



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

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27 February 2003

**Circular to SFC's Registered Intermediaries
and Exempt Persons**

**Comparison Table on Securities and Futures Ordinance Requirements
for Licensing and Supervision of Intermediaries**

The Securities and Futures Ordinance (SFO) will come into effect on 1 April 2003.

One of the most significant features of the SFO is the single licensing regime. This is a streamlined regulatory framework for the licensing or registration of firms and individuals engaged in any regulated activity. It replaces the existing licensing requirements, which are spread across several ordinances.

To improve investor protection and ease compliance, changes have also been made to certain ongoing operational requirements for intermediaries under the SFO. Unlike the current regime, the operational requirements are primarily contained in the subsidiary legislation of the SFO.

To help registered intermediaries and exempt persons understand the changes from the existing regime, the SFC has published a comparison table outlining the major differences between the current framework and the SFO in licensing and operational matters. The latter includes audited accounts and other reporting requirements; client securities; client money; contract notes, statements of account and receipts; financial resources; and keeping of records.

A copy of the table is attached for your reference. The table is also available on the SFC website under "Others: General Educational Materials" in the SFO section.

It should be noted that the table is for reference only and should not be regarded as a substitute of the law. You should seek independent legal or other professional advice if you have any doubt about how the law or new requirements applies to you.

**Intermediaries and Investment Products Division
Securities and Futures Commission**



SFC Website: <http://www.hksfc.org.hk>



Electronic Investor Resources Centre: <http://www.hkeirc.org>

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Licensing		
Types of Intermediaries	<ul style="list-style-type: none"> - Registered Corporation - Representative - Supervisory Director - Exempt Person 	<ul style="list-style-type: none"> - Licensed Corporation - Representative - Representative approved as Responsible Officer - Registered Institution
Types of Activities	<ul style="list-style-type: none"> - Securities dealing - Commodities dealing - Leveraged foreign exchange trading - Securities investment advising - Commodities trading advising - Securities margin financing <p><i>(based on different types of registration/licence under the Securities Ordinance, the Commodities Trading Ordinance and the Leveraged Foreign Exchange Trading Ordinance)</i></p>	<ul style="list-style-type: none"> - Dealing in securities - Dealing in futures contracts - Leveraged foreign exchange trading - Advising on securities - Advising on futures contracts - Advising on corporate finance - Providing automated trading services - Securities margin financing - Asset management <p><i>(based on the 9 types of regulated activity defined under Schedule 5 to the SFO)</i></p>
No. of Licence	Multiple licences (different licences for different activities)	Single licence for multiple regulated activities
Licence Application and Annual Fees	Calculated on a per licence basis	Calculated on a per regulated activity basis A general 3% reduction in licence application and annual fees available to licensed persons

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Temporary Licence	No	Yes <i>(applicable to both corporations and individuals, valid for not more than 3 months)</i>
Provisional Licence	No	Yes <i>(applicable to individuals prior to granting of normal representative licences)</i>
Business Structure	<ul style="list-style-type: none"> - Corporation - Sole Proprietor - Partnership 	<ul style="list-style-type: none"> - Corporation
Ranking of Supervisor	<ul style="list-style-type: none"> - Director (being a member of the Board of Directors) 	<ul style="list-style-type: none"> - Director (being a member of the Board of Directors) - Other senior persons authorised by the Board

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Supervisor	At least 1 Supervisory Director for each licence held by the corporation	<p>At least 2 Responsible Officers for each regulated activity</p> <p><i>(The same individual can be a Responsible Officer in respect of different regulated activities subject to his/her having sufficient relevant experience and no conflict of interest.)</i></p> <p>At least 1 Responsible Officer is an Executive Director*</p> <p>All Executive Directors* must be Responsible Officers</p> <p><i>(*As defined in Part V of the SFO, an Executive Director means a director of the corporation who -</i> <i>(a) actively participates in; or</i> <i>(b) is responsible for directly supervising, the business of a regulated activity for which the corporation is licensed.)</i></p> <p>At least 1 Responsible Officer is available at all times to supervise the business of regulated activity</p>
Competence	All principals and representatives need to comply with all competence (including entry examinations) requirements in respect of each licence concerned.	All principals and representatives need to comply with all competence (including entry examinations) requirements in respect of each regulated activity concerned.
Associated Entity, Complaint Officer and Emergency Contact	No related requirement	<p>Report particulars of:</p> <ul style="list-style-type: none"> - all Associated Entities, - a Complaint Officer, and - an Emergency Contact Officer.

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Submission of Annual Return	<p>1 form for each registration</p> <ul style="list-style-type: none"> • Due date: Anniversary date <p>Non-submission may lead to disciplinary action.</p> <p>Convenience by providing “no change declaration” for annual return submission available only to licensed persons who are participants of the Common Anniversary Date program</p>	<p>1 form per Licensed Corporation</p> <ul style="list-style-type: none"> • Due date: 1 month after anniversary date <p>Non-submission will lead to:</p> <ul style="list-style-type: none"> - Deemed suspension after 3 months from the due date; and - Deemed revocation after 4 months from the due date. <p>Convenience by providing “no change declaration” for annual return submission available to all licensed persons</p>
Payment of Annual Fee	<p>1 fee for each registration/licence</p> <ul style="list-style-type: none"> • Due date: Anniversary date <p>Non-payment will lead to revocation of licence.</p>	<p>1 fee for each regulated activity</p> <ul style="list-style-type: none"> • Due date: 1 month after anniversary date <p>Non-payment will lead to:</p> <ul style="list-style-type: none"> - 10% surcharge for the 1st month after the due date; - another 20% surcharge for the 2nd month after the due date; - another 20% surcharge for the 3rd month after the due date; - deemed suspension after 3 months from the due date; and - deemed revocation after 4 months from the due date.

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Continuous Professional Training	5 hours per registration for each calendar year Reporting of CPT compliance required in annual return	5 hours per regulated activity for each calendar year Reporting of CPT compliance not required

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Audited Accounts and Other Reporting Requirements		
Requirement to submit annual accounts	1 set of audited accounts per registration • Due date: - 4 months after financial year end for dealers - On anniversary date for advisers	1 set of audited accounts per licensed corporation and 1 set of audited accounts per associated entity of intermediaries and due date is 4 months after financial year end
Requirement to submit accounts and other documents within 4 months after the date of cessation	No such requirement under existing legislation	A new requirement
Requirement to submit a Business and Risk Management Questionnaire describing the business activities and risk management measures of a licensed corporation and an associated entity of an intermediary	No such requirement	A new requirement

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Client Securities Rules		
Scope of application	<p>Apply to securities dealers and securities margin financiers only</p> <p>Apply to client securities held for safe custody in Hong Kong or deposited as securities collateral</p>	<p>Apply to all intermediaries and their associated entities</p> <p>Apply to client securities and securities collateral received or held in Hong Kong and only where they are in the form of securities traded or listed on a recognised stock market (i.e. SEHK) or interests in authorised collective investment schemes</p>
Specification of when a firm can treat client securities and securities collateral in a way that is different from those prescribed by the requirements	No such specification	Specify that a firm can treat client securities and securities collateral differently provided that it is in accordance with specific directions or standing authority (subject to limitations)
Renewal of client standing authority	Must be in writing	Allow automatic renewal subject to prescriptive client notification requirements

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Client Money Rules		
Scope of Application	Apply to all client money received or held, whether in Hong Kong or elsewhere	Only apply to client money received or held in Hong Kong
Time limit for segregation	4 days from date of receipt	1 day from date of receipt, subject to cheque is only counted as received upon clearance
Acting upon client standing authority	Not allowed	Allow to act upon client's standing authority
Formality of client instruction	No formality requirement	Client instruction, whether one-off direction or standing authority, must be in writing
Renewal of client standing authority	No such provisions	Allow automatic renewal subject to prescriptive client notification requirements

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Contract Notes, Statements of Account and Receipts		
Requirement to provide contract notes	There is no exemption for asset manager who is a registered or exempt dealer <ul style="list-style-type: none"> • Time allowed : 1 day 	Does not apply in relation to the conduct of asset management <ul style="list-style-type: none"> • Time allowed : 2 days
Requirement to provide daily statements of account	Applicable only to firms conducting share margin financing or leveraged foreign exchange business <ul style="list-style-type: none"> • Time allowed : 1 day 	Now also applicable to any firm entering into margined transactions (e.g. futures and options) except in the course of conducting asset management <ul style="list-style-type: none"> • Time allowed : 2 days
Requirement to provide monthly statements of account	Applicable to all firms; the governing provisions are contained in the relevant ordinance or subsidiary legislation in respect of firms conducting share margin financing or leveraged foreign exchange business, but in code of conduct for other firms. <ul style="list-style-type: none"> • Time allowed : 7 days for firms conducting share margin financing or leveraged foreign exchange business; Not specified for other firms. 	Applicable to all firms except in relation to the management of a collective investment scheme; the governing provisions are contained in subsidiary legislation in respect of all types of regulated activities. <ul style="list-style-type: none"> • Time allowed : 10 days for asset managers; 7 days for other firms.
Receipts	Applicable only to registered securities dealer <ul style="list-style-type: none"> • Time allowed : Not specified 	Applicable to any firm including any associated entity receiving client assets <ul style="list-style-type: none"> • Time allowed : 2 days

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
FRR		
Requirements applicable to securities dealers	<p>Cannot accommodate securities dealers allowing cash clients to roll their balances.</p> <p>Require grouping of related securities.</p>	<p>Provide an option for securities dealers to treat clients as rolling balance cash clients, subject to necessary safeguards.</p> <p>No such requirement anymore.</p>
Requirements applicable to advisers	<p>Advisers are required to comply with the \$500,000 net tangible asset requirement.</p> <p>They are not required to submit any regular FRR returns.</p>	<p>(i) Advisers that are subject to the specified licensing condition (*) will need to maintain liquid capital of not less than the higher of \$100,000 and 5% of their adjusted liabilities</p> <p>They will need to submit returns for June and December only.</p> <p>(ii) Advisers that are not subject to the specified licensing condition will need to maintain liquid capital of not less than the higher of \$3M and 5% of their adjusted liabilities. They will only be required to maintain paid up share capital of \$5M.</p> <p>They will need to submit monthly returns like the brokers.</p> <p>Existing advisers enjoy a 6-month grace period from effective date.</p>

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(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Haircut for mid-tier stocks	Not distinguished from non-index constituent stocks since HS 100 index was abolished	Lower haircut percentage (i.e. 20%) for Hang Seng Hong Kong MidCap Index constituent stocks
Equity linked instrument (“ELI”)	No such provision	ELI listed on SEHK will be accepted as liquid assets subject to the same haircut as its underlying securities
Certificate of deposits (“CD”)	Accepted as liquid assets if issuer has good credit rating	Accepted as liquid assets if it is issued by authorised institutions or approved overseas banks
Requirements applicable to exempt persons	Not subject to FRR	Treated as licensed corporations after the initial 6-month grace period.
Returns	7 returns to be submitted monthly	8 returns to be submitted monthly and 2 returns to be submitted quarterly.

Comparison Table on Securities and Futures Ordinance (SFO) Requirements for Licensing and Supervision of Intermediaries

(This is not an exhaustive list of SFO requirements)

	Current Regime	New Regime (From 1 April 2003)
Keeping of Records Rules		
Record retention period	<p>Not less than 6 years (in general) under the Securities Ordinance; and 7 years (in general) under the Commodities Trading Ordinance and Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules.</p> <p>Not less than 2 years for contract notes and daily statements.</p>	<p>Except as otherwise provided in the SFO (including any subsidiary legislation made thereunder)</p> <ul style="list-style-type: none"> - Not less than 7 years in general - Not less than 2 years for records showing particulars of orders

[27 February 2003]