

COVID-19

Hong Kong

April 2020

SFC ISSUES GUIDANCE ON LICENSING RELATED MATTERS IN LIGHT OF COVID-19 PANDEMIC

The Securities and Futures Commission in Hong Kong (SFC) issued guidance on licensing related matters in light of the COVID-19 pandemic in the form of frequently asked questions¹ (FAQs) on 31 March 2020.

The SFC indicated that they were aware that intermediaries or licensing applicants faced with restrictions on travel, public gatherings and lockdowns due to the COVID-19 pandemic locally and overseas may encounter difficulties in fulfilling their obligations in licensing matters.

The SFC emphasised they would continue ongoing dialogue with the industry and provide regulatory flexibility to help intermediaries cope with the COVID-19 pandemic while ensuring that market integrity and investor protection principles are maintained. The content of the FAQs is summarised below.

1. Regulatory Examinations

The Hong Kong Securities and Investment Institute recently announced that all regulatory examinations are suspended for two weeks up to 11 April 2020. Given that the suspension period may be extended due to the uncertain situation, the SFC decided that all licensed individuals who are originally required, by way of licensing conditions or otherwise, to pass post-licensing regulatory examinations within a prescribed timeframe which falls due on or before 30 September 2020, will be allowed an extended period of three calendar months

after the original due date to meet the requirement. Further, the licensees are not required to submit any application for time extension to the SFC in this respect.

For example, if a licensed individual is required to pass local regulatory framework papers on or before 30 April 2020, the deadline to fulfil this condition will be automatically extended to 31 July 2020.

2. Continuous Professional Training

Similarly, a licensed individual who undertakes to complete additional continuous professional training hours on or before 30 September 2020 will be granted a three-month extension to fulfil his or her undertaking. Again, licensees are not required to submit any application to the SFC.

For example, a licensed individual provided an undertaking to complete additional continuous professional training hours on or before 31 May 2020. Under this arrangement, he or she is allowed to complete the additional continuous professional training hours on or before 31 August 2020.

3. Annual Continuous Professional Training Hours

The SFC decided to allow all licensed individuals who are unable to fulfil the annual continuous professional training hours by 31 December 2020 to carry forward any unfulfilled continuous professional training hours for the calendar year of 2020 to 2021.

¹ <https://www.sfc.hk/web/EN/faqs/intermediaries/licensing/licensing-related-matters-in-light-of-covid-19-pandemic.html>

Online courses, considered as self-study, are acceptable by the SFC for the purpose of meeting the continuous professional training requirement. Licensees may also refer to paragraph 6.2 of the Guidelines on Continuous Professional Training² which sets out other acceptable means of achieving continuous professional training apart from attending face-to-face training courses, workshops, lectures and seminars.

4. Notification to the SFC of Changes Implemented by the Licensed Corporation as a Result of the COVID-19 Pandemic

Under section 4 and paragraph 9 of section 1 of Schedule 3 to the Securities and Futures (Licensing and Registration) (Information) Rules³ (collectively **SFC Notification Requirement**), a licensed corporation is required to notify the SFC of significant changes in its business plan covering internal controls, organisational structure, contingency plans and related matters.

In view of the substantial disruption caused by the COVID-19 pandemic, the SFC expects a licensed corporation to notify the SFC immediately of the following situations (please note that these examples set out by the SFC are non-exhaustive):

- confirmation of staff infection which may have an impact on the licensed corporation's operations;
- closing of office premises as a result of staff infection or government lockdown, including overseas office premises, if the closure has implications for the license corporation's operations or the carrying on of its regulated activities (e.g., temporary closing of overseas office premises which handles back and middle office functions);
- changes to its organisational resources (e.g., split team arrangements, staff relocation to overseas offices); and/or
- the triggering of the licensed corporation's business continuity plan.

² [https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-continuous-professional-training/Guidelines on Continuous Professional Training.pdf](https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-continuous-professional-training/Guidelines%20on%20Continuous%20Professional%20Training.pdf)

³ <https://www.elegislation.gov.hk/hk/cap571S>

5. Contingency Measures of Licensed Corporations

The SFC indicated that it is acceptable that a licensed corporation deploys a licensed individual to work in an overseas office to provide trading services to its clients as a contingency measure. Likewise, it is also acceptable that a licensed individual who is unable to come back to Hong Kong due to quarantine or airport closures conducts regulated activities for Hong Kong clients at an overseas location.

The SFC however emphasised that these contingency measures to cope with the COVID-19 pandemic are acceptable as temporary arrangements only. As these measures would affect the resources of the licensed corporations, a licensed corporation is expected to notify the SFC as set out in item 4 above.

The SFC also highlighted that when a licensed individual conducts activities for a licensed corporation in a jurisdiction outside Hong Kong, it is important that both the licensed corporation and the licensed individual are able to comply with the relevant legal and regulatory requirements in that jurisdiction.

Furthermore, notwithstanding that the licensed individual is overseas, the licensed corporation remains responsible for the regulated activities performed by that individual for the licensed corporation. The licensed corporation should therefore exercise adequate oversight over the licensed individual's conduct.

6. Temporary Representative Licence

A situation may arise where a licensed corporation who initially planned to obtain a temporary representative licence for staff of its overseas affiliate and intended to come to Hong Kong to carry on regulated activities when meeting with Hong Kong clients of the licensed corporation, however due to the COVID-19 pandemic, he or she would instead like to hold teleconferences or video conferences with Hong Kong clients from overseas. The SFC indicated that such overseas individuals should consider obtaining a temporary representative licence as he or she intends to conduct regulated activities servicing Hong Kong clients even though he or she will not come to Hong Kong to perform such activities.

Further, the SFC stated that they would be pragmatic in considering the granting of such licence to him or her in view of the current exceptional circumstances.

7. Shut Down of the Trading Desk of a Licensed Corporation

A licensed corporation is normally expected to maintain a back-up office and have remote access to trading facilities so that it can continue to provide trading services if the main dealing office is shut down.

However, in the event that the back-up facilities fail and orders need to be routed to an overseas affiliate for execution, the licensed corporation is required to notify the SFC immediately, as with any exceptional contingency arrangement (see item 4 above), and seek approvals from the SFC and overseas authorities for trading offshore where necessary.

Under these exceptional circumstances, the SFC said that they would provide flexibility and assistance to ensure continued service to clients.

8. Arrangement of Staff to Work From Home

A licensed corporation is required to keep records and documents under the Securities and Futures Ordinance (Cap 571 of Laws of Hong Kong) (SFO) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615 of Laws of Hong Kong). It is also a requirement to seek the SFC's prior written approval under section 130 of the SFO for using any premises for the keeping of records or documents relating to the carrying on of the regulated activities for which it is licensed.

In view of the COVID-19 pandemic, the SFC said that they understand that a licensed corporation may arrange for its staff to work from home or from its overseas offices which are not premises approved under section 130 of the SFO. In such circumstances, the licensed corporation should ensure that the staff will be able to remotely access the licensed corporation's trading or other systems, and that the activities conducted by the staff will be captured in the records and documents generated by these systems.

If certain records and documents need to be kept in unapproved premises on a temporary basis, the licensed corporation should send them back to the approved premises of the licensed corporation as soon as practicable.

9. Signed Pages of Temporary Licence Applications

Under current procedures, an individual licence applicant is required to submit to the SFC a printed copy of the cover page, duly signed declaration pages and duly signed vetting authorisation form (if necessary) of the application pack (collectively as **Signature Pages**) together with his or her application form submitted through the SFC Online Portal.

The SFC has indicated that they understand that some overseas jurisdictions may have suspended postal services or may have enforced "stay-at-home" restrictions, causing delays in delivering the Signature Pages to the SFC. Under such circumstances, an individual licence applicant can electronically send a copy of the Signature Pages of his or her temporary licence application to the SFC, stating the reasons why printed copies cannot be delivered. He or she is then expected to post the Signature Pages to the SFC once the situation returns to normal.

10. Submission of Audited Accounts of Licensed Corporations or Associated Entities

If a licensed corporation or associated entity anticipates delays in preparing its audited accounts or other documents, it may apply for an extension of the submission period by using Form B (licensed corporations) or Form E (associated entities) published on the SFC's website or via the SFC Online Portal as soon as practicable.

The SFC said that they would consider these applications pragmatically.

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Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com