

**Application for Approval to Treat any Subordinated Loan/ Standby
Subordinated Loan Facility
as an Approved Subordinated Loan/ Approved Standby
Subordinated Loan Facility under
Section 58(5)(b) & (c) of the
Securities and Futures (Financial Resources) Rules (“FRR”)**

Application Guidelines

1. Subordinated Loan Vs Subordinated Loan Facility

Generally speaking, in order that any subordinated loan arrangement obtained by a licensed corporation (“LC”) may improve its ability to meet the applicable minimum liquid capital requirement under the FRR, the loan must have been fully drawn under a subordinated loan agreement which provides for the subordination of the rights of the lender to that of other creditors in the event of the LC’s insolvency or inability to comply with the FRR.

As the minimum liquid capital requirement is set by reference to transaction volume as a variable parameter, the FRR also allows the use of a standby subordinated loan facility to assist a LC to comply with the FRR where its required liquid capital deficit has arisen from a sudden increase in certain specified business transactions. Such a subordinated loan facility, referred to as standby subordinated loan facility, will enable the LC to meet the minimum liquid capital requirement without actual draw down for a maximum of 4 business days within any 60-day period if the specified circumstances in section 6(3) and (4) are met. However, the LC must be entitled to draw a loan under the standby subordinated loan facility for an amount not less than the required liquid capital deficit, and the rights of the lender in respect of any amount drawn down under the facility are subordinated to those of other creditors in the event of the LC’s insolvency or inability to comply with the FRR.

Where a LC anticipates any required liquid capital deficit arising from future transactions of variable amounts (e.g. net underwriting commitment), it will facilitate the LC in complying with the FRR where a revolving subordinated loan facility is obtained beforehand. Upon obtaining the approval of the Commission, any loan drawn under the facility is treated as an approved subordinated loan on the basis that the rights of the lender in respect of such loan are subordinated to those of other creditors. It must however be noted that only the portion of the facility drawn will be taken into account in determining the LC’s compliance with the FRR.

LCs are welcome to contact the Intermediaries Supervision Department in advance of an application to determine the appropriate type of subordinated loan arrangement.

2. Application Fee

An application fee of HK\$6,000 is required. Payment should be made by a crossed cheque made payable to the “**Securities and Futures Commission**”.

Application not accompanied by the appropriate fee will NOT be accepted. Application fee is not refundable even if the application is subsequently withdrawn or refused.

3. General Criteria

Please note that the requirements below are for general guidance only and are by no means exhaustive. They may be varied and / or supplemented by additional requirements to cater for all relevant circumstances of each case determined on its own merits.

a) Financial position of the Lender

The lender must be financially sound. It should be either connected to the Borrower (e.g. parent or holding company) or an authorized financial institution/ approved bank incorporated outside Hong Kong.

b) Size of the Loan

The aggregate amount of all outstanding approved subordinated loans (including amounts drawn under any approved revolving / stand-by subordinated loan facilities) and outstanding approved redeemable shares (if any) should normally not exceed the shareholders' funds (i.e. share capital plus reserves less deficits) of the Borrower.

LCs are welcome to contact the Intermediaries Supervision Department in advance of a subordinated loan application to determine the acceptable size of the loan.

c) Duration of the Loan

The term of any approved subordinated loan or facility should normally be not less than two years.

d) Loan agreement

A subordinated loan agreement must be substantially in the form of the model subordinated loan agreements provided by the Commission. Please make sure that you have obtained a copy of the applicable model agreement for reference. Model loan agreements are available on the SFC website (<http://www.sfc.hk> => Intermediaries => Supervision => Forms => Subordinated Loan Application Guidelines & Proforma Agreements).

The loan clause, the interest clause and the attestation clause are normally the only variable clauses allowed in order to reflect the characteristics of the particular loan. Any interest payable should not be at a rate above the prevailing commercial rate in the market having regard to the financial position of the Borrower and the duration of the loan, although non-interest bearing loans may be acceptable.

e) In-principle approval

If, after having examined the draft subordinated loan agreement and other submissions, the Commission is prepared to approve the application, the Commission will issue an in-principle approval letter to the applicant setting out the documentation and other requirements, including but not be limited to the followings:

- executed but undated subordinated loan agreement in the form as stipulated in the in-principle approval letter

- a certified true copy of the minutes of the board meeting of the Lender at which the execution of the subordinated loan agreement was approved
- a certified true copy of the minutes of the board meeting of the Borrower at which the execution of the subordinated loan agreement was approved
- documentation regarding the funding of the subordinated loan by the Lender to the Borrower (e.g. bank confirmation of receipt of funds, or board resolution in case of conversion of existing inter-company/ shareholders' loan)
- a letter from the legal adviser of the Lender/Borrower (if incorporated overseas) confirming certain matters, including:
 - the company has the corporate capacity, power and authority to enter into the subordinated loan agreement;
 - the entering into the subordinated loan agreement will not breach any local laws or regulations nor will it require any approvals from local authorities; and
 - the subordinated loan agreement has been properly executed; i.e. approval has been given by the proper person(s) whose approval is required for the subordinated loan, the agreement has been executed by the proper person(s) who is duly authorised to execute the subordinated loan agreement on behalf of the company, and the mode of execution complies with relevant law and the constitutive documents of the overseas corporations.
- confirmation of acceptance of specified conditions (if any) applicable to the approval

IMPORTANT: THE COMMISSION RESERVES THE RIGHT TO TREAT ANY APPLICATION AS WITHDRAWN IF ANY REQUESTED DOCUMENTS AND INFORMATION ARE NOT SUBMITTED TO THE COMMISSION WITHIN THE SPECIFIED TIME PERIOD. FURTHERMORE, OUR IN-PRINCIPLE APPROVAL WILL LAPSE, IF PROPERLY EXECUTED AGREEMENTS AND OTHER REQUIREMENTS STIPULATED IN THE LETTER ARE NOT SUBMITTED WITHIN ONE MONTH, UNLESS OTHERWISE SPECIFIED, AND THE APPLICATION WILL BE TREATED AS WITHDRAWN.

4. Subordinated Loan under vetting

For the avoidance of doubt, if the proposed subordinated loan is to be discharged by any subsisting advance(s) already made by the Lender to the Borrower, the loan must be included as a ranking liability of the Borrower's liquid capital computation and must not be treated as an approved subordinated loan unless and until final approval is given by the Commission.

5. How should an application be lodged?

Applications should be submitted to the Commission together with the requisite application fee and supporting documents, by hand or by post to the Intermediaries Supervision Department of the Securities and Futures Commission at:

54/F, One Island East
18 Westlands Road
Quarry Bay
Hong Kong

Attn: Mr Keith CHOY
Senior Director of Intermediaries Supervision Department

Use of attached application form is encouraged, but by no means mandatory.



Approved Subordinated Loan/ Standby Subordinated Loan Facility

Application Form

- Subject of Application (please see part 1 of Application Guidelines for classification)
- Subordinated Loan
 - Stand-by Facility
 - Subordinated Loan drawn under a Revolving Facility

Use tick “√” to indicate the selected option in check boxes.

Part A - Information relating to the Borrower (i.e. the Applicant)

Full Name of the Borrower _____

Regulated Activity: (please select one or more, as appropriate)

Corporation licensed for:

- dealing in securities
- dealing in futures contracts
- leveraged foreign exchange trading
- advising on securities
- advising on futures contracts
- advising on corporate finance
- providing automatic trading services
- securities margin financing
- asset management

Office Address : _____

Contact person : _____

Telephone Number : _____

Fax Number : _____

E-mail Address : _____

Part B - Information about the Lender

Name of the Lender : _____

Place of incorporation
of the Lender : _____

Principal activities
of the Lender : _____

Relationship between
the Borrower and the
Lender : _____

Type of registration
(if any- licensed by the
Commission or registered
with any other local or
overseas regulatory body : _____

Name of regulatory
organization / country
(if applicable) : _____

Any credit rating by
rating agencies. If so,
please supply details : _____

Part C - Information relating to the Subordinated Loan

Loan amount : _____

Tenor of the loan facility
(only applicable for revolving
facility or stand-by facility) : _____

Duration of the Loan : _____

Interest rate : _____

Purpose of the Loan : _____



Part D - Financial positions of the Borrower and the Lender

The Borrower

HK\$

Liquid capital as reported in the latest financial return under the Securities and Futures (Financial Resources) Rules as of * _____

Aggregate amount of subsisting approved subordinated loan(s), if any _____

Aggregate amount of outstanding approved redeemable shares, if any _____

Shareholders' funds (share capital plus reserves less deficits) _____

The Lender

Shareholders' funds as per the latest audited accounts as of _____

Please run through the checklist on the next page to ensure that the necessary supporting documents are attached with this application.

Signed on behalf of the Borrower:

Signature

Full name and position

Date

Checklist for application for Approved Subordinated Loan

IMPORTANT: Application not accompanied by the following requisite supporting documents and fee will **NOT** be accepted.

Please ensure that the followings are attached with the application by ticking the relevant box:

Fees

- A crossed cheque of HK\$6,000 made payable to the “Securities and Futures Commission” (Please note that the application fee is not refundable even if the application is subsequently withdrawn or refused)

Supporting documents

- The latest financial return* under the Securities and Futures (Financial Resources) Rules of the Borrower with supporting schedules for the major components
- The latest management accounts* (including balance sheet, profit and loss account and trial balance) of the Borrower
- The last audited accounts of both the Borrower and the Lender
- A group chart of the Borrower (or any other relevant documents) which shows the relationship between the Lender and the Borrower
- A draft subordinated loan agreement which should be substantially in accordance with the model loan agreement of the Commission
- A marked-up copy of the draft subordinated loan agreement which shows clearly any amendments (including anything added, deleted or replaced) to the model loan agreement
- A draft letter from the legal adviser of the Lender/Borrower (if incorporated overseas) confirming the following matters:
 - the company has the corporate capacity, power and authority to enter into the subordinated loan agreement;
 - the entering into the subordinated loan agreement will not breach any local laws or regulations nor will it require any approvals from local authorities; and
 - the subordinated loan agreement has been properly executed; i.e. approval has been given by the proper person(s) whose approval is required for the subordinated loan, the agreement has been executed by the proper person(s) who is duly authorized to execute the subordinated loan agreement on behalf of the company, and the mode of execution complies with relevant law and the constitutive documents of the overseas corporations
- Registration status of the Lender
- Credit rating report of Lender, if applicable

* To be made up to a date which is not more than one month from the date of application