

有關發牌事宜經常遇到的提問

證券及期貨事務監察委員會

發牌科

2003年9月11日

概覽

1. 向所屬集團公司提供服務的豁免
2. 遵守有關財政資源的規定
3. 第7類受規管活動 (提供自動化交易服務)
4. 房地產投資信託基金的管理公司
5. 呈交經審計帳目
6. 共同周年日期計劃
7. 填寫過渡申請表的常見錯誤

向所屬集團公司提供服務的豁免 (1)

- ❖ 在《證券及期貨條例》附表5中，“資產管理”不包括某法團純粹向其任何全資附屬公司、其唯一的控股公司，或該控股公司的其他全資附屬公司提供管理投資組合的服務。
- ❖ “就證券提供意見”、“就期貨合約提供意見”及“就機構融資提供意見”的定義亦提供了上述類似的豁免。

向所屬集團公司提供意見的豁免(2)

問：這是否表示一間香港公司可以在毋須獲得發牌的情況下，根據轉授協議代表其所屬集團公司(或許是離岸基金經理)提供投資組合管理服務，即使所管理的資產屬於該集團公司的客戶亦然？

答：上述豁免只適用於就有關的集團公司的資產而向其提供資產管理服務的法團。有關條文並不適用於管理屬於所屬集團公司客戶的資產。管理屬於第三者的資產將會構成“資產管理”，而需要符合有關的牌照規定。

向所屬集團公司提供意見的豁免 (3)

問：香港法團如只是就證券 / 期貨合約向其所屬集團公司提供意見，是否亦需要獲得就證券 / 期貨合約提供意見的牌照？

答：香港法團如就所屬集團公司所擁有的資產而提供投資意見，上述的豁免應該適用。然而，有關條文不應被詮釋為適用於香港法團為所屬集團公司的客戶資產而提供意見的情況。

遵守有關財政資源的規定 (1)

- ❖ 《證券及期貨(財政資源)規則》所訂明的**6個月**過渡期將於**2003年9月30日**屆滿。

- ❖ 在舊有制度下取得以下註冊或豁免資格的商號須特別注意這點：
 - 投資顧問
 - 商品交易顧問
 - 並不屬於認可財務機構的獲豁免交易商及獲豁免投資顧問 (現在被視作持牌法團)

遵守有關財政資源的規定 (2)

- ❖ 在過渡期屆滿後，有關法團必須遵守一切適用的財政資源規定（包括定期呈交財政資源申報表）。
- ❖ 詳細內容請參閱本會分別於2003年7月4日及2003年8月11日所發出的通函。

第7類受規管活動 (1)

問：若某獲發牌進行第1類(證券交易)及/或第2類(期貨合約交易)的法團如同時提供電子交易服務，而有關服務只不過是將客戶所發出的買賣指示透過電子途徑傳送到交易所以供執行，該法團是否需要就第7類受規管活動（提供自動化交易服務）獲發牌照？

答：一般來說，提供買賣盤傳送服務不會被視為第7類受規管活動。然而，中介人應確保其擬提供的買賣盤傳送服務或其他電子服務，不會屬於《證券及期貨條例》附表5內所界定的“提供自動化交易服務”的範圍之內.....

第7類受規管活動 (2)

.....就過渡安排而言，我們會將所有已向我們表示有意提供自動化交易服務的中介人視為已就第7類受規管活動而獲發牌的人士。

證監會將會在過渡過程中考慮有關中介人是否需要就第7類受規管活動獲發牌照（特別是考慮其運作是否屬於“提供自動化交易服務”的定義範圍之內）。

房地產投資信託基金的管理公司(1)

問：房地產投資信託基金的管理公司是否需要獲得證監會發出的牌照？

答：房地產投資信託基金的管理公司需要就第9類受規管活動(資產管理)獲發牌照。至於該公司是否需要就其他類別的受規管活動獲發牌照，須視乎其運作模式而定。

例如，若該管理公司擬在不委任上市代理人的情況下從事涉及房地產投資信託基金的上市申請的事宜，該公司便需要就第6類受規管活動(就機構融資提供意見)獲發牌照。若該公司擬分銷房地產投資信託基金，則其亦需要就第1類受規管活動(證券交易)獲發牌照。

房地產投資信託基金的管理公司 (2)

問：房地產投資信託基金管理公司的管理人員須符合甚麼規定？

答：正如其他持牌法團一樣，每家房地產投資信託基金的管理公司必須就其獲發牌進行的每類受規管活動，委任最少**2**名經由證監會核准的負責人員直接監督該活動的業務。

除須要符合一般適用於負責人員的勝任能力規定外，有關的負責人員亦必須具備最少**5**年管理集體投資計劃（包括私人基金）的經驗。

呈交經審計帳目 (1)

問：根據舊有的制度，投資顧問或商品交易顧問商號只需在其牌照的周年到期日遞交經審計帳目。因此，遞交有關帳目的時間可能超過其財政年度完結日期後的4個月內（《證券及期貨條例》目前的規定是4個月內）。

若以往屬註冊投資顧問或商品交易顧問而現在被視為持牌法團的中介人的財政年度在2003年3月31日完結，那麼它需要在甚麼期限內就有關的財政年度遞交經審計帳目？

呈交經審計帳目 (2)

答：財政年度在2003年3月31日完結的持牌法團，需要在其牌照的周年到期日遞交經審計帳目。然而，其在2004年3月31日完結的財政年度的經審計帳目，則需要在2004年7月31日之前而非其牌照的周年到期日遞交。

要補充的是，若持牌法團的財政年度在2003年4月1日或以後完結，則該法團需要在其財政年度完結日期之後的4個月內遞交其經審計帳目。

共同周年日期計劃

- ❖ 參與上述計劃的持牌法團可以選擇一個共同周年日期，以便提交周年申報表。有關的共同周年日期將同時適用於持牌法團、其集團公司（如該法團提出有關要求的話），以及所有相關的持牌代表。
- ❖ 此舉可以減省擬備周年申報表及繳付年費時所招致的行政費用，因為所有相關的周年申報表及年費可以每年一次性整批處理。
- ❖ 這並非一項強制性的計劃（毋需繳付申請費用）。
- ❖ 詳情及申請方法，請參閱本會於2003年7月12日發出的通函。

填寫過渡申請表的常見錯誤(1)

- ❖ 超過20,000名持牌人需要在2005年3月31日前過渡至新的制度。
- ❖ 填妥的過渡申請表樣本已上載於證監會網站，以供參考。
- ❖ 資料不足的過渡申請表會退回予申請人。請參閱隨附的檢視清單，以免犯上常見的錯誤。

填寫過渡申請表的常見錯誤(2)

❖ 表格1(x) – 供被視為持牌法團的中介人填寫的申請表

❖ 未有以 號標示擬申請進行的受規管活動類別。



SECURITIES AND FUTURES COMMISSION
Form 1(x)
Deemed Licensed Corporation
Application for Licence Under
the Securities and Futures Ordinance

Name of applicant	
CE number	
Contact person for this application	
Contact person's telephone number	

Section 1: Regulated Activity

Please tick "✓" the regulated activities that you are deemed licensed to carry on and apply to carry on. (You may choose more than 1 regulated activity.)

		Deemed	Apply
Type 1	Dealing in securities	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Dealing in futures contracts	<input type="checkbox"/>	<input type="checkbox"/>
Type 3	Leveraged foreign exchange trading	<input type="checkbox"/>	<input type="checkbox"/>
Type 4	Advising on securities	<input type="checkbox"/>	<input type="checkbox"/>
Type 5	Advising on futures contracts	<input type="checkbox"/>	<input type="checkbox"/>
Type 6	Advising on corporate finance	<input type="checkbox"/>	<input type="checkbox"/>
Type 7	Providing automated trading services	<input type="checkbox"/>	<input type="checkbox"/>
Type 8	Securities margin financing	<input type="checkbox"/>	<input type="checkbox"/>
Type 9	Asset management	<input type="checkbox"/>	<input type="checkbox"/>

1.1 Are you applying to carry on any new regulated activity other than those you are deemed licensed?

No.

Yes. Please complete Supplement 14 – Automated Trading Services (for Type 7 regulated activity) or Supplement 3 – Business Plan and Proposed Business Activities (for other regulated activities) to provide further information on proposed new regulated activity.

填寫過渡申請表的常見錯誤(4)

- ❖ 申請表未有妥當地經有關法團的兩名董事簽署及填上日期。

Section 3: Anniversary Date

Please tick "x" in **any one** of the options below to indicate your preferred anniversary date for the purposes of annual submissions under section 138 of the Ordinance.

We would like to adopt the approval date of our licence under this application as the first anniversary date.

We have joined the Common Anniversary Date Program* and would like to retain the existing Common Anniversary Date _____ (day/month) of our firm for our new licence.

We have joined the Common Anniversary Date Program* but would like to alter the Common Anniversary Date* of our firm from _____ (day/month) to _____ (day/month) for our new licence.

We would like to participate in the Common Anniversary Date Program* and the preferred Common Anniversary Date of our firm is _____ (day/month).

*The SFC has implemented an optional annual submission arrangement for licensed corporations to apply for one common anniversary date applicable to the corporations and their accredited individuals. This Common Anniversary Date Program aims to save licensees' administrative cost by processing related annual submissions in one single batch instead of separately throughout a year.

Section 4: Other Information

Is there any change in the information that you have previously submitted to the SFC, in particular premises for keeping records or documents and substantial shareholders?

No.

Yes. We are filing a Form 4 Miscellaneous Applications or Form 5 Notification – Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder or Annual Return along with this application. (delete where not applicable)

Declaration


We, on behalf of _____ (licensed corporation applying for a licence)

- Declare that all the information provided in this application (including all supplements and attachments) is complete, true and correct to the best of our knowledge and belief.
- Declare that the board of directors has passed a resolution approving this application.
- Understand that providing false or misleading information in support of an application for a licence is an offence under section 383 of the Ordinance.
- Understand that the Commission may take disciplinary action against a person who has made a false or misleading statement in support of an application for a licence.
- Understand that if any information in this application changes from the information in this application is approved, we shall notify the Commission in writing immediately of the change.

Name of signatory	_____ (Name)	_____ (Name)
Signature	_____ (Signature of the signatory)	_____ (Signature of the signatory)
Date	_____ (Date)	_____ (Date)

填寫過渡申請表的常見錯誤 (5)

- ❖ **表格3(x)** – 供被視為持牌代表的人士填寫的申請表
- ❖ 未有以 號標示擬申請進行的受規管活動類別及擬擔任的職位（即申請成為代表或負責人員）。



SECURITIES AND FUTURES COMMISSION

Form 3(x)
Deemed Licensed Representative and Responsible Officer

Application for Licence Under
the Securities and Futures Ordinance

Name of applicant	
CE number	
Name of primary principal	
CE number of primary principal	

Section 1: Regulated Activity

Please tick "✓" the regulated activity/activities and capacity that you are deemed licensed to carry on and apply to carry on. (You may choose more than 1 regulated activity.)

		Deemed		Apply	
		Responsible officer	Representative	Responsible officer	Representative
Type 1	Dealing in securities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Dealing in futures contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Leveraged foreign exchange trading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 4	Advising on securities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 5	Advising on futures contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 6	Advising on corporate finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 7	Providing advice/trading services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 8	Securities margin financing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 9	Asset management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.1 Are you applying to carry on any new regulated activity other than those you are deemed licensed?

No.

Yes. Please complete Supplement 3(x) – Information on Qualification and Experience.

1.2 If your new regulated activity is Type 3 regulated activity (leveraged foreign exchange trading), will you offer discretionary account services to your clients?

No.

Yes. Please complete Supplement 3(x) – Information on Qualification and Experience.

填寫過渡申請表的常見錯誤(6)

❖ 申請人及申請人的主事人未有在“聲明”欄的適當空格填上 號。

❖ 申請表未有妥當地經申請人及申請人的主事人簽署，並填上日期。

Section 4: Other Information	
Is there any change in the information that you have previously submitted to the SFC?	
<input type="checkbox"/> No. <input type="checkbox"/> Yes, I am filing a Form S Notification – Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder or Annual Return along with this application. (delete where not applicable)	
Declaration: I, _____ (name of applicant) • Declare that the information in this application (including all supplements and attachments) is complete, true and correct. For responsible officer applicant: • Declare that the Board of Directors has passed a board resolution appointing me as the responsible officer: <input type="checkbox"/> I declare and responsible officer to supervise the regulated activities for which I will be responsible (unless the applicant is a director). <input type="checkbox"/> Responsible officer and granting me sufficient authority to supervise the regulated activities for which I will be responsible (where the applicant is not a director). • Understand that giving false or misleading information in support of an application for a licence is an offence under section 383 of the Ordinance. • Understand that the Commission may take disciplinary action against a person who has made a false or misleading representation when applying for a licence. • Understand that if any information in this application changes before this application is approved, I must notify the Commission in writing immediately of the changes. • Certify that I have read and understood the attached Personal Information Collection Statement. • Consent to the Commission using any personal information I have provided in this application, and any personal information I may provide in the future, for the purposes described in the Personal Information Collection Statement.	I/We, _____ (name of principal person/s) Have reviewed: <input type="checkbox"/> The information provided in this application form (including all supplements and attachments). <input type="checkbox"/> The documents evidencing the applicant's academic, professional and industry qualifications stated in this form (including all supplements and attachments), where applicable. • Certify that the other proposed principal person/s of the applicant has also agreed to the information herein (where such information relates to the other principal person/s stated in this application). • Believe that the applicant is a fit and proper person to be licensed as our representative, and endorse this application.
	Name of signatory _____ (Applicant) Signature _____ (Date to be returned) Date _____ (Date when filled in/signed)
- Delete where not applicable	

¹ This will only be applicable if the representative is applying for regulated activity(ies) other than the Board regulated activities, for which he is licensed under the Securities and Futures Ordinance. The regulated activities he is licensed to be licensed should include those included by virtue of licensing conducted under the said Ordinance.

索取更多資料

- ❖ 請瀏覽證監會網站 (www.hksfc.org.hk) 以取得最新消息，例如：有關牌照事宜的經常遇到的提問。
- ❖ 最新出版的《發牌資料冊》可於證監會網站下載。
- ❖ 證監會查詢熱線 **(2840-9393)**
- ❖ 證監會的網站更新提示服務



完
