

2 June 2017

Circular to Licensed Corporations on Responsible Officers and Substantial Shareholders

In recent years, the SFC has observed an increasing number of persons with no prior experience in the securities industry seeking to set up or acquire licensed corporations in Hong Kong. In some cases, large premiums were paid by new substantial shareholders acquiring licensed corporations that have little or no business. The SFC is also aware of reports of a “market price” for hiring a responsible officer who does not participate in the firm’s management or operations.

Accordingly, the SFC wishes to remind the industry that licences are granted to corporations and individuals to enable them to carry on a business in a regulated activity. The SFC may revoke the licences of corporations and individuals that do not genuinely carry on a business in a regulated activity.¹

Responsible officers

A licensed corporation’s responsible officers should have sufficient authority to supervise the business of regulated activity in the licensed corporation. The SFC wishes to remind licensed corporations and applicants that it is not acceptable to hire responsible officers in name only, where those responsible officers in reality do not participate in the supervision of the licensed corporation’s business, or they lack sufficient authority to do so.

This kind of arrangement is not acceptable to the SFC because there will be doubt as to whether the senior management of the licensed corporation is properly supervising the firm’s regulated activity and properly managing the risks associated with its business.² That might be an indication that the licensed corporation and the responsible officers are not fit and proper. They could therefore be subject to disciplinary action, including public reprimand and licence revocation.³

Furthermore, when applying for approval as a responsible officer, an applicant needs to provide details of his or her proposed duties. This should include a description of the specific responsibilities the responsible officer will have in relation to supervision of the licensed corporation’s business. The SFC may when necessary directly contact a responsible officer in respect of his or her area of responsibilities and the business of the licensed corporation under his or her supervision. If in reality the responsible officer does not participate in the supervision of the licensed corporation’s business, the licensed corporation and the responsible officer might have committed an offence of providing false or misleading information to the SFC in support of their licence applications.⁴

In assessing whether a person is fit and proper to be or remain licensed as a responsible officer, the SFC will also consider (among other things) whether the person is able to devote sufficient

¹ Section 195(1)(c) of the Securities and Futures Ordinance (SFO).

² Paragraph 14.1 and General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

³ Section 194(1) of the SFO.

⁴ Section 383 of the SFO.



time to his or her duties as a responsible officer, and to properly manage any potential conflicts of interest arising from any other capacities or business interests of that person. The SFC is unlikely to be satisfied that a person will be fit and proper to be licensed to act for more than one licensed corporation, unless the licensed corporations are in the same corporate group or owned by the same controlling shareholders. Similarly, there will be significant conflict of interest concerns if a responsible officer applicant also acts as a director of, or an external consultant or compliance advisor to, other licensed corporations or applicants.

Substantial shareholders

When the SFC considers an application for approval to become a substantial shareholder of a licensed corporation, it will scrutinise the proposed arrangement particularly closely if the licensed corporation appears to be dormant. That is because there may be concern that the new substantial shareholder is seeking to avoid the normal assessment and vetting process involved with a new licensed corporation application.

Whether considering a new corporate licence application or a change of substantial shareholders of an existing licensed corporation, the SFC will refuse to approve an applicant to become or continue to be a substantial shareholder of the licensed corporation unless the applicant satisfies the SFC that the corporation will remain a fit and proper person to be licensed if the application is approved.⁵ The SFC is not likely to be satisfied that a corporation will remain fit and proper unless its substantial shareholders also meet the Fit and Proper Guidelines published by the SFC.⁶

It is worth noting that the assessment and vetting process for a new substantial shareholder application is no less stringent than the process involved with a new licensed corporation application. The timeframe for processing a substantial shareholder application may be comparable to that for a corporate licence application,⁷ as the factors that affect the processing time are largely the same.

The SFC may enquire into a proposed substantial shareholder's source of funding and financial strength. This serves to assess the legitimacy of the funds and confirm that ultimate beneficial owners who are substantial shareholders have applied for approval.

The SFC will also assess any potential changes to the licensed corporation's business plan and senior management following a change of ownership. Substantial shareholders should be aware that the SFC expects a licensed corporation's Board of Directors and senior management to be composed of individuals with an appropriate range of skills and experience to understand and run the corporation's activities.⁸

In some cases, licensed corporations and proposed new substantial shareholders represent to the SFC that the licensed corporation's business plan and senior management will remain unchanged following the change of ownership. In its ongoing supervision of licensees, the SFC may seek to confirm what changes have in fact occurred. This helps ensure that parties are

⁵ Section 132(2) of the SFO.

⁶ Paragraph 6.1.2 of the Fit and Proper Guidelines.

⁷ The time it takes for the SFC to process a new corporate licence application will depend on a number of factors, such as the types of service or products the corporation proposes to provide, the completeness of the application, and the time taken for other regulatory bodies to respond to our vetting requests, where applicable (see paragraph 8.6.2 of the Licensing Handbook).

⁸ Appendix A of the Guidelines on Competence.



forthcoming in providing information. Any person providing false or misleading information to the SFC in purported compliance with a requirement to provide information (such as changes to the licensed corporation's business plan and senior management) may commit an offence punishable by a fine and imprisonment.⁹

As part of its continuous obligations, a licensed corporation must notify the SFC within seven business days whenever certain changes occur, including significant changes to its business plan and changes to its senior management.¹⁰

**Intermediaries Division
Securities and Futures Commission**

⁹ Section 384 of the SFO.

¹⁰ Securities and Futures (Licensing and Registration) (Information) Rules; Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management issued 16 December 2016.