading services), Type 8 (securities margin financing) and Type 9 (asset management) which a temporary licence holder is not permitted to carry out.

4.4 **Licensed representative**

He is an individual who is granted a licence under section 120(1) of the SFO to carry on one or more than one regulated activity for a licensed corporation to which he is accredited.

Please see paragraph 6.7 for more information.

4.5 **Provisional licensed representative**

He is an individual who is granted a provisional licence under section 120(2) of the SFO to carry on one or more than one regulated activity for a licensed corporation to which he is accredited (prior to the grant of his licence under section 120(1) of the SFO).

Please see paragraph 6.8 for more information.

4.6 **Temporary licensed representative**

He is an individual who is granted a temporary licence under section 121 of the SFO to carry on, for a period not exceeding 3 months, one or more than one regulated activity⁷ for a corporation licensed under section 116 or 117 to which he is accredited.

Please see paragraph 6.9 for more information.

4.7 **Registered institution**

It is an authorized financial institution which is registered to carry on one or more than one regulated activity⁵ under section 119 of the SFO.

Please see paragraph 6.10 for more information.

Part 5 Exemption from licensing requirements

- 5.1 This Part gives an overview of certain common situations in which exemption from the licensing requirements may apply under the SFO. This information is provided with a view to assisting prospective applicants in considering the appropriate types of regulated activity necessary for their proposed businesses. The information contained hereunder is by no means exhaustive. You should refer to the SFO or consult your professional advisers if you need guidance specific to your case.
- 5.2 For simplicity, the terms “licence” and “licensed” in this Part bear the same meaning as “registration” and “registered” respectively unless otherwise specified.

Incidental exemption

- 5.3 You may not be required to be licensed for certain regulated activities if such activities are performed wholly incidental to your carrying out of another regulated activity for which you are already licensed. Incidental exemption may apply in the following circumstances:-

Licensed for Type 1 regulated activity and carry out certain other regulated activities

- 5.3.1 You are licensed for Type 1 regulated activity (dealing in securities) and you wish to carry out Type 4 (advising on securities), Type 6 (advising on corporate finance) and/or Type 9 (asset management) regulated activity. You do not need to be licensed for Types 4, 6 and 9 provided that these activities are carried out wholly incidental to your securities dealing business. This exemption normally applies to

stockbrokers who provide investment advice or manage discretionary accounts for their securities clients.

Licensed for Type 2 regulated activity and carry out certain other regulated activities

- 5.3.2 You are licensed for Type 2 regulated activity (dealing in futures contracts) and you wish to carry out Type 5 (advising on futures contracts) and/or Type 9 (asset management) regulated activity. You do not need to be licensed for Types 5 and 9 provided that these activities are carried out wholly incidental to your futures dealing business. This exemption normally applies to futures brokers who provide investment advice or manage discretionary accounts for their futures clients.

Licensed for Type 9 regulated activity and carry out certain other regulated activities

- 5.3.3 You are licensed for Type 9 regulated activity (asset management) and you wish to carry out Type 1 (dealing in securities) and/or Type 2 (dealing in futures contracts) regulated activity. You do not need to be licensed for Types 1 and 2 provided that these activities are carried out solely for the purposes of your asset management business. This exemption normally applies to fund managers who place trade orders to dealers in the course of managing their clients' portfolios of securities and/or futures contracts.

Securities dealer - margin financier exemption

- 5.4 If you are licensed for Type 1 regulated activity (dealing in securities), you need not separately be licensed for Type 8 regulated activity (securities margin financing) to carry out securities margin financing activities for your clients. However, you would need to satisfy a more stringent financial resources requirement in terms of paid-up capital in order to do so (see paragraph 6.4.10). This

exemption normally applies to stockbrokers who also provide margin financing facilities to their securities clients.

- 5.5 Please note that in any event, authorized financial institutions are not required to be registered for Type 8 regulated activity to carry out securities margin financing activities.

Dealing with professional investor exemption

- 5.6 You may not be required to be licensed for futures or securities dealing activity if you act as principal and deal with professional investors⁸ only. This exemption will apply if:-

In relation to dealing in futures contracts

- ❖ you as principal carry out the dealing activity concerned 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 investor⁸ (whether acting as principal or agent); or

In relation to dealing in securities

- ❖ you as principal carry out the dealing activity concerned by way of dealing with a person who is a professional investor⁸ (whether acting as principal or agent).

⁸ "Professional investor" is specifically defined in Part 1 of Schedule 1 to the SFO. However, please note that the definition of "professional investor" in the *Securities and Futures (Professional Investor) Rules* does not apply in this exemption.

Advising group company exemption

- 5.7 You are not required to be licensed for Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) or Type 9 (asset management) regulated activity if you provide the related investment advice or services solely to your wholly owned subsidiaries, your holding company which holds all your issued shares, or other wholly owned subsidiaries of that holding company.
- 5.8 However, this exemption is only applicable if you provide the relevant services to such group companies in respect of their own assets. In case that the assets belong to the clients of those group companies, this exemption will not apply. In other words, managing or advising on assets belonging to third parties would generally attract a licensing requirement.

Professional exemption

- 5.9 If you are a solicitor, a counsel or a professional accountant, you are not required to be licensed for Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) or Type 9 (asset management) regulated activity if you provide such advice or services wholly incidental to your practice as a solicitor, a counsel or a professional accountant.

Broadcaster/Journalist exemption

5.10 If you give advice on securities, futures contracts or corporate finance or issue related analyses or reports through:-

- ❖ a newspaper, magazine, book or other publication which is made generally available to the public; or
- ❖ television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,

you are not required to be licensed for Type 4, Type 5 or Type 6 regulated activity (as the case may be).

Trust company exemption

In relation to dealing in securities

5.11 If you are a trust company registered under Part VIII of the Trustee Ordinance, you are not required to be licensed for Type 1 regulated activity (dealing in securities) if you act as an agent for a collective investment scheme to distribute application forms, redemption notices, conversion notices and contract notes, and/or receive money and issue receipts on behalf of your principal.

In relation to investment advisory activities

5.12 As a trust company, you are not required to be licensed for Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) or Type 9 (asset management) regulated activity if you provide such investment advice or services wholly incidental to your discharge of your duty as a trustee.

Leveraged foreign exchange trading exemption

- 5.13 The SFO provides a number of exclusions in the definition of “leveraged foreign exchange trading” (see **Appendix B**). For example, if you are an authorized financial institution, you are not required to be registered for Type 3 regulated activity (leveraged foreign exchange trading) in order to carry out such activity.
- 5.14 The *Securities and Futures (Leveraged Foreign Exchange Trading – Exemption) Rules* set out the requirements and conditions in applying the exemption provided in paragraph (xiii) of the definition of “leveraged foreign exchange trading” of Schedule 5 to the SFO. Please refer to the provisions of the *Rules* for details.

Part 6 Basic approval criteria

Fit and proper

6.1 The SFC is obliged to refuse to grant a licence or registration if the applicant fails to satisfy the SFC that he is fit and proper. Pursuant to section 129 of the SFO, in considering whether a person is fit and proper for the purposes of licensing or registration, the SFC shall, in addition to any other matter that the SFC may consider relevant, have regard to the following:-

- ❖ 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, and
- ❖ reputation, character, reliability and financial integrity

of the applicant and other relevant persons as appropriate.

6.2 The above criteria serve as the fundamental basis when the SFC considers each licence or registration application. For further elaboration of these attributes, you may wish to refer to the *Fit and Proper Guidelines* and the *Guidelines on Competence* published by the SFC.

6.3 As a general overview, we set out below the aspects that an applicant normally needs to satisfy so as to get a licence or registration.

6.4 If you apply to be a licensed corporation

Incorporated

- 6.4.1 You must be a company incorporated⁹ in Hong Kong or an overseas company registered with the Companies Registry of Hong Kong.

Competence

- 6.4.2 You have to satisfy the SFC that you have proper business structure, good internal control systems and qualified personnel to ensure the proper management of risks that you will encounter in carrying on your proposed business as detailed in your business plan. Please refer to the following publications of the SFC for more information:-

- ❖ *Guidelines on Competence*;
- ❖ *Code of Conduct for Persons Licensed by or Registered with the SFC*; and
- ❖ *Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC*.

Responsible officers

- 6.4.3 You should appoint not less than 2 responsible officers to directly supervise the conduct of each regulated activity you apply.
- 6.4.4 For each regulated activity you apply, you should have 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.

⁹ Sole proprietorship or partnership is not an acceptable form of business structure for the purposes of licensing.

- 6.4.5 At least one of your proposed responsible officers must be an executive director⁴ as defined under the SFO.
- 6.4.6 All your executive directors⁴ must seek the SFC's approval as responsible officers accredited to your corporation.
- 6.4.7 All applications for approval as responsible officers should be lodged with the SFC for consideration together with your licence application.

Substantial shareholders, etc. to be fit and proper

- 6.4.8 Your substantial shareholders (see paragraph 9.13), officers¹⁰ and any other person who is or is to be employed by, or associated with, you for the purposes of the regulated activity for which the application is made shall be fit and proper. Please refer to section 129 of the SFO for details.

Financial resources

- 6.4.9 Depending on the type(s) of regulated activity that you apply for, you have to 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*. If you apply for more than one type of regulated activity, the minimum paid-up share capital and liquid capital that you should maintain shall be the higher or the highest amount required amongst those regulated activities you apply for.

¹⁰ "Officer", in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation.

As defined in Part 1 of Schedule 1 to the SFO, "director" includes a shadow director and any person occupying the position of director by whatever name called. "Shadow director" means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity.

6.4.10 **Table 1** summarizes the minimum paid-up capital and liquid capital that a licensed corporation is required to maintain for each type of regulated activity.

Table 1 – Minimum paid-up share capital and liquid capital requirements

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
Type 1 – (a) in the case where the corporation is an approved introducing agent ¹¹ or a trader ¹² (b) in the case where the corporation provides securities margin financing (c) in any other case	Not applicable \$10,000,000 \$5,000,000	\$500,000 \$3,000,000 \$3,000,000

¹¹ “Approved introducing agent” means a licensed corporation approved as such under section 58(4) of the *Securities and Futures (Financial Resources) Rules*.

¹² “Trader” means a licensed corporation licensed for Type 1 or Type 2 regulated activity which does not hold client assets or handle clients’ orders and, in carrying on the regulated activity for which it is licensed, conducts no business other than effecting, or offering to effect, dealings in securities, futures contracts or options contracts for its own account.

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
Type 2 – (a) in the case where the corporation is an approved introducing agent ¹¹ , a trader ¹² or a futures non-clearing dealer ¹³ (b) in any other case	Not applicable \$5,000,000	\$500,000 \$3,000,000
Type 3 – (a) in the case where the corporation is an approved introducing agent ¹¹ (b) in any other case	\$5,000,000 \$30,000,000	\$3,000,000 \$15,000,000
Type 4 – (a) in the case where in relation to Type 4 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets (b) in any other case	Not applicable \$5,000,000	\$100,000 \$3,000,000
Type 5 – (a) in the case where in relation to Type 5 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets (b) in any other case	Not applicable \$5,000,000	\$100,000 \$3,000,000

¹³ “Futures non-clearing dealer” means a licensed corporation licensed for Type 2 regulated activity which is an exchange participant of a recognized futures market, but is not a clearing participant of a recognized clearing house.

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
Type 6 – (a) in the case where in relation to Type 6 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets (b) in any other case	Not applicable \$5,000,000	\$100,000 \$3,000,000
Type 7	\$5,000,000	\$3,000,000
Type 8	\$10,000,000	\$3,000,000
Type 9 – (a) in the case where in relation to Type 9 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets (b) in any other case	Not applicable \$5,000,000	\$100,000 \$3,000,000

6.4.11 Please refer to the *Securities and Futures (Financial Resources) Rules* for more information on financial resources requirements, e.g. the computation of liquid capital.

Insurance

6.4.12 The *Securities and Futures (Insurance) Rules* set out the insurance requirements applicable to corporations licensed for certain regulated activities. Subject to the exemption mentioned in paragraph 6.4.13, if you are licensed for Type 1 (dealing in securities), Type 2 (dealing in futures contract) or Type 8 (securities margin financing) regulated activity, you are required to take out and maintain insurance against specific risks for specified amount when the SFC approves a master policy of insurance applicable to you.

- 6.4.13 You are exempted from the above requirement if you are not an exchange participant and your licence is subject to a condition that you shall not hold client assets.
- 6.4.14 Until the printing of this Booklet, the SFC has approved only one master policy of insurance applicable to corporations which are stock exchange participants licensed for Type 1 regulated activity (dealing in securities). Licensed corporations other than stock exchange participants licensed for Type 1 regulated activity are currently not required to take out insurance under the *Securities and Futures (Insurance) Rules*. For updated information, please refer to the *Regulatory Handbook (Part A of Volume 2 – Licensing of Intermediaries and Continuing Obligations of Licensed Persons)* posted on the SFC's web site.
- 6.4.15 If you wish to apply for Type 1 regulated activity (dealing in securities) and intend to be a stock exchange participant, you should be prepared to take out insurance under the approved master policy. Related administrative matters are being dealt with by the appointed insurance broker. Contact information of the insurance broker is available on the SFC's web site under *Frequently Asked Questions*.
- 6.4.16 Please refer to the *Securities and Futures (Insurance) Rules* for more information.

6.5 **If you apply to be a temporary licensed corporation**

Similar role overseas

6.5.1 You should be carrying on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute a regulated activity. You seek to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity. In addition, you are authorized by a relevant regulatory organization in your home jurisdiction to carry on such business in that place.

Restriction on types of regulated activity

6.5.2 A temporary licence holder may carry on one or more than one of the following regulated activities only:-

- ❖ Type 1 (dealing in securities)
- ❖ Type 2 (dealing in futures contracts)
- ❖ Type 4 (advising on securities)
- ❖ Type 5 (advising on futures contracts)
- ❖ Type 6 (advising on corporate finance)

Cannot hold client assets

6.5.3 You cannot hold any client assets in carrying on the regulated activity you apply to be licensed.

Licensed period

6.5.4 Your temporary licence, if granted, will be for a duration of not more than 3 months at any one time.

6.5.5 You will not be granted temporary licences for more than 6 months in total within any period of 24 months.

Supervision of business

- 6.5.6 You are required to nominate at least one individual for approval by the SFC for the purposes of section 117(5)(a). That individual shall be available at all times to supervise the business of regulated activity for which you apply to be licensed.

Substantial shareholders, etc. to be fit and proper

- 6.5.7 The same requirements as mentioned in paragraph 6.4.8 apply to you.

6.6 If you apply to be a licensed representative and approved as a responsible officer

Sufficient authority

- 6.6.1 You should have sufficient authority to supervise the business of regulated activity within the licensed corporation that you will be accredited to.
- 6.6.2 You may or may not be a director of the licensed corporation. However, if you are a director of the corporation and actively participate or directly supervise the business of regulated activity, you must apply to become a responsible officer of that corporation in respect of the regulated activity concerned (see paragraphs 6.4.3 to 6.4.7).

Competence

- 6.6.3 You should possess appropriate ability, skills, knowledge and experience to properly manage and supervise the corporation's business of regulated activities. Basically, you have to fulfil four elements mentioned in **Table 2** to be approved as a responsible officer.

Table 2 – Test of competence for responsible officers

Basic elements			Can be compensated by
(1)	Academic / industry qualification	Passed one of the recognized industry qualifications	<ul style="list-style-type: none"> ❖ Degree in Accounting, Business Administration, Economics, Finance or Law; or other degree (with passes in at least two courses in the above disciplines); or ❖ Internationally recognized professional qualifications in Law, Accounting or Finance¹⁴; or ❖ Passes in English or Chinese, and Mathematics in Hong Kong Certificate of Education Examination (“HKCEE”) or equivalent¹⁵ plus an additional 2 years of relevant industry experience¹⁶; or ❖ An additional 5 years relevant industry experience.
(2)	Industry experience	Possesses 3 years of relevant industry experience over the 6 years immediately prior to the date of application	Not applicable

¹⁴ Internationally recognized professional qualifications in Finance include Chartered Financial Analyst, Certified International Investment Analyst and Certified Financial Planner.

¹⁵ All high school public examinations (such as university entry examinations) will be recognized as equivalent to HKCEE.

¹⁶ In assessing the relevance of an applicant’s experience, the SFC will consider the role and functions to be undertaken by the applicant and whether the applicant possesses the recognized industry qualifications. Experience gained in Hong Kong or elsewhere that is closely related to the functions to be performed will be recognized.

Basic elements			Can be compensated by
(3)	Management experience	Has a minimum of 2 years' proven management skill and experience	Not applicable
(4)	Regulatory knowledge	Passed one of the recognized local regulatory framework papers	Applicant may apply for exemption from taking the recognized local regulatory framework paper if he satisfies the exemption criteria as set out in Appendix E of the <i>Guidelines on Competence</i> .

6.6.4 If you intend to conduct regulated activities in relation to matters falling within the ambit of a particular code issued by the SFC, e.g. the *Codes on Takeovers and Mergers and Share Repurchases*, the *Code on Real Estate Investment Trusts*, additional competence requirements specific to that field would apply.

6.6.5 Please refer to the *Guidelines on Competence* issued by the SFC and related *Frequently Asked Questions* posted on the SFC's web site for more information.

6.7 If you apply to be a licensed representative (other than a responsible officer)

Competence

6.7.1 You have to establish that you have the requisite basic understanding of the market in which you are to work as well as the laws and regulatory requirements applicable to the industry. In assessing your competence to be licensed as a representative, the SFC will have regard to three basic elements mentioned in **Table 3**.

Table 3 – Test of competence for representatives

Basic elements			Can be compensated by
(1)	Academic qualification	Passes in English or Chinese, and Mathematics in HKCEE or equivalent ¹⁵	<ul style="list-style-type: none"> ❖ Degree in Accounting, Business Administration, Economics, Finance or Law; or other degree (with passes in at least two courses in the above disciplines); or ❖ Internationally recognized professional qualifications in Law, Accounting or Finance¹⁴; or ❖ An additional 2 years of relevant industry experience for lacking either (1) or (2); or ❖ An additional 5 years of relevant industry experience for lacking both (1) and (2).
(2)	Industry qualification	Passed one of the recognized industry qualifications	
(3)	Regulatory knowledge	Passed one of the recognized local regulatory framework papers	Applicant may apply for exemption from taking the recognized local regulatory framework paper if he satisfies the exemption criteria as set out in Appendix E of the <i>Guidelines on Competence</i> .

Note: A representative licensed for Type 3 regulated activity (leveraged foreign exchange trading) who handles discretionary account activities has to obtain an additional 3 years of direct foreign exchange trading experience in the inter-bank foreign exchange market or currency futures market, or its equivalent over the past 6 years.

6.7.2 Please refer to the *Guidelines on Competence* issued by the SFC and related *Frequently Asked Questions* posted on the SFC's web site for more information.

6.8 If you apply to be a provisional licensed representative....

- 6.8.1 You should have submitted your application to be a normal licensed representative. The same requirements for licensed representatives as described in paragraph 6.7.1 apply to you.
- 6.8.2 The SFC may grant you a provisional licence to carry on regulated activity as a representative if it is satisfied that you are fit and proper and that the grant of the provisional licence will not prejudice the interest of the investing public.
- 6.8.3 An additional fee of \$800 for the provisional licence is required.
- 6.8.4 Your provisional licence, if granted, will be deemed to have been revoked when your application to be a normal licensed representative is approved or refused, whichever first occurs.

6.9 If you apply to be a temporary licensed representative....

Similar role overseas

- 6.9.1 You should carry on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity, under an authorization by a regulatory organization in that place.

Accreditation to a licensed corporation

- 6.9.2 You must be accredited to a licensed corporation described in paragraph 6.4 or a temporary licensed corporation described in paragraph 6.5. If you intend to be accredited to a corporation licensed under section 116 of the SFO (i.e. a licensed corporation described in paragraph 6.4), that licensed corporation needs to be of

the same group of companies as your principal in your home jurisdiction. Where you intend to be accredited to a corporation licensed under section 117 of the SFO (i.e. a temporary licensed corporation described in paragraph 6.5), you seek to be licensed as a temporary representative solely for the conduct of your principal's business in the activity referred to in its licence application.

Restriction on types of regulated activity

- 6.9.3 A temporary licence holder may carry on one or more than one of the following regulated activities only:-
- ❖ Type 1 (dealing in securities)
 - ❖ Type 2 (dealing in futures contracts)
 - ❖ Type 4 (advising on securities)
 - ❖ Type 5 (advising on futures contracts)
 - ❖ Type 6 (advising on corporate finance)

Cannot hold client assets

- 6.9.4 You cannot hold any client assets in carrying on the regulated activity you apply to be licensed.

Licensed period

- 6.9.5 Your temporary licence, if granted, will be for a duration of not more than 3 months at any one time.
- 6.9.6 You will not be granted temporary licences for more than 6 months in total within any period of 24 months.

6.10 **If you apply to be a registered institution**

Authorized institution

6.10.1 You must be an authorized financial institution¹. It is desirable that you notify the HKMA before submitting an application for registration to the SFC.

Executive officers

6.10.2 You should appoint not less than 2 executive officers responsible for directly supervising the conduct of each regulated activity you apply.

6.10.3 For each regulated activity you apply, you should have at least one executive officer available at all times to supervise the business. The same individual may be appointed to be an executive 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.

6.10.4 An executive officer is a person who has obtained the consent of the HKMA to act in such capacity under the Banking Ordinance. The HKMA is obliged to refuse to give that consent unless it is satisfied that the individual is a fit and proper person and has sufficient authority to be an executive officer of the registered institution concerned.

6.10.5 Executive officers are expected to meet the same competence requirements as responsible officers of licensed corporations described in paragraphs 6.6.3 and 6.6.4.

Relevant individuals

- 6.10.6 Individuals engaged to carry on regulated activity on your behalf are regarded as relevant individuals¹⁷. They are not required to be registered or licensed with the SFC, but their names and certain particulars have to be entered in the register maintained by the HKMA.
- 6.10.7 It is a statutory condition of registration for every registered institution that its relevant individuals are fit and proper. In relation to competence requirements, executive officers are expected to meet the same requirements as responsible officers of licensed corporations (as mentioned in paragraph 6.10.5) while other relevant individuals are expected to meet the same competence requirements as licensed representatives (see paragraph 6.7.1).

Substantial shareholders, etc. to be fit and proper

- 6.10.8 Your substantial shareholders, directors, chief executive, managers (as defined in section 2(1) of the Banking Ordinance), executive officers and any other person who will be acting for or on behalf of you in relation to the regulated activity for which the application is made shall be fit and proper. Please refer to section 129 of the SFO for details.

¹⁷ “Relevant individual”, in relation to a registered institution, means an individual who performs for or on behalf of or by an arrangement with the institution any regulated function in a regulated activity. Please refer to Footnote 3 for the definition of “regulated function”.

Part 7 Application procedures

Completing the application form

- 7.1 If you wish to apply for a licence or registration, you should complete the appropriate application form and supplements, if any. Please refer to **Appendix D** for a detailed list.
- 7.2 Application forms can be downloaded from the SFC's web site under the section of *Forms specified by the Commission* or obtained by fax through the SFC Infoline (2840-9393)¹⁸.

Submitting the application

- 7.3 Before submitting your application, please check that you have provided everything that we need to process your application. In particular, you should have:-
- ❖ answered every question in the application form and supplement(s) unless directed otherwise;
 - ❖ provided all supporting documents as required in the application form and supplement(s); and
 - ❖ enclosed a cheque payable to "Securities and Futures Commission" for the required application fee (see **Appendix E** for the application fee amount).

¹⁸ Please refer to **Appendix A**.

- 7.4 For applications to become representatives (including responsible officers), the applicants' principals are primarily responsible and liable for verifying and endorsing the applications of such individuals before submitting the applications to the SFC.
- 7.5 You may submit your application package:-
- ❖ in person to the SFC's office, or
 - ❖ by post to the Licensing Department of the SFC.

Returned application

- 7.6 Your application may be returned to you if you have not:-
- ❖ answered all questions or marked "N/A" where appropriate;
 - ❖ signed and dated the application form or any relevant supplements;
 - ❖ submitted all supporting documents as required; or
 - ❖ paid the correct amount of application fee.

Withdrawal of application

- 7.7 You may choose to withdraw your application prior to the approval or refusal of the application by the SFC. The application fee paid is however not refundable.

Processing time

- 7.8 To process an application of a new industry participant, it normally takes approximately:-
- ❖ **2 business days** (for acknowledgement of application);
 - ❖ **7 business days** (for provisional licensed representative application);
 - ❖ **8 weeks** (for normal licensed representative application);
 - ❖ **10 weeks** (for responsible officer application); or
 - ❖ **15 weeks** (for licensed corporation or registered institution application).
- 7.9 The time it takes to process an application may vary depending on a number of factors such as:-
- ❖ types of service or product you propose to provide;
 - ❖ quality of your application;
 - ❖ quality of the supporting documents you provided;
 - ❖ time taken for other regulatory bodies to respond to our vetting requests on you, where applicable;
 - ❖ your response time to provide any further information requested during the assessment process; and
 - ❖ volume of applications we received.
- 7.10 The processing time mentioned in paragraph 7.8 may change from time to time. For updated information, please refer to *Our Performance Pledges* posted on the SFC's web site under the section of *About the SFC*.

Refusal of application

- 7.11 We will refuse your application if you fail to meet the statutory requirements or you fail to satisfy us that you are a fit and proper person to be licensed or registered. Before we refuse your application, you will be given an opportunity of being heard (section 140 of the SFO). In case that we, having considered your representation if any, decide to refuse your application, you may appeal against our decision to the Securities and Futures Appeals Tribunal within 21 days (section 232 of the SFO). Please address your correspondence relating to the appeal to:-

The Clerk to the Securities and Futures Appeals Tribunal
38th Floor, Immigration Tower
7 Gloucester Road,
Wanchai
Hong Kong

Approval of application

- 7.12 Please refer to Part 8 on grant of licence or registration and related matters requiring your attention.

Part 8 Grant of licence or registration

Approval of application

- 8.1 Once all requirements are met and the SFC is satisfied that you are fit and proper, we may grant you a licence or registration (as the case may be). You will be notified of the approval in writing and a licence or a certificate of registration will be posted to you by registered mail.
- 8.2 Your licence or certificate of registration will show:-
- ❖ your name;
 - ❖ your central entity number (also known as CE number¹⁹);
 - ❖ effective date of your licence or registration;
 - ❖ type(s) of regulated activity that you are licensed or registered to carry on; and
 - ❖ the condition(s) imposed on your licence or registration, if any.
- 8.3 You may refer to the public register maintained by the SFC and available on its web site (see paragraphs 11.1 and 11.2) to check whether your licence/registration status and related particulars are correctly reflected. Please notify the SFC immediately if there is any discrepancy.

¹⁹ The CE number is a unique identification number assigned to you by the SFC. Please quote your CE number in all future correspondence with the SFC.

Notes to licensed corporations

Notification of financial year end

- 8.4 As a licensed corporation, you are required to notify the SFC of your financial year end within one month upon the grant of your licence (section 155(1)(a) of the SFO).

Exhibition of licence

- 8.5 You should exhibit your licence in a prominent place at your principal place of business. If you have more than one place of business, a certified copy of your licence must be exhibited in a prominent place at each of your other places of business (section 3 of the *Securities and Futures (Miscellaneous) Rules*).

Cessation of business

- 8.6 If you (or any of your licensed representatives) intend to cease to carry on any licensed regulated activity, you (or that representative) should notify the SFC by completing Form 5 of the intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation (section 135(1) of the SFO).
- 8.7 After you (or any of your licensed representatives) ceased to carry on all or any of the licensed regulated activities for more than one month, you (or that representative) should return the licence to the SFC for cancellation or amendment (as the case may be) within 37 days after the cessation unless the SFC has approved a longer period for such purpose (section 4 of the *Securities and Futures (Miscellaneous) Rules*).
- 8.8 If you cease to carry on all regulated activities, you are also required to submit audited accounts to the SFC within 4 months after the date of cessation (see paragraph 10.4).

Notes to licensed representatives

Accreditation to specified principal(s)

- 8.9 If you are a licensed representative, apart from the items mentioned in paragraph 8.2, your licence will also specify the licensed corporation(s) that you are accredited to as your principal(s). You can only act for such corporation(s) in carrying out your licensed regulated activity or activities for which each of the corporations is also licensed.

Cessation of accreditation

- 8.10 When you cease to act for your principal(s), your licence is considered to be invalid. You should return your licence to the SFC within 7 business days after the cessation of accreditation. In addition, your principal(s) should, within 7 business days after such cessation, notify the SFC of the cessation (section 123(1)(a) and (b) of the SFO).

Transfer of accreditation

- 8.11 Upon your ceasing to act for your principal(s), you may apply for a transfer of accreditation by submitting Form 4 and the required application fee (\$200 per regulated activity²⁰) within 180 days after the cessation in order to act for another licensed corporation. It takes approximately 7 business days to process an application for transfer of accreditation.
- 8.12 Please also pay attention to paragraphs 8.6 and 8.7 which are also applicable to you as a licensed representative.

²⁰ Except for Type 7 regulated activity (providing automated trading services) which is free of charge provided that the applicant's proposed carrying on of Type 7 regulated activity is incidental to the proposed carrying on of Type 1 (dealing on securities) or Type 2 (dealing in futures contracts) regulated activity.

Notes to registered institutions

Exhibition of certificate of registration

- 8.13 You should exhibit your certificate of registration in a prominent place at your principal place of business. If you have more than one place of business, a certified copy of your certificate must be exhibited in a prominent place at each of your other places of business (section 3 of the *Securities and Futures (Miscellaneous) Rules*).

Cessation of business

- 8.14 If you intend to cease to carry on any registered regulated activity, you should notify the SFC by completing Form 5 of the intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation. You should also notify the same to the HKMA in writing within that time limit (section 135(1) of the SFO).
- 8.15 After you cease to carry on all or any of your registered regulated activities for more than one month, you should return your certificate of registration to the SFC for cancellation or amendment (as the case may be) within 37 days after the cessation unless the SFC has approved a longer period for such purpose (section 4 of the *Securities and Futures (Miscellaneous) Rules*).

Penalties on failure to exhibit or return licence / certificate as required

- 8.16 If you, without reasonable excuse, fail to comply with the requirements referred to in paragraphs 8.5 and 8.13 (exhibition of licence or certificate of registration), you are liable on conviction to a fine at level 5 (\$50,000 as currently prescribed by the Criminal Procedure Ordinance). Similarly, failure to comply, without reasonable excuse, with the requirements mentioned in paragraphs 8.7, 8.10 and 8.15 (return of licence or certificate of registration) will render you liable on conviction to a fine at level 6 (\$100,000 as currently prescribed).

Other requirements and on-going obligations

- 8.17 In addition to the above requirements concerning exhibition and return of licence or certificate of registration, etc, licensed corporations, licensed representatives and registered institutions have to comply with other requirements on an ongoing basis (see Parts 9 and 10).

Duplicate licence or certificate of registration

- 8.18 If your licence or certificate of registration is lost, defaced or destroyed, you may apply to the SFC for the issuance of a duplicate licence or certificate of registration (section 124 of the SFO). The application fee is \$200. For the purpose of such application, you may be required to provide evidence to substantiate loss or destruction of the licence or certificate. Such evidence may be:-
- ❖ statutory declaration; or
 - ❖ evidence of report to the Police.

Part 9 Notification of changes and other applications

Notification by licensed corporations, licensed representatives and registered institutions

- 9.1 In relation to licensing and registration matters, section 135 of the SFO sets out the events for which notification by licensed persons and registered institutions is required. Apart from notifying any intended cessation of business as mentioned in paragraphs 8.6 and 8.14, licensed persons and registered institutions are required to notify the SFC of certain changes in the information that they have provided to the SFC in their initial applications. In the case of registered institutions, the notification should be made to both the SFC and the HKMA. The changes requiring notification are specified in section 135 of the SFO and Parts 1 to 3 of Schedule 3 to the *Securities and Futures (Licensing and Registration) (Information) Rules*. Some examples are described in **Table 4** below.

Notification by directors and substantial shareholders of licensed corporations

- 9.2 A director of a licensed corporation should notify the SFC of his becoming or ceasing to be a director of the corporation within 7 business days after the event takes place (section 135(6) of the SFO).
- 9.3 A substantial shareholder of a licensed corporation is required to notify the SFC of changes in his particulars as detailed in Part 4 of Schedule 3 to the *Securities and Futures (Licensing and Registration) (Information) Rules*.

Notification by associated entities of intermediaries

- 9.4 An associated entity²¹ of an intermediary is required to notify the SFC within 7 business days of its becoming an associated entity and ceasing to be an associated entity (section 165 of the SFO). The particulars required for notification are set out in sections 3 and 4 of the *Securities and Futures (Associated Entities – Notice) Rules*. Where there is any change in the particulars notified, the associated entity shall within 7 business days thereafter notify the SFC of such change by completing Form 6.
- 9.5 Furthermore, section 155(1)(b) of the SFO requires that an associated entity shall notify the SFC of its financial year end within one month after it becomes such an associated entity. This requirement however does not apply to an associated entity which is an authorized financial institution.

Examples of changes that require notification

- 9.6 Some of the more common change events that require notification are shown in **Table 4**. For details of the notification requirements, you should refer to relevant provisions of the SFO and its subsidiary legislation.

²¹ “Associated entity”, in relation to an intermediary, means a company, or an overseas company complying with the provisions of Part XI of the Companies Ordinance relating to the registration of documents, which –

- (a) is in a controlling entity relationship with the intermediary; and
- (b) receives or holds in Hong Kong client assets of the intermediary.

Please refer to Part 1 of Schedule 1 to the SFO for the definitions of “controlling entity”, “controlling entity relationship” and other associated terms.

Table 4 – Certain changes that require notification

Types of change / events	Applicable to	Notification time limit	Form required
Cessation of business	LC, LR, RI	At least 7 business days in advance for intended cessation of business	Form 5
Ceased to act as a licensed representative	LC, LR	Within 7 business days	Form 5
Ceased to act as a responsible officer	LC, RO	Within 7 business days	Form 5
Change in name ²²	LC, LR, RI, SS	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in business address	LC ²³ , RI	At least 7 business days in advance for intended change in business address	Form 5
	AE	Within 7 business days	Form 6

²² In the case of a licensed corporation, a licensed representative or a registered institution, an application fee of \$200 is payable for the grant of a new licence or certificate of registration as a result of the change in name.

²³ Please note that an intended change in business address will inevitably trigger an application under section 130 of the SFO by a licensed corporation for approval of its new premises for keeping records or documents. An application fee of \$1,000 is required.

Types of change / events	Applicable to	Notification time limit	Form required
Change in director or his particulars	LC, RI	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in complaints officer or his particulars	LC, RI	Within 7 business days	Form 5
Change in emergency contact person or his particulars	LC, RI	Within 7 business days	Form 5
Change in share capital or shareholding structure	LC, RI, SS	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in contact information	LC, LR, RI, SS	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in bank accounts	LC	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in associated entity or its particulars	LC, RI	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6
Change in insurance policy maintained under the <i>Securities and Futures (Insurance) Rules</i>	LC	Within 7 business days	Form 5

Types of change / events	Applicable to	Notification time limit	Form required
Change in auditor's name	LC, RI	Within 7 business days	Form 5
Give notice of a motion to change auditor in a general meeting, etc (see section 154 of the SFO)	LC	Within 1 business day	Form 5
	AE ²⁴	Within 1 business day	Form 6
Change in executive officer or his Particulars	RI	Within 7 business days	Form 5
	AE	Within 7 business days	Form 6

(LC: Licensed corporation; LR: Licensed representative; RO: Responsible officer; RI: Registered institution; SS: Substantial shareholder; AE: Associated entity)

²⁴ This requirement is not applicable to an associated entity which is an authorized financial institution.

Changes that require prior approval

9.7 **Table 5** contains certain changes that require the prior approval of the SFC. If you are a licensed person or a registered institution and intend to make any such changes, you or the person concerned (e.g. proposed substantial shareholder of a licensed corporation) should lodge an application with the SFC by completing the specified application form together with the required application fee.

Table 5 – Certain changes that require prior approval of the SFC

Type of change	Applicable to	Form required	Fee required ²⁵
Addition of regulated activity	LC, LR, RI	Form 4 + Supplement 7 & 8 (for LC), or + Supplement 8 (for RI)	Yes
Reduction of regulated activity	LC, LR, RI	Form 4	Yes ²⁶
Modification or waiver of licensing or registration condition	LC, LR, RI	Form 4	Yes
Change of financial year end	LC, AE ²⁴	Form 4	Yes

²⁵ Please refer to **Appendix E** for the required application fee amount.

²⁶ If you intend to reduce the last regulated activity for which you are licensed or registered, you are only required to notify the SFC of the intended change. No application fee is payable.

Type of change	Applicable to	Form required	Fee required ²⁵
Adoption of period exceeding 12 months as financial year	LC, AE ²⁴	Form 4	Yes
Extension of deadline for submission of audited accounts	LC, AE ²⁴	Form 4	Yes
New premises to be used for keeping records or documents	LC	Form 4	Yes
Becoming a substantial shareholder of a licensed corporation	SS	Form 4 + Supplement 2 (for corporate applicant), or + Supplement 3 (for individual applicant)	Yes
Transfer or addition of accreditation	LR	Form 4	Yes
Licensed representative becoming responsible officer	LR	Form 4 + Supplements 10 & 11 ²⁷	Yes

(LC: Licensed corporation; LR: Licensed representative; RI: Registered institution; SS: Substantial shareholder; AE: Associated entity)

²⁷ Supplement 11 is required only if the applicant intends to engage in activities in connection with matters regulated by the Codes on Takeovers and Mergers and Share Repurchases.

Addition or reduction of regulated activity

- 9.8 A licensed corporation, a licensed representative or a registered institution may apply to the SFC to vary the regulated activity specified in his licence or certificate of registration (section 127(1) of the SFO). If the application is approved, he should return his old licence or certificate of registration to the SFC for amendment or cancellation (as the case may be).

Modification or waiver of licensing requirements

- 9.9 In relation to licensing and registration requirements, a licensed corporation, a licensed representative or a registered institution may apply for modification or waiver of the conditions imposed or certain other requirements (section 134 of the SFO). If the application is approved, he has to return his old licence or certificate to us for amendment where necessary.

Change of financial year end and/or adoption of a financial period exceeding 12 months

- 9.10 A licensed corporation or an associated entity of an intermediary may apply for an alternation of financial year end previously notified to the SFC and/or adoption of a period exceeding 12 months as its financial year (section 155(3) of the SFO).

Extension of deadline to submit audited accounts

- 9.11 A licensed corporation or an associated entity of an intermediary may apply for an extension of time to lodge its audited accounts (section 156(4) of the SFO) and the SFC may grant an extension if it is satisfied that there are special reasons for doing so. If a licensed corporation or an associated entity anticipates that an extension of the submission deadline may be required, it should submit its application to extend the submission period well before the deadline.

New premises to be used for keeping records or documents

- 9.12 A licensed corporation needs to apply for the SFC's approval for each new premises to be used for keeping records or documents (section 130 of the SFO). An intended new business address will inevitably trigger this application.

Becoming substantial shareholder of licensed corporation

- 9.13 A person (including a corporation) is required to apply for the SFC's approval before he can become or continue to be a substantial shareholder²⁸ of a licensed corporation (section 132 of the SFO).
- 9.14 A person, being aware that he became a substantial shareholder of a licensed corporation without the SFC's prior approval should as soon as reasonably practicable and in any event within 3 business days after he became so aware, apply to the SFC for approval to continue to be a substantial shareholder of the corporation.
- 9.15 A group chart depicting the related change in shareholding structure including the respective number of shares and percentage of shareholdings shall be submitted together with the application.

²⁸ A person shall, in relation to a corporation, be regarded as a "substantial shareholder" of the corporation, if he, either alone or with any of his associates –

- (a) has an interest in shares in the corporation –
 - (i) the nominal value of which shares is equal to more than the nominal value of 10% of the issued share capital of the corporation; or
 - (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or
- (b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at the general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at the general meetings of the corporation.

Please refer to Part 1 of Schedule 1 to the SFO for the definition of "associate", "hold" and other related terms.

Transfer or addition of accreditation of licensed representative

- 9.16 A licensed representative may apply for transfer or addition of accreditation (section 122 of the SFO). When submitting such application, the licensed representative is required to return his licence concurrent with his application to the SFC for necessary amendment if he has not already done so.

Licensed representative becoming responsible officer

- 9.17 A licensed representative may apply to become a responsible officer of his principal(s) in respect of all or any regulated activities for which he is licensed. If the application is approved, the representative should return his old licence to the SFC for amendment.

Part 10 On-going obligations

Remaining fit and proper

- 10.1 Licensed corporations, licensed representatives and registered institutions must remain fit and proper at all times. They have to comply with all applicable provisions of the SFO and its subsidiary legislation as well as the codes and guidelines issued by the SFC.

Notification of certain events and changes

- 10.2 As mentioned in Part 9, licensed corporations, licensed representatives and registered institutions are required to notify the SFC of certain events and changes in their particulars within the specified time limit.

Submission of audited accounts, etc.

- 10.3 Licensed corporations and associated entities of intermediaries (except for those which are authorized financial institutions) are required to submit their audited accounts and other required documents within 4 months after the end of each financial year (section 156(1) of the SFO).
- 10.4 Furthermore, if a licensed corporation ceases carrying on all of the regulated activities for which it is licensed, it should submit to the SFC its audited accounts and other required documents, made up to the date of cessation, not later than 4 months after the date of the cessation. The same submission requirement applies to an associated entity (which is not an authorized financial institution) of an intermediary upon its ceasing to be such an associated entity (section 156(2) of the SFO).

Submission of financial resources returns

- 10.5 Licensed corporations are required to submit **monthly** financial resources returns to the SFC except for those corporations licensed for only Type 4, Type 5, Type 6 and/or Type 9 regulated activities and their licences are subject to the condition that they shall not hold client assets. In such latter case, the corporations concerned shall submit **semi-annual** financial resources returns to the SFC (section 56 of the *Securities and Futures (Financial Resources) Rules*).

Payment of annual fees

- 10.6 All licensed persons and registered institutions should pay annual fees within one month after each anniversary date of their licences or registrations (section 138(2) of the SFO). **Appendix E** details the annual fee amounts payable.
- 10.7 Failure to make full payment of the annual fee before the due date will attract surcharge on the outstanding amount and possible suspension and revocation of a licence or registration (sections 138(3) and 195(4)(a) and (6) of the SFO). Details are depicted in **Table 6**.

Table 6 – Penalty for late or non-payment of annual fees

Overdue period	Penalty
Less than 1 month	10% surcharge
Over 1 month but less than 2 months	30% surcharge
Over 2 months but less than 3 months	50% surcharge

Overdue period	Penalty
Over 3 months but less than 4 months	Suspension ²⁹ of licence or registration
Over 4 months	Revocation of licence or registration

Submission of annual returns

- 10.8 Licensed corporations and licensed representatives are required to submit annual returns³⁰ to the SFC within one month after each anniversary date of their licences (section 138(4) of the SFO).
- 10.9 Failure to submit annual return before the due date could result in suspension and revocation of the licence concerned as described in **Table 7** (section 195(4)(b) and (6) of the SFO).

Table 7 – Penalty for late or non-submission of annual returns

Overdue period	Penalty
Over 3 months but less than 4 months	Suspension ²⁹ of licence
Over 4 months	Revocation of licence

²⁹ Subject to the SFC giving 10 business days notice.

³⁰ Licensed corporations have to submit Form 7 and licensed representatives have to submit Form 8.

Continuous professional training (“CPT”)

- 10.10 Licensed corporations and registered institutions are held primarily responsible for designing and implementing a continuous education program best suited to the training needs of the licensed representatives or relevant individuals they engaged. Such programs should be able to enhance the individuals’ industry knowledge, skills and professionalism. Sufficient records on the programs and the CPT activities undertaken by the individuals should be kept for a minimum of 3 years and be made available for inspection upon request by the SFC or the HKMA.
- 10.11 Representatives of licensed corporations and relevant individuals of registered institutions are generally required to complete 5 CPT hours per calendar year for each regulated activity which they may carry out except for Type 7 regulated activity (providing automated trading services). They should also retain their own CPT compliance records for a minimum of 3 years.
- 10.12 Please refer to the *Guidelines on Continuous Professional Training* issued by the SFC for more information.

Part 11 Public register

- 11.1 Under section 136(1) of the SFO, the SFC maintains a register that contains certain particulars of licensed persons and registered institutions. Members of the public may access to the register through the SFC's web site³¹.

Particulars contained in the register

- 11.2 The particulars contained in the register are set out in section 136(2) of the SFO and Schedule 4 to the *Securities and Futures (Licensing and Registration) (Information) Rules*. They include:-

For both licensed corporation and licensed representative

- ❖ Licensee's name and CE number
- ❖ Date of the licence granted
- ❖ Business address
- ❖ Licensing condition(s) if any and its effective date
- ❖ Type(s) of regulated activity licensed and its effective date
- ❖ Licence status (whether the licence is suspended)
- ❖ Record of each public disciplinary action taken by the SFC against the licensee in the past 5 years
- ❖ Modification or waiver granted (if any) and related particulars

For licensed corporation only

- ❖ Licence category (whether it is a normal licence or temporary licence)
- ❖ E-mail address (if any)
- ❖ Web site address (if any)

³¹ The SFC's public register can also be accessed directly at the following address:-
<http://www.hksfc.org.hk/eng/licensing/html/persons/lpfl.htm>

- ❖ Contact details of its complaints officer
- ❖ List of its accredited representatives

For licensed representatives only

- ❖ Licence category (whether it is a normal licence, a provisional licence or a temporary licence)
- ❖ Licensee's role (whether he is also approved as an responsible officer)
- ❖ Name of the licensee's accredited principal(s) and the date of accreditation

For registered institutions

- ❖ Registered institution's name and CE number
- ❖ Date of registration granted
- ❖ Business address
- ❖ E-mail address (if any)
- ❖ Web site address (if any)
- ❖ Contact details of its complaints officer
- ❖ Details of registration condition(s) if any and its effective date
- ❖ Type(s) of regulated activity registered and its effective date
- ❖ Registration status (whether the registration is suspended)
- ❖ Record of each public disciplinary action taken by the SFC against the registered institution in the past 5 years
- ❖ Modification or waiver granted (if any) and related particulars

11.3 Under section 20 of the Banking Ordinance, the HKMA maintains a register containing certain particulars of relevant individuals engaged by registered institutions in carrying out regulated activities. This register can be accessed through the HKMA's web site at <http://www.info.gov.hk/hkma>.

Part 12 Disciplinary actions

- 12.1 The SFC may take disciplinary action against a regulated person (including a licensed person or a registered institution) if that person is found to be guilty of misconduct or not fit and proper to be or remain the same type of regulated person (sections 194 and 196 of the SFO).
- 12.2 Section 194 of the SFO deals with disciplinary actions in respect of licensed persons, etc. For the purposes of that section, a “regulated person” means a person who is or at the relevant time was any of the following types of person:-
- (a) a licensed person;
 - (b) a responsible officer of a licensed corporation; or
 - (c) a person involved in the management of the business of a licensed corporation.
- 12.3 Section 196 of the SFO deals with disciplinary actions in respect of registered institutions, etc. For the purposes of that section, a regulated person means a person who is or at the relevant time was any of the following types of person:-
- (a) a registered institution;
 - (b) an executive officer of a registered institution;
 - (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or
 - (d) an individual whose name is or was (as the case may be) entered in the register maintained by the HKMA under section 20 of the Banking Ordinance as that of a person engaged by a registered institution in respect of a regulated activity.

12.4 Subject to the due process for exercising disciplinary powers laid down in section 198 of the SFO, the SFC may exercise any of the following disciplinary actions against a regulated person:-

- ❖ Revocation or suspension of a licence or a registration;
- ❖ Revocation or suspension of part of a licence or registration in relation to any of the regulated activities for which a regulated person is licensed or registered;
- ❖ Revocation or suspension of the approval granted to a responsible officer;
- ❖ Public or private reprimand on a regulated person;
- ❖ Prohibition of a regulated person from applying to be licensed or registered or to be approved as a responsible officer, etc; and
- ❖ Pecuniary penalty of up to \$10,000,000 or 3 times the profit gained or loss avoided as a result of the conduct in question.

Appendix A Reference guide to the SFC Infoline

The 24-hour SFC Infoline (telephone number: **2840-9393**) contains general information on licensing, intermediaries supervision and investment products authorization matters. A caller may also obtain licensing application and notification forms and certain competence requirements summaries via fax.

The following is a reference guide to facilitate the use of the Infoline in obtaining the required licensing information after connecting to it.

<u>To hear licensing information on:</u>	<u>Press:</u>
Types of regulated activity	2 3 1 1
Financial resources requirements	2 3 1 2 3
Application processing time	2 3 1 5
Representatives to become responsible officers	2 3 2 2
Representatives' change of employment	2 3 2 3
Transitional arrangements (applicable during the 2-year transitional period ending 31 March 2005)	2 3 3
Competence –	
❖ Competence requirements relating to licensed corporations and registered institutions	2 3 1 2 1
❖ Competence requirements Relating to representatives	2 3 1 2 2 1
❖ Competence requirements Relating to responsible officers	2 3 1 2 2 2
Licence/registration applications –	
❖ Licensed corporation	2 3 1 3 1 1
❖ Temporary licensed corporation	2 3 1 3 1 2
❖ Registered institution	2 3 1 3 1 3
❖ Licensed representative	2 3 1 3 2 1

To hear licensing information on:

Licence/registration application fees –

- ❖ Licensed corporation
- ❖ Temporary licensed corporation
- ❖ Registered institution
- ❖ Licensed representative
- ❖ Temporary licensed representative

Press:

2 3 1 4 1 1
2 3 1 4 1 2
2 3 1 4 1 3
2 3 1 4 2 1
2 3 1 4 2 2

Ongoing obligations –

- ❖ Payment of annual fees (Corporations)
- ❖ Payment of annual fees (Individuals)
- ❖ Submission of annual returns
- ❖ Submission of audited accounts
- ❖ Continuous professional training requirements (Corporations)
- ❖ Continuous professional training requirements (Individuals)
- ❖ Financial resources requirements

2 3 2 1 1 1 1
2 3 2 1 1 1 2
2 3 2 1 1 2
2 3 2 1 1 3
2 3 2 1 2 1
2 3 2 1 2 2
2 3 2 1 3

To receive licensing documents via fax:

Licence/registration application forms and notification forms –

- ❖ Form 1 (Application for Licence – Corporation)
- ❖ Form 1A (Application for Temporary Licence – Corporation)
- ❖ Form 2 (Application for Registration – Authorized Institution)
- ❖ Form 3 (Application for Licence – Representative)
- ❖ Form 3A (Application for Temporary Licence – Representative)
- Form 4 (Miscellaneous Applications)

Press:

2 3 4 1
2 3 4 2
2 3 4 3
2 3 4 4
2 3 4 5
2 3 4 6

To receive licensing documents via fax:**Press:**

- ❖ Form 5 (Notification – Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder) **2 3 4 7**
- ❖ Form 6 (Notification – Associated Entity) **2 3 4 8**
- ❖ Supplement 1 (Contact Information and Record Keeping Address for Corporation) **2 3 4 9**
- ❖ Supplement 2 (Information on Corporate Substantial Shareholder) **2 3 4 1 0**
- ❖ Supplement 3 (Statement of Personal Information) **2 3 4 1 1**
- ❖ Supplement 4 (Information on Corporate Director) **2 3 4 1 2**
- ❖ Supplement 5 (Basic Information on Associated Entity) **2 3 4 1 3**
- ❖ Supplement 6 (Bank Accounts) **2 3 4 1 4**
- ❖ Supplement 7 (Financial Resources) **2 3 4 1 5**
- ❖ Supplement 8 (Business Plan and Proposed Business Activities) **2 3 4 1 6**
- ❖ Supplement 9 (Licence Record) **2 3 4 1 7**
- ❖ Supplement 10 (Duties and Experience of Responsible Officer) **2 3 4 1 8**
- ❖ Supplement 11 (Activities in Connection with Matters Regulated by the Hong Kong Codes on Takeovers and Mergers and Share Repurchases) **2 3 4 1 9**
- ❖ Supplement 12 (Directorships and Other Business Interests) **2 3 4 2 0**
- ❖ Supplement 13 (Information on Associated Entity) **2 3 4 2 1**
- ❖ Supplement 14 (Automated Trading Services) **2 3 4 2 2**

Annual return forms –

- ❖ Form 7 (Annual Return – Licensed Corporation) **2 3 5 1**
- ❖ Form 8 (Annual Return – Licensed Representative) **2 3 5 2**

To receive licensing documents via fax:

Press:

Migration application forms –

(applicable during the 2-year transitional period ending 31 March 2005)

- ❖ Form 1(x) (Deemed Licensed Corporation) **2 3 6 1**
- ❖ Form 2(x) (Deemed Registered Institution) **2 3 6 2**
- ❖ Form 3(x) (Deemed Licensed Representative and Responsible Officer) **2 3 6 3**
- ❖ Supplement 3(x) (Information on Qualification and Experience) **2 3 6 4**

Competence requirements –

- ❖ Examples of matters to be considered by the SFC in assessing the competence of a corporation applying to carry on a regulated activity **2 3 1 2 1 1 1**
- ❖ Test of competence (Responsible Officer) **2 3 1 2 2 2 1**
- ❖ Test of competence (Representative) **2 3 1 2 2 1 2 1**
- ❖ Recognized industry qualifications and local regulatory papers versus regulated activities (Responsible Officer) **2 3 1 2 2 2 1 3**
- ❖ Recognized industry qualifications and local regulatory papers versus regulated activities (Representative) **2 3 1 2 2 1 1 3**
- ❖ Exemptions from local regulatory framework paper requirement **2 3 1 2 2 1 1 2 1**

To leave message on licensing enquiries

Press 2 3 9

Appendix B Definitions of regulated activities

Type 1: Dealing in securities

"Dealing in securities", 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; or
- (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity.

Type 2: Dealing in futures contracts

"Dealing in futures contracts", 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).

Type 3: Leveraged foreign exchange trading

"Leveraged foreign exchange trading" 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" 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.

Type 4: Advising on securities

"Advising on securities" 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;
- (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 professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional 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".

Type 5: Advising on futures contracts

"Advising on futures contracts" 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;
- (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 professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional 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.

Type 6: Advising on corporate finance

"Advising on corporate finance" 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 professional 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);
- (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.

Type 7: Providing automated trading services

"Automated trading services" 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 Government.

Type 8: Securities margin financing

"Securities margin financing" 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.

Type 9: Asset management

"Asset management", 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 professional 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.

Appendix C Provision of financial information on the Internet or on-line trading services

1. Periodical publication exemption

The definitions for “advising on corporate finance”, “advising on securities”, and “advising on futures contracts” in Schedule 5 to the SFO provide a specific exclusion for a person giving advice through a newspaper, magazine, book or other publication which is made generally available to the public (see **Appendix B** and paragraph 5.10 of this Booklet). Internet publications may rely on this licensing exemption if they are able to satisfy the requirements of the provisions.

2. Providing generic factual market information

The ambit of “advising on securities” or “advising on futures contracts” as provided in Schedule 5 to the SFO is broad. In the present context, the licensing requirement should not generally be extended to cover activities concerned solely with the provision of generic factual market information (whether or not through the Internet) where no recommendation on specific securities/futures contracts or investment advice has been made, or to cover the reproduction of the entire research reports of persons licensed by or registered with the SFC.

3. Hyperlinks to other financial web sites

The mere presence of hyperlinks, notwithstanding the links may be with a licensed or registered person, does not of itself trigger a licensing requirement. However, the presence of any inducement, or invitation, to visit the related sites through the links concerned may mean a licence or registration is required. It should be noted that effecting an introduction of a client to a securities/futures/leveraged

foreign exchange dealer or his representative in return for a commission, rebate or other remuneration may constitute a regulated activity, for which a licence or registration may be required.

4. Providing analytical tools

Analytical tools facilitating the making of investment decisions are often available from financial information web sites. In general, where the tools are able to identify a variety of investment possibilities or recommendations presenting different choices to users, the providers of such tools would be regarded as “advising on securities” or “advising on futures contracts”. An example would be an analytical tool able to make specific recommendations on the basis of the investment profile (such as risk aversion, age or projected cash flow) as determined by the user. However, the mere provision of analytical tools which solely filter publicly available data in a transparent process does not constitute an advisory activity. For example, the provision of a computer programme that identifies stocks of a particular industry sector having price earning ratios below a predetermined level, or that identifies investment funds having past annual returns above a predetermined level, should not trigger a licensing requirement.

5. Providing automated trading services (“ATS”)

A corporation that provides ATS as defined in Schedule 5 to the SFO shall either be authorized to provide ATS under Part III of the SFO, or licensed or registered under Part V of the SFO. As a general practice, if that corporation is already an intermediary in respect of other type(s) of regulated activity, it would need to be licensed or registered for Type 7 under Part V of the SFO. An intermediary wishing to submit such application should first read the *Guidelines for the Regulation of Automated Trading Services* and consult its professional advisors on related business proposal where necessary.

Order routing facilities

It should be noted that the provision of electronic order routing facilities generally would not be regarded as Type 7 regulated activity. If an intermediary intends to conduct dealing activities in the form of pure order routing via the Internet, it is required to:-

- (1) inform the SFC in writing of such intention and provide relevant documents to the SFC including a business plan, a description of the computer system, account opening procedures, security measures and information pertaining to the experience and qualifications of the personnel in charge of the proposed services, etc;
- (2) arrange a demonstration to the SFC in respect of the related business operations when ready; and
- (3) notify the SFC in writing the effective date of launching such Internet services and the address of the web site.

An intermediary is responsible for ensuring that the order routing services or other electronic services that it wishes to provide do not fall within the definition of “providing ATS” under Schedule 5 to the SFO. If the services do fall within the definition, the intermediary would need to be licensed or registered for Type 7 regulated activity (as the case may be).

Appendix D Application forms and supplements

1. Licensed corporation application

Forms required	Remarks
Form 1 and Supplements 1, 6, 7 and 8	-
+ Form 6	if applicant proposes to have any associated entity
+ Supplement 2	if applicant has any corporate substantial shareholder
+ Supplement 3	if applicant has any individual substantial shareholder or individual director who is not applying for a licence
+ Supplement 4	if applicant has any corporate director
+ Supplements 5 and 13	if applicant proposes to have any associated entity which is not a licensed corporation or registered institution
+ Supplement 9	if applicant has been licensed by or registered with the SFC and/or other regulatory body in Hong Kong or overseas to engage in any regulated or similar regulated activity
+ Supplement 14	if applicant proposes to carry on Type 7 regulated activity (providing automated trading services) or any on-line trading activity

2. Temporary licensed corporation application

Forms Required	Remarks
Form 1A and Supplements 1, 6, 7 and 8	-
+ Supplement 2	if applicant has any corporate substantial shareholder
+ Supplement 3	for each individual proposed to supervise the corporation's regulated activities, each individual substantial shareholder and each individual director
+ Supplement 4	if applicant has any corporate director
+ Supplement 9	if applicant has been licensed by or registered with the SFC and/or other regulatory body in Hong Kong or overseas to engage in any regulated or similar regulated activity

**3. Licensed representative application /
Temporary licensed representative application**

Forms required	Remarks
<p>Form 3</p> <p>Form 3A</p>	<p>applicable to normal licensed representative application</p> <p>applicable to temporary licensed representative application</p>
<p>+ Supplement 9</p>	<p>if applicant has been licensed by or registered with the SFC and/or other regulatory body in Hong Kong or overseas to engage in any regulated or similar regulated activity</p>
<p>+ Supplement 10</p>	<p>if applicant proposes to be a responsible officer</p>
<p>+ Supplement 11</p>	<p>if applicant proposes to be a responsible officer supervising Type 6 regulated activity (advising on corporate finance) and the applicant will undertake activities in connection with the Hong Kong Codes on Takeovers and Mergers and Share Repurchases</p>
<p>+ Supplement 12</p>	<p>if applicant is currently a director, partner or proprietor of any firm except the principal(s) proposed in the application</p>

4. Registered institution application

Forms required	Remarks
Form 2 and Supplements 1 and 8	-
+ Form 6	if applicant proposes to have any associated entity
+ Supplement 5 and 13	if applicant proposes to have any associated entity which is not a licensed corporation or registered institution
+ Supplement 9	if applicant has been licensed by or registered with the SFC and/or other regulatory body in Hong Kong or overseas to engage in any regulated or similar regulated activity
+ Supplement 14	if applicant intends to carry on Type 7 regulated activity (providing automated trading services) or any on-line trading activity

Appendix E Licensing fees

1. Licence or registration application fees

Type of application	Type of regulated activity ("RA")	Application fee amount
Licensed corporation	Types 1, 2, 4, 5, 6, 7, 8, 9	\$4,740 per RA ³²
	Type 3	\$129,730
Temporary licensed corporation	Types 1, 2, 4, 5, 6	\$4,900 per RA
Registered institution	Types 1, 2, 4, 5, 6, 7, 9	\$23,500 per RA ³²
Licensed representative	Types 1, 2, 4, 5, 6, 7, 8, 9	\$1,790 per RA ³²
	Type 3	\$2,420
Provisional licensed representative	Not applicable	\$800 per application ³³
Temporary licensed representative	Types 1, 2, 4, 5, 6	\$1,850 per RA
Approval to become responsible officer	Types 1 through 9	\$2,950 per RA ³²

³² The application fee payable for Type 7 regulated activity is waived if the applicant's proposed carrying on of Type 7 regulated activity is incidental to the carrying on, or proposed carrying on, of Type 1 or Type 2 regulated activity by that applicant.

³³ This fee is payable on top of the application fee for becoming a normal licensed representative.

2. Annual fees

Types of intermediary	Types of regulated activity ("RA")	Annual fee amount
Licensed corporation	Types 1, 2, 4, 5, 6, 7, 8, 9	\$4,740 per RA ³⁴
	Type 3	\$129,730
Licensed representative (not approved as responsible officer)	Types 1, 2, 4, 5, 6, 7, 8, 9	\$1,790 per RA ³⁴
	Type 3	\$2,420
Licensed representative (approved as responsible officer)	Types 1, 2, 4, 5, 6, 7, 8, 9	\$4,740 per RA ³⁴
	Type 3	\$5,370
Registered institution	Types 1, 2, 4, 5, 6, 7, 9	\$35,000 per RA ³⁴

³⁴ The annual fee payable for Type 7 regulated activity is waived if the person's carrying on of Type 7 regulated activity is incidental to the person's carrying on of Type 1 or Type 2 regulated activity for which the person is licensed or registered.

3. Miscellaneous applications

For licensed corporations

Types of application	Application fee amount
Addition of regulated activities other than Type 3	\$4,740 per RA
Addition of Type 3 regulated activity	\$129,730
Reduction of regulated activity	\$200 per RA ³⁵
Issuance of duplicate licence	\$200
Modification or waiver of licensing condition	\$2,000
Modification or waiver of “fit and proper” requirements under section 129 of the SFO	\$4,000
Change of financial year end	\$2,000 ³⁶
Adoption of a period exceeding 12 months as a financial year	\$2,000 ³⁶
Apply for both “change of financial year end” and “adoption of a period exceeding 12 months as a financial year” at the same time	\$2,000 ³⁶
Extension of deadline for submission of audited accounts	\$2,000 ³⁶
Approval of premises for keeping of records or documents	\$1,000 ³⁷
Addition of substantial shareholder	\$3,000 ³⁸
Substantial change in particulars which necessitates the grant of a new licence (e.g. change in name) ³⁹	\$200

³⁵ No fee is required for removing all regulated activities specified in the licence.

³⁶ This fee is also applicable to associated entities of intermediaries lodging related applications.

³⁷ Payable on a per application basis regardless of the number of premises proposed in an application.

³⁸ Payable on a per application basis regardless of the number of substantial shareholders proposed and the number of licensed corporations concerned in an application.

³⁹ This fee is waived if the change event is related to another application which requires a separate application fee payable to the SFC (e.g. application for variation of regulated activities, application for modification or waiver of licensing conditions).

For licensed representatives

Types of application	Application fee amount
Addition of regulated activities other than Type 3	\$1,790 per RA
Addition of Type 3 regulated activity	\$2,420
Reduction of regulated activity	\$200 per RA ⁴⁰
Approval of additional accreditation	\$200 ⁴¹
Transfer of accreditation	\$200 per RA
Modification or wavier of licensing condition	\$2,000
Modification or wavier of "fit and proper" requirements under section 129 of the SFO	\$4,000
Issuance of duplicate licence	\$200
Approval as responsible officer	\$2,950 per RA ³²
Substantial change in particulars which necessitates the grant of a new licence (e.g. change in name) ⁴²	\$200

⁴⁰ No fee is required for removing all regulated activities specified in the licence.

⁴¹ Payable on a per application basis regardless of the number of new principals proposed in an application.

⁴² This fee is waived if the change event is related to another application which requires a separate application fee payable to the SFC (e.g. application for variation of regulated activities, application for transfer or addition of accreditation, application for modification or waiver of licensing conditions).

For registered institutions

Types of application	Application fee amount
Addition of regulated activity	\$23,500 per RA
Reduction of regulated activity	\$200 per RA ⁴³
Issuance of duplicate certificate of registration	\$200
Modification or wavier of registration condition	\$2,000
Modification or wavier of “fit and proper” requirements under section 129 of the SFO	\$4,000
Substantial change in particulars which necessitates the grant of a new certificate of registration (e.g. change in name) ⁴⁴	\$200

⁴³ No fee is required for removing all regulated activities specified in the certificate of registration.

⁴⁴ This fee is waived if the change event is related to another application which requires a separate application fee payable to the SFC (e.g. application for variation of regulated activities, application for modification or waiver of registration conditions).