

1 April 2010

### **Circular clarifying the licensing obligations of corporations and individuals and more particularly those conducting business outside Hong Kong**

This circular is issued for the purpose of clarifying the licensing obligations of corporations and individuals which arise under the Securities and Futures Ordinance (Cap. 571) (“SFO”) and, more particularly, the applicability of such obligations to those conducting business outside Hong Kong.

#### **Licensing requirements under the SFO**

Part V of the SFO imposes an obligation to be licensed upon corporations which in Hong Kong carry on business in a *regulated activity* (as defined in section 1 of Part 1 of Schedule 1 and Part 2 of Schedule 5 of the SFO) and upon individuals who in Hong Kong perform any *regulated function* (as defined in section 113(1) of the SFO) in relation to a regulated activity carried on as a business (see section 114(1) to (4) of the SFO).

A licence which is issued by the Securities and Futures Commission (“SFC”) under Part V of the SFO only permits the holder to carry on business in a regulated activity, or to perform a regulated function in relation to a regulated activity carried on as a business, in Hong Kong. The SFO neither imposes upon corporations and individuals an obligation to be licensed in relation to activities which are conducted by them outside Hong Kong, nor confers upon them, after they have been licensed, the ability to conduct business outside Hong Kong. It follows that when a licensed corporation or individual conducts activities in a jurisdiction outside Hong Kong, it is necessary for such corporation or individual to ensure that the relevant legal and regulatory requirements of that other jurisdiction are fully complied with.

The SFC does not license individuals who carry on business activities in another jurisdiction even though those activities might be conducted for or on behalf of, or in conjunction with, a corporation based in Hong Kong that is licensed under the SFO. Accordingly, by way of example, individuals who are based in another jurisdiction for the purpose of performing the function of recruiting new clients from that other jurisdiction for a corporation that is licensed in Hong Kong, are not required to be licensed under the SFO. Furthermore, the SFC does not have the power to license such individuals.

As a consequence, the SFC declines applications from such individuals to be licensed under the SFO unless they satisfy the SFC that they will in Hong Kong also genuinely perform regulated functions in relation to a regulated activity carried on as a business by the corporation licensed under the SFO to which it is proposed that they be accredited. In cases involving individuals who have already been licensed by the SFC, but who do not in Hong Kong genuinely perform regulated functions, the SFC is likely to revoke their licences on the ground that in Hong Kong they do not conduct the business activities for which they were licensed under the SFO (see section 195(1)(c) of the SFO).



## **The SFC's concerns**

It is of concern to the SFC that some individuals who have been licensed under the SFO, only conduct business activities outside Hong Kong and, in doing so, promote themselves as persons who are licensed by the SFC. The SFC has two principal concerns in relation to this situation.

First, the fact that an individual has a licence issued by the SFC gives rise to an inference that the individual is actively regulated by the SFC. Because the SFC may only exercise its powers within Hong Kong, its ability to effectively supervise such individuals and to investigate their conduct is, at best, very restricted. Accordingly, persons in other jurisdictions with whom these licensed individuals deal, are likely to be misled as to the effectiveness the SFC's regulatory oversight of them.

Secondly, the SFC is concerned that certain individuals who are licensed under the SFO, but who conduct their business activities outside Hong Kong, misled the SFC as to the precise nature of their intended business when they applied for their licences. The SFC is also concerned that this is a continuing practice and that some licensed corporations are, or have been, actively complicit in it.

Accordingly, the SFC wishes to remind individuals who have been licensed under the SFO (or who are contemplating seeking such a licence) and the corporations to which they are (or are intending to be) accredited, that providing false or misleading information to the SFC in support of a licence application is a criminal offence contrary to section 383 of the SFO. Such conduct is viewed seriously by the SFC and is likely to call into question the fitness and properness of the individual and the corporation to be, or to remain, licensed.

Corporations which are licensed by the SFC, and which have employees or agents conducting business activities on their behalf in other jurisdictions (irrespective of whether such persons are licensed under the SFO), are likely to be regarded by the SFC as responsible for their conduct. If these persons are not licensed under the laws of such other jurisdictions when they should be, or they otherwise conduct themselves in an improper manner, this is likely to be of considerable concern to the SFC. In such a situation, the SFC might well consider malpractices of these types as calling into question the fitness and properness of such a corporation to be, or to remain, licensed in Hong Kong.

The contents of this circular are intended to provide guidance of a general nature and should not be taken as constituting legal advice. If corporations or individuals are in any doubt concerning the licensing obligations that arise under the SFO in their particular circumstances, they should seek legal advice.

**Licensing Department  
Securities and Futures Commission**

[250/LC/24/1/15]