

# Establishing an SFC- Licensed Corporation in Hong Kong



**Tiang & Partners**  
程偉賓律師事務所

An independent Hong Kong law firm and  
a member of the PwC network

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# 01

## Our strengths



## Tiang & Partners' Funds practice

Tiang & Partners is an independent Hong Kong law firm and a member of the PricewaterhouseCoopers Limited ('PwC') network. Our Funds and Regulatory practice consists of a team of dedicated investment funds lawyers and legal staff covering the entire spectrum of investment funds, from private equity, hedge, hybrid to retail and authorised funds, and all non-contentious regulatory issues related to investment management activity in Hong Kong. Our services include advising on:

- Structuring funds, choosing the domicile, listing requirements and drafting fund documentation;
- Structuring and regulatory issues for cryptocurrency funds, drafting documentation for cryptocurrency funds;
- Legal restrictions on marketing internationally (with the assistance of our international network);
- SFC licensing and application process;
- Regulatory issues for hedge fund managers including disclosures of interests; and
- Structuring and setting up hedge fund management businesses.

## Tiang & Partners is a full-service asset management law firm

Our firm also boasts expertise across all areas that are relevant or related to asset management activity, including:

- Negotiating prime brokerage and trading documentation (including ISDA Master agreements, CFD, repo and other futures and options agreements);
- Advising on strategic and transactional matters, including fund merger and acquisitions ('M&A'), illiquid investments and active investment situations; and
- Advising on all aspects of the employment relationship (both contentious and non-contentious) including employment contracts, employee entitlement and protection, employee documentation, termination disputes and redundancies.

Our lawyers work closely with PwC's Asset & Wealth Management and Financial Services Lines of Service, as well as the global Legal teams within the PwC legal network, to provide integrated advice and support on operational, regulatory, and transactional aspects to fund managers, sponsors and investors. Our in-depth industry knowledge and expertise in specialist areas also equips us to advise on the full range of issues relevant to hedge, private equity, crypto and hybrid funds, and also their managers.

Given this capability, we are able to provide an end-to-end solution across the entire life cycle of a fund, from inception, to operation, through to termination. In addition, drawing from expertise across the entire legal and wider PwC network, we are able to provide services across all aspects of a fund's operation and in relation to asset management activity generally.

## PwC Global Legal Business Solutions

PwC Global Legal Business Solutions ('LBS') represents the combination of the PwC Network's global Legal and NewLaw practices. The global Legal practice consists of 3,500 professionals across 90+ territories, bringing the right combination of legal insights, business understanding and technological innovation to transform how you work and make the right decisions.

Investments funds and regulations need global perspective with local knowledge. The PwC Global Legal Funds team has a presence in many of the key jurisdictions in which funds clients invest or operate, and has established alliances with leading law firms in many other jurisdictions. Working with us is not just about legal advice – by collaborating closely with PwC's Tax, Assurance, Risk and Regulatory Compliance, Deals and Crypto Advisory teams, our team provides asset and wealth management clients with an integrated, end-to-end business solution to all of their asset management and investment fund needs.

### PwC legal services coverage:



## The PwC network of law firms across Asia Pacific

Tiang & Partners works closely with the PwC network of law firms – the most geographically connected legal services network in the world with more than 3,500 legal practitioners in 90+ territories, including offices across 12 territories in Asia Pacific. Combining local market knowledge with international experience, we connect your challenges with the right expertise in Legal and across PwC.

<b>Territory</b>	<b>Network firm(s)</b>	<b>Law practised</b>
<b>Hong Kong SAR</b>	Tiang & Partners*	Hong Kong SAR English Australian Canadian New York State, United States
<b>Taiwan</b>	PricewaterhouseCoopers Legal	Taiwan
<b>Singapore</b>	Eng and Co. LLC	English Australian Singapore
<b>Australia</b>	PwC Australia	Australian (NSW, VIC, QLD, WA, ACT)
<b>Indonesia</b>	Melli Darsa & Co., Advocates & Legal Consultants	Indonesian
<b>Japan</b>	PwC Legal Japan	Japanese
<b>Mongolia</b>	PwC Mongolia	Mongolian
<b>New Zealand</b>	PwC Legal New Zealand	New Zealand
<b>Philippines</b>	Cabrera & Co	Philippine
<b>Thailand Laos</b>	PwC Legal & Tax Consultants	Thai Laotian
<b>Vietnam</b>	PwC Legal Vietnam	Vietnamese
<b>Total</b>	<b>80+ partners and 400+ legal professionals</b>	



## Tiang & Partners – Excellent market recognition

### Leading / recommended lawyers and individuals:



**Michelle Taylor**

Ranked in Capital Markets and Structured Finance & Securitisation



**Gaven Cheong**

Ranked in Investment Funds / Private Funds - Formation



**Tejaswi Nimmagadda**

Ranked in Asset Finance / Aviation Finance



**Martin Robertson**

Ranked in M&A



**Chiang Ling Li**

Ranked in Intellectual Property, Life Sciences, Patent and Technology



**Martyn Huckerby**

Ranked in Antitrust & Competition



**Kevin Tsang**

Ranked in Capital Markets and Structured Finance & Securitisation



**Nai Kwok**

Ranked in Asset Finance / Aviation Finance



**David Law**

Ranked in Structured Finance & Securitisation



**'Innovation in Enabling Business Growth' –**  
Establishment of Global Shipping Business Network

### Ranked practice areas

- Antitrust & Competition
- Asset Finance (Aviation)
- Capital Markets (South Korea, HK)
- FinTech
- Intellectual Property - Patents
- Intellectual Property - Trademarks / Copyright
- Investment Funds
- Corporate/ M&A
- Structured Finance & Securitisation

# 02

## SFC licensing regime in Hong Kong – an overview





## A. Introduction

Hong Kong, being an administrative region after it reverted to the People's Republic of China (the '**PRC**') in 1997, is also a major financial centre. The legal system in Hong Kong remains largely unchanged after its return to the PRC, which is a Common Law system inherited largely from English law. Having their own specific rules and requirements, the regulators in Hong Kong operate separately from their counterparts in the PRC although there is now much closer collaboration between parties on both sides of the divide.

The main regulator in Hong Kong governing financial institutions and their activities in relation to 'securities' and 'futures' as defined under the Securities and Futures Ordinance (Cap. 571) ('**SFO**') is the Securities and Futures Commission (the '**SFC**'). The SFC also has jurisdictions over banks that are 'registered institutions', although they are primarily governed by the Hong Kong Monetary Authority (the '**HKMA**') and its primary legislation, the Banking Ordinance (Cap. 155).

This overview aims to highlight the key considerations for an overseas financial institution (an '**Overseas Entity**') establishing business operations in Hong Kong, including the procedures for obtaining a relevant regulatory licence for carrying on 'Regulated Activity' ('**RA**') in Hong Kong.

## B. SFC licensing

### Regulated activities

Under the SFO, any person carrying on a business in Hong Kong, or holding himself out as carrying on a business in an RA without a licence or a registration from the SFC, commits an offence. All other persons carrying on RAs have to be licensed by the SFC as 'licensed corporations' or, in the case of individuals, be accredited to a licensed corporation to engage in the activities as 'licensed representatives'. Banks regulated under the HKMA that are also involved in the carrying out of activities related to securities or futures are to be registered with the SFC as 'registered institutions'. This overview will only focus on licensed corporations (and not on the activities of banking institutions under the HKMA).

Schedule 5 of the SFO sets out 12 RAs (in which Type 1 to 10 RAs are in operation) as follows:

<b>Type 1</b>	Dealing in securities	<b>Type 7</b>	Providing automated trading services***
<b>Type 2</b>	Dealing in futures contracts	<b>Type 8</b>	Securities margin financing
<b>Type 3</b>	Leveraged foreign exchange trading	<b>Type 9</b>	Asset management***
<b>Type 4</b>	Advising on securities	<b>Type 10</b>	Providing credit rating services
<b>Type 5</b>	Advising on futures contracts	<b>Type 11</b>	Dealing in OTC derivative products or advising on OTC derivative products***
<b>Type 6</b>	Advising on corporate finance	<b>Type 12</b>	Providing client clearing services for OTC transactions***

\*\*\*Since April 2014, the Securities and Futures (Amendment) Ordinance introduced Type 11 and Type 12 RAs. It also created the 'expanded Type 9' which covers the management of a portfolio of OTC derivative products and 'expanded Type 7' which covers the provision of automated trading services for OTC derivative products. While provisions in relation to these Type 11, Type 12, 'expanded Type 7', and 'expanded Type 9' have already been incorporated into the SFO, they have not yet been brought into effect. Since 2014, the SFC has done two additional rounds of consultation on the OTC derivative products to refine the scope. The first round of consultation conclusion was issued in December 2018, which covers requirements on risk mitigation and client clearing and conduct requirements to address risks posed by group affiliates and other connected persons. The second round of consultation conclusion was issued in June 2020, which mainly covers the proposed refinements to the scope of RAs in relation to OTC derivative products. These amendments have now been passed by the Legislative Council on 30 September 2021 as part of the Securities and Futures and Companies Legislation (Amendment) Bill 2021 (the '**Bill**').

The Bill also clarifies or expands some exemptions, the more important ones for fund managers are:

- An 'expanded Type 9' licence holder will not need to be licensed for Type 3 RA if it deals in foreign exchange derivatives solely for the purpose of providing asset management services to its clients.
- An 'expanded Type 9' licence holder will not need to be licensed for Type 12 RA if it engages in such activity solely for the purpose of providing asset management services to its clients.

Despite the passage of the Bill, the whole OTC derivatives regulatory regime is still not yet in operation. The SFC has previously confirmed in its June 2020 consultation conclusion that the whole OTC derivatives regulatory regime would only come into operation after amendments of other relevant subsidiary legislation, such as the Securities and Futures (Financial Resources) Rules ('**FRR**'). Therefore, we will keep close eyes on the updates by the SFC.

### The 'carve outs' exemption

The SFO, however, contains certain 'carve outs' or exemptions from the need to be licensed even if one is carrying on the relevant RA in Hong Kong.

#### Group company exemption

Pursuant to the SFO, where a Hong Kong based company carries on a business of providing Type 4 RA and Type 9 RA solely to:

- its 100% parent company;
- any of its wholly owned subsidiaries; or
- other wholly owned subsidiaries of that parent company,

it may be entitled to an 'intra-group' exemption from needing to get licensed for the relevant RA.

However, as regards Type 9 RA specifically, the SFC has stated<sup>1</sup> that it considers the intra-group exemption to NOT be applicable where the provision of the asset management RA is in

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<sup>1</sup> The 'carve out' is stated in '**securities or futures contracts management**' under Schedule 5 Part 2 of the SFO and further guidance is provided in 1.3.15 of the Licensing Handbook (January 2022).

respect of third party moneys (for example, if the Fund in respect of which the manager is providing asset management RA, even if those services are first provided solely to its 100% parent company, then the SFC considers that the manager would NOT be able to rely on the intra-group exemption in such a case).

#### Incidental exemption

The SFO also provides that in certain circumstances, having one type of RA licence also enables a licensee to exercise another related type of RA if it is incidental to the exercise or carrying on of that original licensed RA – without having to obtain a specific licence for that incidental RA.

Examples that are most relevant to asset managers are as follows:

- A person licensed for Type 1 (Dealing in Securities) RA is entitled to also provide Type 9 (Asset Management) and Type 4 (Advising on Securities) RA if those activities are incidental to the activity of dealing in securities;
- A person licensed for Type 9 (Asset Management) RA is able to carry out Type 1 (Dealing in Securities), Type 2 (Dealing in Futures Contracts), Type 4 (Advising on Securities), and Type 5 (Advising on Futures Contracts) RA as part of the provision of its asset management services to a specific client; and
- As discussed in the section above, the holder of 'expanded Type 9' will not be required to obtain Type 3 (leveraged foreign exchange trading) and Type 12 (providing client clearing services for OTC derivative transactions). But these are not in operation yet as discussed and we await more clear guidance to be provided when the SFC updates its licensing handbook.

## Major licensing requirements

### Legal structure

For the purpose of a financial institution seeking to be licensed with the SFC, its legal structure must be in the form of a company (sole proprietorships or partnerships will not be acceptable) incorporated in Hong Kong or a body corporate or company incorporated overseas but registered as a branch (a '**Branch**') with the Registrar of Companies in Hong Kong (the '**Registrar**') under Part 16 of the Companies Ordinance (Cap. 622). While a Hong Kong incorporated company is preferred by the SFC for the purpose of licensing, the SFC may, in limited circumstances, grant a licence to a Branch provided that it will undertake to carry on its business only in Hong Kong.

### Competence

The SFC requires that the relevant financial institution has a proper business structure, good internal control systems and qualified personnel. The applicant must be able to demonstrate that it has proper risks management procedures in place for the carrying out of its proposed business. At a minimum, the applicant must produce to the SFC:

- a detailed business plan; and
- a compliance manual,

which form the core documents as part of its application bundle.

## Fitness and properness

For applicants failing to meet the 'fit and proper' requirement, the SFC is obliged to refuse to grant a licence. The 'fit and proper' requirement applies not just to the financial institution applying for the licence, but also other parties related or involved with the management and operation of the applicant, such as the substantial shareholders, officers and any other person who are or are to be employed by, or associated with, the applicant.

In determining whether a person is fit and proper, section 129 of the SFO sets out the following factors that the SFC would take into account in addition to any other relevant matters:

- financial status or insolvency;
- educational or other qualifications or experience having regard to the nature of the functions to be performed;
- ability to carry on the RA concerned competently, honestly and fairly; and
- reputation, character, reliability and financial integrity.

## Responsible Officer

Every licensed corporation must have at least two (2) responsible officers ('**Responsible Officers**') who are responsible for the business conducted by the licensed corporation, and to directly supervise the conduct of each RA.

Responsible Officers are also the licensed representatives ('**Licensed Representatives**') of the company, approved by the SFC on additional eligibility and approval requirements. Each Responsible Officer may supervise more than one RA provided there is no conflict of interest. For each RA, there should be at least one Responsible Officer available in Hong Kong at all times to supervise the business (given also that at least one of the proposed Responsible Officers must be an executive director (as defined in the SFO), who then must seek approval from the SFC to be a Responsible Officer of the licensed corporation).

When making an application submission to the SFC for a licence to carry out certain RAs, the company must lodge applications at the same time for the approval of at least two (2) Responsible Officers (who may be licensed or working with another entity at the time the application is made) for the SFC's consideration.

The requirement of two Responsible Officers per RA may, in limited circumstances, be relaxed, such that the SFC may (on a completely discretionary basis) permit:

- one Responsible Officer out of the two to reside overseas, subject to the RA involved;
- the licensed corporation to commence business before one of the two Responsible Officers has obtained a pass in the relevant regulatory examinations during the six month grace period granted by the SFC; and
- the licensed corporation to operate on a 'non-sole condition' such that the Responsible Officer who does not satisfy the experience requirement undertakes to be supervised by a fully qualified Responsible Officer.

In order for an individual to qualify as a Responsible Officer, there are four competence criteria that must be fulfilled (as shown in the table below):

Category	Requirements
<b>Academic/ Professional Qualifications</b>	<p>The individual can fulfill this requirement by either obtaining a degree in certain prescribed subjects or an internationally recognised professional qualification (eg., Chartered Financial Analyst, Certified International Investment Analyst and Certified Financial Planner)). At a minimum, the individual must attain Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent, and he/she must also have obtained the relevant recognised industry qualifications ('<b>RIQ</b>') or completed relevant extra continuous professional training ('<b>CPT</b>') (depending on the individual's years of relevant industry experience). RIQ requirement may however be exempted in full or upon certain conditions (For details, please refer to below).</p> <p>The Guidelines on Competence (January 2022) has also set out a new exemption concerning an individual who does not possess the required academic or professional qualifications discussed above but has been a licensee before 1 January 2022. The application of such individual will now still be considered by the SFC provided that he/she has a) acquired at least 8 years of relevant industry experience over the past 11 years in the RA he/she applied for and b) fulfilled the LRP and the two years management experience requirements set out in this table below.</p>
<b>Local regulatory framework paper ('LRP')*</b>	The individual must have passed the relevant LRP to the RA licence he/she applied for (which are held monthly) or otherwise has been granted full or conditional exemption (For details of each exemptions, please refer to below).
<b>Industry Experience</b>	Immediately prior to the date of application, the individual must possess three years of relevant industry experience over the past six years.
<b>Management Experience</b>	The individual must have a minimum of two years proven management skills and experience.

#### Exemptions for 'RIQ' category:

- Full exemption: applicable to an individual who applies for (i) a different type of RA licence with the same competence<sup>2</sup> requirements and in the same role given that the individual is a current licensee (or who has been so licensed within the past three years); or
- (ii) a temporary licence to carry on RAs 1, 2, 4, 5, 6, 10 or 11<sup>3</sup>.

<sup>2</sup> 'Competence' means RIQ or LRP requirements, depending on the exemptions the individual applied for.

<sup>3</sup> For RA 11, effective upon the commencement of the new licensing regime for this RA.

- Conditional exemption: applicable to a current licensee having five years of related local experience over the past eight years, who seeks to apply to carry on an RA with different RIQ requirements but in the same role under exceptional circumstances. In such case, the SFC would consider imposing licensing conditions which restrict the scope of activities to be undertaken by the licensee. The individual is also required to complete an additional five hours of continuous professional training ('CPT') in industry/product knowledge for the new RA.

#### **Exemptions for 'LRP' category:**

- Full exemption: The requirements and conditions (i) and (ii) for a full RIQ exemption discussed above also apply here. In addition, an individual who has been actively involved in regulatory or compliance work in Hong Kong on a full-time basis for not less than three years over the past six years in the same RA might get full exemption as well (in this situation, the individual's scope of activities might be restricted if the SFC considers appropriate to impose licensing conditions upon the individual).
- Conditional exemption: applicable to an individual who satisfies the following conditions in i) to vi).
  - In terms of experience, if an applicant does not have sufficient local regulatory exposure, he/she may demonstrate he has substantial related experience by showing, for example:
    - 8 years of related experience in a jurisdiction where any of the specified exchanges in Schedule 3 to the FRR is domiciled (e.g. in Hong Kong, United Kingdom, United States or Japan); or
    - 6 years of related experience with at least 2 years of being licensed in Hong Kong;

with some part of the experience gained in the most recent 3 years.
  - In terms of restriction on permitted activities, (a) the individual is either only involved in a limited scope of activities of the licensed corporation or only assuming a very senior management level role; or (b) the licensed corporation will only be carrying on a limited scope of business activities.
  - In terms of regulatory support from other personnel, there must be at least 1 approved Responsible Officer at the licensed corporation who is licensed in the relevant RA and who will be directly reporting to or otherwise responsible for advising the individual as well as supervising the daily operations of the RA.
  - As for internal control systems, the licensed corporation should have in place an appropriate risk and regulatory compliance infrastructure (including a comprehensive risk management system, internal audit, compliance staff and procedures).
  - In relation to CPT, the individual must complete an extra 5 CPT hours in local regulatory knowledge in the relevant RA. The individual and the licensed corporation must provide (a) confirmations that the individual has completed the extra 5 CPT hours if those were attained within 6 months preceding the application, or (b) undertakings



that the individual will take the extra 5 CPT hours within 12 months after the grant of approval.

- vi. And finally, the licensed corporation and/or the individual should also undertake or confirm that a) they will update the SFC for any significant change to the underlying circumstances, including the job functions or the RA the individual engages in, the licensed corporation's business activity relevant to the individual, or changes in any designated licensed or support personnel and b) the licensed corporation has suitably qualified back office staff (including finance, compliance, and audit staff).

To provide extra regulatory comfort, the SFC would impose licensing conditions to restrict the scope of activities of the licensed corporation and/or the individual such that the activities engaged by an individual is confined within the same group or related companies, or to non-retail clients.

In addition to the general LRP conditional exemption discussed above, the new SFC Guidelines on Competence has also set out 3 other scenarios (varying in relation to the years of relevant experience obtained, the RA that the individual applied for, and the jurisdiction where the Responsible Officer obtained the experience from) that a Responsible Officer might obtain a conditional exemption for the LRP. Whilst the requirements for each scenario deviate slightly, they all have a common requirement that the Responsible Officer must obtain an extra 5 CPT hours in order that the LRP conditional exemption would be considered.


Conditional exemption is now also available to former practitioners under the new Guidelines. Both RIQ and LRP requirements might be conditionally exempted if he/she, who has left the industry between 3 to 8 years, re-applies for a licence with the same RIQ and LRP requirements and in the same role as previously licensed (with the support of showing that certain CPT hours have been obtained, depending on the number of years of absence).

### **Transfer of Accreditation**

Whilst the application is being vetted by the SFC, the proposed Responsible Officer who holds a licence to carry out the relevant RA for another licensed corporation is permitted by the SFC to still work at the other licensed corporation employer. An application for a transfer of accreditation will be made for this individual to the SFC (the applicable fees include the required application fee of HK\$2,950 plus HK\$200 per RA). For a transfer of accreditation, the individual would have 180 days to make the application, after ceasing to act for the existing principal.

### **'Manager-In-Charge' Regime**

Under the Manager-In-Charge ('**MIC**') regime introduced in 2016, a licensed corporation must identify and appoint an individual who will be responsible for the management of each of the following core functions listed below. That individual (either alone or with others) is known as the MIC. He/she becomes principally responsible for managing the relevant core function(s) of the licensed corporation and is answerable personally to the SFC for any regulatory lapses in the function for which he/she has been nominated as MIC.



**Overall management oversight ('OMO')**

Directing and overseeing the effective management of the overall operations of the licensed corporation on a day-to-day basis



### **Key business line ('KBL')**

Directing and overseeing a line of business which comprises one or more types of RAs



### **Risk management**

Identification, assessment, monitoring and reporting of risks arising from the licensed corporation's operations



### **Operational control & review**

Responsible for:

- i. establishing and maintaining adequate and effective systems of controls over the licensed corporation's operations; and
- ii. reviewing the adherence to, and the adequacy and effectiveness of, the licensed corporation's internal control systems



### **Finance & Accounting**

Ensuring the timely and accurate financial reporting and analysis of the operational results and financial positions of the licensed corporation



### **Information Technology ('IT')**

Designing, developing, operating and maintaining the computer systems of the licensed corporation



### **Compliance**

Responsible for:

- i. setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the licensed corporation operates; and
- ii. monitoring the licensed corporation's compliance



### **Anti-Money Laundering and Counter-Terrorist Financing ('AML & CTF')**

Establishing and maintaining internal control procedures to safeguard the licensed corporation against involvement in money laundering activities or terrorist financing

In relation to the OMO and the KBL functions, the SFC generally expects that the MICs of those functions will also be the Responsible Officers in respect of the RAs they oversee. An individual may also act as an MIC for more than one core function.

The MIC circular issued in 2016 clarified the meaning of 'Senior management' to include an individual who is appointed as the MICs by the licensed corporation. This in turn supplemented the definition of a 'regulated person' under the SFO where it says a regulated person is 'either the licensed corporation, the Responsible Officer, or a person who has management involvement in the business'. The implication is that the SFC's scope of enforcement against duty breach is extended to include non-licensed individuals who hold senior positions (i.e. the MICs) of the licensed corporation. In November 2021, the SFC took its first disciplinary action against an MIC (in charge of the OMO and KBL functions) who was also the Responsible Officer of a licensed corporation. This shows that the SFC will use the MIC regime to identify senior individuals who are responsible for the firm's misconduct and it is now possible that non-licensed senior individuals could be sanctioned for misconduct.

In addition, the SFC issued a circular in 2019 on the use of external electronic data storage ('EDSP'). Pursuant to the circular, licensed corporations are expected to review their use of EDSP to ensure that the preservation and integrity of its records or documents comply with section 130 of the SFO. The SFC also stated that licensed corporations should designate at least two MICs, with knowledge and expertise, for the maintenance of regulatory records and to ensure the SFC has effective access to such records upon request without undue delay.

Although the requirements around the use of EDSP have yet to be formally incorporated into the MIC requirements in a licensing application, it is the SFC's general expectation that the licensed corporation and the designated MICs should ensure that they can and will discharge their responsibilities in relation to EDSP at all times.

### Requirements on capital

A licensed corporation must meet and/or maintain certain minimum capital requirements, depending on the RA for which the licensed corporation is licensed. These minimum requirements are set out in the FRR.

In addition, the SFC generally expects that a licensed corporation will maintain a buffer of an additional 20% above a minimum liquid capital requirements.

For instance, assuming the licensed corporation will not hold client assets, the SFC has stipulated as follows:

- For those engaging in Type 4 (advising on securities) or Type 9 (asset management) RA: no minimum paid up capital, but minimum liquid capital of HK\$100,000 (plus 20% buffer) = HK\$120,000;
- For those engaging in Type 1 (dealing in securities) RA: minimum paid up capital of HK\$5,000,000 and minimum liquid capital of HK\$3,000,000 (plus 20% buffer) = HK\$3,600,000.

## Application processing time

For a fresh licence application, the minimum processing time as pledged by the SFC is 15 weeks from when the submission bundle is received in good order. However, this period excludes any time required by applicants to respond to requisitions raised by the SFC (effectively, the 'clock stops running' every time the SFC raises a query).

A more realistic estimate is, therefore, 20 weeks for an application to be approved (from the time of submission of the application bundle), assuming that there are no significant issues (for example, substantial change in business scope, or time taken to inject capital in meeting financial resources requirements).

Factors that affect timing generally include:

- the type of licence applied for (for example, a Type 1 licence application is usually subject to greater scrutiny than a Type 4 licence);
- where overseas regulators are involved in any vetting requests issued by the SFC; (where applicable);
- the complexity of holding structure of the applicant; and
- where the Responsible Officers have insufficient industry, management, or academic experience.

Finally, it should be noted that applicants typically take up to 4 weeks to complete the application forms, amend and finalise their business plans and compliance manuals, and provide the necessary information to lodge an application with the SFC. This preparation period should also be factored into the 20 weeks estimate provided above.

## C. Ongoing obligations of a licensed corporation

Following the successful grant of a licence from the SFC, the licensed corporation must submit the following documents to the SFC within certain time frames:

- Audited Accounts and Business and Risk Management Questionnaire: must be submitted to the SFC not later than 4 months after the end of each financial year as stated in section 156(1) of the SFO (and if the licensed corporation ceases to conduct the RAs for which it is licensed, audited accounts and other required documents must be submitted not later than 4 months after the date of such cessation);
- Financial Resources Return: must be submitted monthly to the SFC (semi-annually if the licensed corporation is licensed only for Type 4, Type 5, Type 6, Type 9 and/or Type 10 RAs while also subject to the condition of 'no holding of client assets') as stated in section 56(1) of the FRR. The licensed corporation must submit not later than 3 weeks after the expiry of the relevant minimum period for submission.
- Annual Return and Payment of Annual Fee: must be submitted and paid to the SFC within 1 month after the anniversary date of grant of licence as stated in sections 138(2) and 138(4) of the SFO. Failure to do so could result in suspension and revocation of licence plus imposition of a surcharge on the outstanding amount of annual fee payable to the SFC.

## Changes requiring notification and prior approval

Certain changes in relation to the licensed corporation require notification to, and prior approval from, the SFC. Some of the more common changes include:

- cessation of business;
- change in share capital or shareholding structure of the licensed corporation;
- change in directors composition;
- change in substantial shareholders (any shareholder having more than 10% of the issued shares of a licensed corporation is considered a substantial shareholder); and
- modification or waiver of licensing condition.

A licensed corporation is required to submit a notification of change within the time limit prescribed by the SFC for each item (i.e. within 7 business days before or after the change, except for giving notice of a motion to change auditor in a general meeting which requires the notification to be made within 1 business day). For a detailed list of the items that require notification and prior approval, please refer to the Appendix 1 and 2 to this Overview.

## Other ongoing requirements (CPT and to remain 'Fit and Proper')

As set out in the new Licensing Handbook (January 2022), licensed individuals are now required to complete 10 CPT hours per calendar year, regardless of the number and types of RAs he or she engages in. Out of the 10 CPT hours, the individual must attend 5 hours of CPT on topics directly relevant to his/her RA licence at the time the CPT hours are undertaken.

The total CPT hours required to be completed by a Responsible Officer is 12 per calendar year under the new Guidelines. 10 of those CPT hours have the same requirements as those applicable to a licensed individual. Whereas, the Responsible Officer are required to complete 2 extra CPT hours on topics relating to regulatory compliance.

Such CPT records should be retained for a minimum of 3 years and be made available to the SFC for inspection upon request. CPT includes continuous education programmes designed to enhance an individual's industry knowledge, skills and professionalism organised by the licensed corporation or other institutions.

The 'fit and proper' requirement continues to apply to licensed corporations and licensed representatives post-incorporation meaning they must at all times remain financially sound, competent, honest, reputable and reliable and comply with all applicable provisions of the SFO, its subsidiary legislation, and the codes and guidelines issued by the SFC.

## D. Setting up business by the Overseas Entity

An Overseas Entity looking to set up business in Hong Kong may choose:

- to incorporate a Hong Kong private limited liability company as a wholly owned subsidiary of the Overseas Entity; or
- establish a Branch (if the Overseas Entity is a company or body corporate).

The SFC has indicated that as a matter of practice, it prefers an Overseas Entity to operate through a subsidiary incorporated in Hong Kong (a '**Subsidiary**').

#### (i) Incorporating a Subsidiary

The following assumes that any Subsidiary incorporated in Hong Kong by the Overseas Entity would be a private company limited by shares, and not a public company.

A private company in Hong Kong must stipulate in its constitution that:

- the right to transfer shares is restricted (and requires approval of the Board of Directors);
- the number of shareholders/members cannot exceed 50; and
- the making of offers to the public for acquisition of its securities is prohibited.

The constitution of the Subsidiary is set out in its Articles of Association. The Articles of Association deal with, among other things, the right of the shareholders, the powers and functions of the Directors, and may also include the Subsidiary's objects and powers.

In terms of capital requirement, companies can be incorporated with any amount of share capital, while the founding member must subscribe for at least one share in the company. As stated previously, there are minimum liquid and paid-up capital requirements imposed by the SFC, depending on the type of RA licence applied for.

The Subsidiary must have a registered office in Hong Kong (this can be the address of the Subsidiary's lawyer and this need not be the address in which the Subsidiary operates) to which any official notices or communications may be sent.

#### (ii) Setting up of a branch

A Branch can be set up either for the Overseas Entity (if it is a corporation) or for an overseas subsidiary of the Overseas Entity. The below discussed assumes that the Branch is a branch of the Overseas Entity (similar rules apply to a branch of an overseas subsidiary).

Upon the establishment of a place of business in Hong Kong, registration requirements must be complied with within 1 month, except where the Overseas Entity merely wishes to establish a representative office with staff that have no authority to enter into contracts on its behalf. (Practically speaking, a representative office would not be a viable option for a financial institution looking to set up business in Hong Kong).

A certified true copy of the Overseas Entity's constitution must be delivered to the Registrar, together also with the particulars of its directors and secretary and the name and address of at least one person who is a resident in Hong Kong authorised to accept service on behalf of the Overseas Entity.

The Overseas Entity must also supply the Registrar with a certified copy of its latest published accounts unless the Overseas Entity is similar to a private company under Hong Kong law and is not required in the jurisdiction where the Overseas Entity is registered to publish its accounts or to have its accounts open to inspection by members of the public.



## **E. Other considerations**

Other matters that should be considered in the course of establishing operations in Hong Kong include:

- taxation;
- employment arrangements;
- rental of office premises;
- finance and leverage; and
- insurance arrangement.

## **F. What's next?**

Not all business models are built in a way that fit perfectly with the requirements of certain RAs. Here at Tiang & Partners (together with our Risk and Regulatory compliance colleagues at PwC), we are able to analyse your circumstances from the beginning and assist you through the process of:

- identifying issues on competence;
- structuring and drafting your business plan;
- reviewing the sufficiency of your compliance processes and infrastructure;
- preparing materials for submission; and
- dealing with all SFC requisitions in relation to your licence application.

We are also able to assist you with ongoing matters after you have successfully obtained your licence, including:

- subsequent licensed representative applications;
- pre-approval applications to the SFC for substantial shareholder and capital changes; and
- applications for a modifying or waiving licensing conditions.

# 03

## Appendices



## Appendix 1

### Changes that require notification

Types of changes / events	Applicable to	Notification time limit
Cessation of business	LC, LR, RI	At least 7 business days before the intended cessation of business
Ceased to act as a licensed representative	LC, LR	Within 7 business days
Ceased to act as a responsible officer	LC, RO	Within 7 business days
Change in name	LC, LR, RI, SS, AE	Within 7 business days
Change in business address	LC, RI	At least 7 business days before the intended change in business address
	AE	Within 7 business days
Change in director or his/her particulars	LC, RI, AE	Within 7 business days
Change in complaints officer or his/her particulars	LC, RI	Within 7 business days
Change in emergency contact person or his/her particulars	LC, RI	Within 7 business days
Change in share capital or shareholding structure	LC, RI, SS, AE	Within 7 business days
Change in contact information	LC, LR, RI, SS, AE	Within 7 business days
Significant changes in nature of business carried on and types of services provided	LC, RI	Within 7 business days
Significant changes in business plan	LC, RI	Within 7 business days
Changes in Managers-In-Charge of Core Functions (MICs) (including any new appointment and cessation of appointment)	LC	Within 7 business days
Changes in certain particulars of MICs	LC	Within 7 business days
Change in bank accounts	LC, AE	Within 7 business days
Change in associated entity or its particulars	LC, RI, AE	Within 7 business days
Change in insurance policy maintained under the Securities and Futures (Insurance) Rules	LC	Within 7 business days
Change in auditor's name	LC, RI	Within 7 business days
Give notice of a motion to change auditor in a general meeting, etc. (see section 154 of the SFO)	LC, AE which is not an authorised financial institution	Within 1 business day
Change in executive officer or his/her particulars	RI, AE	Within 7 business days
Change in status of any authorisation to carry on an RA by authority or regulatory organisation in Hong Kong or elsewhere	LC, LR, RI	Within 7 business days

LC: Licensed corporation; LR: Licensed representative; RO: Responsible officer; RI: Registered institution; SS: Substantial shareholder; AE: Associated entity

Source: The SFC licensing handbook (January 2022)

## Appendix 2

### Changes that require prior approval

Type of change (relevant SFO section)	Applicable to	Applicable fee (in HKD)
Addition of RA (Section 127(1))	LC, LR, RI	For LC: Type 3: \$129,730 (RA other than Type 3: \$4,740 per RA)  For LR: Type 3: \$2,420 (Regulated activity other than Type 3: \$1,790 per RA)  For RI: \$23,500 per RA
Submission to act as Sponsor	LC	Nil
Reduction of RA (Section 127(1))	LC, LR, RI	\$200 per RA
Modification or waiver of licensing or registration condition (Section 134)	LC, LR, RI	\$2,000
Modification or waiver of 'fit and proper' requirements under section 129 (Section 134)	LC, LR, RI	\$4,000
Change of financial year end and/or adoption of period exceeding 12 months as financial year (Section 155(3))	LC	\$2,000
Extension of deadline for submission of audited accounts (Section 156(4))	LC	\$2,000
New premises to be used for keeping records or documents (Section 130)	LC	\$1,000
Becoming a substantial shareholder of a licensed corporation (Section 132)	LC	\$3,000
Addition of accreditation (Section 122)	LR	\$200
Transfer of accreditation (Section 122)	LR	\$200 per RA
Licensed representative becoming responsible officer (Section 126)	LR	\$2,950 per RA
Substantial change in particulars which necessitates the grant of a new certificate of registration (e.g. change in name)	RI	\$200

LC: Licensed corporation; LR: Licensed representative; RO: Responsible officer; RI: Registered institution; SS: Substantial shareholder; AE: Associated entity

Source: The SFC licensing handbook (January 2022)

## Appendix 3

### SFC licensing fee

<b>Application Fee</b>	<b>HKD</b>
Licence Application (other than Type 3)	\$4,740 per RA
Licensed Representative Application (other than Type 3)	\$1,790 per RA
Approval to become a Responsible Officer	\$2,950 per RA
<b>Annual Fee</b>	
Licence Application (other than Type 3)	\$4,740 per RA
Responsible Officer (other than Type 3)	\$4,740 per RA
Licensed Representative Application (other than Type 3)	\$1,790 per RA

Source: The SFC licensing handbook (January 2022)

# 04

## Key contacts





## Your primary contact for Investment Funds and Regulatory work:



### **Gaven Cheong**

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Gaven is Head of Investment Funds at Tiang & Partners (an independent law firm and a member of the PwC network).

Prior to joining the PwC Global Legal network, Gaven was an equity partner in the investment funds group of Simmons & Simmons (Hong Kong), and before that, a Counsel with the funds practice of Sidley Austin in Hong Kong.

With almost 20 years of fund formation and Hong Kong regulatory experience, Gaven is able to assist clients in the establishment and structuring of a diverse range of collective investment schemes including hedge funds, real estate funds, private equity arrangements, hybrid funds and other private investment structures, and regulatory advice in relation to investment management activity generally. He is also a pioneer in the crypto fund formation and regulatory advice space, having helped obtain the first regulatory licences in Hong Kong for the management of a fund of crypto funds and shortly after that, a pure virtual assets fund.

Working closely with other disciplines at PwC (including PwC Global Legal network and PwC Legal Business Solutions), he is able to offer investment funds and asset manager clients an international fund formation and regulatory service that can also integrate PwC's tax, accounting, deals and consulting offerings - thus providing a truly end-to-end business solution.

Gaven is a ranked practitioner in 'Investment Funds' by Chambers Greater China Region 2024 edition, a recommended individual in 'Investment Funds' by Legal 500 Asia Pacific 2024 and 'Private Funds – Formation' by Who's Who Legal 2024 edition. He is also a 'Leading Individual' in 'Fintech Legal (International Firms)' by Chambers FinTech 2024. In recent editions of Chambers, clients praised Gaven for being 'very technically sound', 'practical and shrewd in terms of getting down to the key points in relation to any matter', 'a very bright individual' and for having 'good response time and a business mind'.

Legal 500 Asia Pacific 2024 quotes Gaven as being 'unquestionably the most knowledgeable crypto funds lawyer operating in the Hong Kong market right now. He has a very solid background in the hedge fund industry coupled with deep understanding of the digital asset space, which is a formidable combination'.

Gaven received his Bachelor of Commerce (Accounting and Finance), LL.B (Hons) and LL.M (Distinction) from the University of Western Australia. He is qualified to practise in Western Australia, Hong Kong and England & Wales. He is fluent in English and Cantonese, and is conversant in Mandarin.

### Areas of expertise

- ❖ Investment funds (private hedge, PE and hybrid funds)
- ❖ Virtual assets - crypto fund formation and regulatory
- ❖ Financial services regulatory (primarily non-contentious)
- ❖ Fund and asset management-related disputes



### Representative experience\*

- ❖ Advising as lead counsel on the establishment of a number of large and reputable private hedge fund and PE fund launches.
- ❖ Advising on a number of crypto fund launches.
- ❖ Advising fund managers and sponsors on the virtual assets regulatory regime in Hong Kong and assisting with applications to the SFC for various virtual assets licences.
- ❖ Providing general regulatory advice to numerous asset management, investment funds, private equity and other financial services companies.
- ❖ Advising on asset management-related disputes.

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