

## Hong Kong SFC's Licensing Requirements for Family Offices and Industry Professionals

Investment entities can ensure regulatory compliance with Hong Kong licensing requirements



The Hong Kong Securities and Futures Commission (SFC) has released a series of quick reference guides aimed at family offices, private equity firms, hedge fund managers, and both overseas and Mainland industry professionals regarding licensing requirements. These guides are designed to assist these entities in gaining a deeper understanding of the SFC's licensing regime. They address frequently-asked questions about licensing topics and provide specific information about licensing carve-outs for family offices, recognition of overseas industry experience and qualifications and the availability of exemptions from examination requirements. Its main contents are as follows:

### *Family Offices*

If all the three key factors below are present, a family office is required to be licensed under the Securities and Futures Ordinance (SFO).

- the services provided by the family office constitute one or more types of regulated activity;
- the family office is carrying on as a business; and
- the business is conducted in Hong Kong.

There are two relevant carve-outs from the licensing requirements for asset management under the SFO:

- services provided solely to the group company (on a wholly owned basis) in respect of the group's assets; and
- activities incidental to the trust service of a registered trust company under the Trustee Ordinance.

In general, a single-family office is not required to apply for a licence under the SFO if it does not carry on a business of regulated activity in Hong Kong. For example, the family office runs on a cost recovery basis (i.e., no income other than reimbursements of operating costs); or does not pursue profit as its objective, is not required to apply for a licence under the SFO.

A multi-family office, by definition, serves more than one high net-worth family. It is typically established and run as a commercial venture. Thus, it is likely required to obtain a licence under the SFO before

providing services in Hong Kong. It is common for a multi-family office to obtain the following types of licences under the SFO:

- Type 1 (dealing in securities)
- Type 4 (advising on securities)
- Type 9 (asset management)

### *Private Equity Firms*

A Private Equity Firm (PE firm) in Hong Kong is likely required to be licensed if it deals in or advises on securities or manages a portfolio comprising securities (eg, shares or debentures of offshore private companies). It is common for a licensed PE firm operating in Hong Kong to hold one or more of the following licences granted under the Securities and Futures Ordinance:

- Type 9 (asset management) (RA 9) if the firm is delegated with discretionary investment authority to manage a PE fund;
- Type 1 (dealing in securities) (RA 1) if the firm negotiates or executes securities transactions for a PE fund, markets a PE fund or offers co-investment opportunities to investors; and
- Type 4 (advising on securities) (RA 4) if the firm provides non-discretionary investment recommendations or research reports to investors.

Where incidental exemptions apply, RA 9 licensees may carry on certain RA 1 and RA 4 activities without being licensed for them. There are also licensing exemptions applicable to the provision of investment advisory services to group companies only.

When considering an application for an RA 9 licence, the SFC will regard a PE firm as having the necessary discretionary investment authority if any of its ROs possesses sufficient authority and seniority to make investment decisions throughout the life cycle of the PE fund under management.

Offering co-investment opportunities to investors generally requires an RA 1 licence, but an incidental exemption is potentially available to RA 9 licensees. The SFC would assesses individual PE practitioners' competence, recognising a broad range of experience and granting conditional exemptions from licensing examination where appropriate.

### *Hedge Fund Managers*

In general, a hedge fund manager operating in Hong Kong is required to be licensed for Type 9 (asset management) (RA 9) under the SFO if it manages, on a discretionary basis, a portfolio of securities or futures contracts for a client or an investment fund.

Depending on its business model, a hedge fund manager may need to be licensed for other types of regulated activity (RA). For example, an RA 1 licence is required for firms which are set up solely for fund marketing purposes or Type 2 (dealing in futures contracts).

The SFC recognises a broad range of local and overseas experience when assessing the competence of ROs who work for private fund managers. Experienced investment professionals may request exemption from taking licensing examination.

### *Overseas Practitioners*

An individual is required to be licensed under the SFO in order to carry on regulated activities (RA) in Hong Kong. To obtain a licence under the SFO, an individual has to demonstrate three core competences, amongst other fit and proper criteria:

1. Academic and professional qualifications: The SFC recognises a wide range of academic and professional qualifications obtained worldwide.

2. Industry knowledge and experience: The SFC would consider the relevance of a licence applicant's industry experience. Experienced practitioners who are not degree holders may use additional one-off continuous professional training hours instead of passing the industry knowledge examinations.
3. Regulatory knowledge: To ensure overseas practitioners have an acceptable understanding of Hong Kong regulations, applicants are required to pass the local regulatory examination not more than three years before making an application or, subject to approval, within six months after obtaining a licence. However, a number of exemptions from meeting the local regulatory examination requirement are available to experienced practitioners upon application. For example, itinerant professionals, subject to conditions, are not required to pass the examination. Further, former practitioners who have left the Hong Kong industry for not more than eight years and satisfy certain eligibility criteria may be exempted.

The industry experience required for a licensed representative is less than that for a responsible officer (RO). Moreover, there are additional competence requirements for some specialised RAs, such as advising on the Codes on Takeovers and Mergers and Share Buy-backs and serving as an initial public offering sponsor principal.

The SFC adopts a pragmatic approach in administering the competence requirements. It is prepared to exercise discretion in relation to matters such as exemptions from examination requirements. The SFC's digitalised licensing platform provides a means for online applications from overseas practitioners regardless of where they are located.

#### *Mainland Practitioners*

The SFC recognizes academic qualifications, professional credentials, industry experience and management experience obtained in mainland China to meet licensing requirements. In general, applicants need to pass relevant exams to obtain a license. For applicants with sufficient experience, the SFC will waive the exam requirements to obtain a license to practice in Hong Kong. Nevertheless, the SFC may exercise discretion to exempt applicants from following the relevant examination requirements. For example, if an applicant is a senior manager of a mainland fund group and needs to engage in regulated fund management activities in Hong Kong, where the applicant has sufficient relevant industry experience, the SFC may consider waiving the requirement to pass the relevant exams under specified circumstances.

For inquiries about how JML can assist you with your licensing application and compliance planning, please scan the QR code below for quick access to learn more about our services:



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