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Circular on the licensing obligations of family offices

This circular provides general guidance for family offices intending to carry out asset management or other services in Hong Kong.

As an international financial centre and asset management hub, Hong Kong is an obvious choice for family offices, which are typically set up to manage the financial affairs of high net worth families. Their activities include asset management and estate planning. They may serve a single family or multiple families which are not necessarily connected to each other.

A. General licensing requirements

In Hong Kong, there is no specific licensing regime for family offices. The licensing regime under the Securities and Futures Ordinance (SFO) is activity-based. If the services provided by a family office do not constitute any regulated activity or they fall within any of the available carve-outs¹, the family office is not required to be licensed under the SFO. However, family offices should take care not to hold themselves out as carrying on a business in a regulated activity without a licence.

As discussed in Parts B and C below, a company or family office set up as a business to manage assets which include securities or futures contracts may be required to hold a licence for Type 9 regulated activity (asset management)². The licensing implications of providing asset management services in Hong Kong do not hinge on whether clients are families. Therefore, the relationships amongst the beneficiaries of a family trust or between family members are not relevant in determining whether a licence is required. For example, a family office can manage assets for persons who are not strictly “family members” (e.g. ex-spouses and in-laws).

If a family office intends to provide other services such as acquiring financial assets following instructions made by the family, it should review whether they fall within the definition of any of the other types of regulated activities such as Type 1 (dealing in securities) and whether it is required to be licensed for them.

B. Single family offices

The way in which a single family office operates can lead to different consequences under the licensing regime. For example, in cases where a family appoints a trustee to hold its assets of a family trust, and the trustee operates a family office as an internal unit to manage the trust assets, the family office will not need a licence because it will not be providing asset management services to a third party.

Similarly, if the family office is established as a separate legal entity which is wholly owned by a trustee or a company that holds the assets of the family, it will not need a licence as it

¹ Please refer to Schedule 5 to the SFO for details about the available carve-outs under the definitions of the various types of regulated activities. Paragraph 1.3 of the Licensing Handbook (Exemptions) provides general guidance on some situations in which the carve-outs may apply.

² Asset management is defined in Schedule 5 to the SFO to mean real estate investment scheme management and securities or futures contracts management.

will qualify for the intra-group carve-out³ as full discretionary investment manager of the securities or futures contracts portfolio. The family office is not required to be licensed for Type 9 regulated activity if it provides asset management services solely to related entities, which are defined as its wholly-owned subsidiaries, its holding company which holds all its issued shares or that holding company's other wholly-owned subsidiaries.

C. Multi-family offices

A multi-family office by definition serves more than one high net worth family. The type of SFC licence required depends on the services to be provided in Hong Kong. If a multi-family office provides services to clients who are not related entities as defined in Part B above, it will not be able to make use of the intra-group carve-out.

Where a multi-family office is granted full discretionary investment authority, its asset management activity would generally be similar to that of a licensed asset management company and therefore it would likely need to be licensed for Type 9 regulated activity. If it has not been delegated full discretionary investment authority and only provides securities investment advice and executes securities transactions, it may need to be licensed for other types of regulated activities, ie, Type 1 regulated activity and Type 4 regulated activity (advising on securities). Where the assets include futures contracts, it may also need to be licensed for Type 2 regulated activity (dealing in futures contracts) and Type 5 regulated activity (advising on futures contracts).

Should there be queries regarding the contents of this circular, please contact enquiry.familyoffice@sfc.hk.

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End

³ Please refer to paragraph (a) under the definition of "securities or futures contracts management" in Schedule 5 to the SFO.