
REGULATORY NEWSLETTER

2019 Vol.3



REGULATORY UPDATES

Revamped Licensing Processes and New Requirements on Annual Returns/ Notifications

Licensing Process and Forms

- The SFC has revamped the application forms and published two new self-assessment questionnaires for licence applicants with an aim to collect information on the applicants' (i) business profile and clientele, (ii) financial strength and sustainability of substantial shareholders, (iii) management (including corporate governance, responsible officers and managers-in-charge of core functions), and (iv) risk management and internal control measures.
- Corporate licence applicants are now required to provide a detailed funding plan if its projected excess liquid capital cannot cover the projected expenses in the first six months after having been licensed.
- Substantial shareholders of intermediaries (or corporate licence applicants) who do not have a "close link" with the intermediary (or the corporate licence applicant) would be subject to a streamlined application process during which less information would be required from them. Please refer to paragraph 7.12.1 of the new Licensing Handbook for the definition of having "close link" with a corporation.
- The questions requiring applicants to disclose investigations, disciplinary actions and civil litigation against them has been refined.

Licensing Handbook

- Further guidance has been given in the handbook on the licensing requirements for firms engaging in FinTech businesses.
- Further clarification has been made on the licensing requirements for firms engaging in distributing or managing Private Equity Funds.
- Exchange participant of the Stock Exchange of Hong Kong Limited or Hong Kong Futures Exchange Limited are expected to have at least two responsible officers locally available at all times to directly supervise its brokerage business.
- The SFC reiterated that it is not acceptable to hire responsible officers in name only. Responsible officers should be given sufficient authority to carry out and supervise the business of the intermediaries in relation to regulated activities.

Annual Return, Notifications and SFC Online Portal

- All intermediaries will be required to submit their annual returns and notifications electronically through the SFC Online Portal.
- Individual and corporate licensees will be required to confirm their compliance with the continuous professional training (CPT) requirements for the previous calendar year when they electronically submit their annual returns.

Effective Date and Transition Period

The new licensing process and forms have been effective on 11 February 2019. The current forms will be accepted during a two-month transition period until 11 April 2019. From 11 April 2019 onward, only the new forms will be accepted.

Useful Links

SFC Circular to announce new licensing forms and mandatory electronic submission of annual returns and notifications:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC5>

New forms and questionnaires:

<https://www.sfc.hk/web/EN/forms/intermediaries/licensing-application-and-notification-forms/forms/licensing-forms-forms.html>

Revised Licensing Handbook:

<https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/?rule=Licensing%20Handbook>

Frequently Asked Questions on AML/CFT

25 Jan 2019

The SFC today published a new set of Frequently Asked Questions ("FAQs") in relation to anti-money laundering and counter-financing of terrorism. The FAQs superseded the FAQs published in March 2012.

The FAQs clarifies the AML/CFT requirements including group-wide AML/CFT systems, identification and verification of clients' identity, treatment for expired documents, establishment of clients' source of wealth, ongoing monitoring, etc.

The FAQs has been posted onto the SFC's website

(<https://www.sfc.hk/web/EN/faqs/intermediaries/supervision/anti-money-laundering-and-counter-financing-of-terrorism/2019-02-22.html>).

[View Circular](#)

Asset and Wealth Management Activities Survey 2018

1 Mar 2019

The SFC has commenced the Asset and Wealth Management Activities Survey 2018 (the "AWMAS").

Who should complete the questionnaire?

It is encouraged that all LCs should complete the questionnaire.

For those licensed corporations which had had gross operating income derived from **asset management, giving advice on funds / portfolios and / or private banking / private wealth management** during the year of 2018, please complete the whole questionnaire.

If your corporation did not engage in any of the activities covered in the survey throughout the year, please still fill in the part of General Information in the questionnaire.

How to submit the questionnaire?

The questionnaire can be accessed and submitted online at: <https://wings.sfc.hk/awmas/#/en>

Deadline of submission

The questionnaire should be completed on or before **1 April 2019**.

[View Circular](#)

ENFORCEMENT NEWS

SFC reprimands and fines Guosen Securities (HK) Brokerage Company, Limited \$15.2 million for breaches of anti-money laundering regulatory requirements

The SFC has reprimanded Guosen Securities (HK) Brokerage Company, Limited (“Guosen”) and fined it \$15.2 million for failing to comply with AML/CFT requirements when handling third party fund transfers.

The SFC found that:

- over 100 Guosen’s clients received third party deposits that were incommensurate with their financial profiles;
- some third party deposits were withdrawn by clients shortly after receiving the funds without being used for trading;
- certain third parties made numerous deposits to the accounts of Guosen’s clients and had no apparent relationships with these clients;
- Guosen failed to make enquiries about such third party deposits and did not submit suspicious transaction reports to the Joint Financial Intelligence Unit (JFIU) in a timely manner;
- Guosen failed to put in place any system or controls to identify and monitor third party deposits into the bank sub-accounts for its clients;
- Guosen failed to verify the identities of third party depositors, ascertain their relationships with clients, and scrutinise the reasons for making third party deposits;
- Guosen failed to put in place an effective approval process for third party deposits;
- Guosen failed to effectively communicate and enforce its internal AML/CFT policies;
- Guosen failed to maintain proper documentation of its assessment of clients’ money laundering and terrorist financing (ML/TF) risk levels;
- Guosen failed to conduct ongoing monitoring of its business relationship with clients; and
- Guosen failed to put in place an effective compliance function.

The SFC is of the view that Guosen’s conduct was in breach of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and the Guideline on Anti-Money Laundering and Counter-Terrorist Financing, which require licensed corporations to implement appropriate AML/CFT internal controls to mitigate the risk of ML/TF.

[View News](#)

SFC revokes W. Falcon Asset Management (Asia) Limited’s licence

The SFC revoked the licence of W. Falcon Asset Management (Asia) Limited (“Falcon”) for window dressing its liquid capital, breaching the terms of a restriction notice and failing to provide timely notification of the resignation of its director.

SFC suspends CMS’s former responsible officer Wu Yinong for 18 months

The SFC has suspended the licence of Mr Wu Yinong, a former responsible officer of China Merchants Securities (HK) Co., Limited (“CMS”), for 18 months from 25 February 2019 to 24 August 2020 for breaching the SFC’s Code of Conduct and the Sponsor Guidelines.

Falcon window-dressed its month-end liquid capital by including in its liquid capital computation the amount of certain cheques, which were subsequently dishonoured. This practice was adopted from the time of Falcon's SFC licence application. Had the amount of these cheques been excluded, Falcon would have been denied a licence to carry on regulated activities due to a liquid capital deficit at the time of its licence application and at each of the month-ends over a three-year period.

Falcon had also failed to comply with the restriction notice issued by the SFC and to notify the resignation of the director who engineered the window-dressing scheme within seven business days as required.

Wu was a sponsor principal in charge of supervision of the execution of a listing application in 2009 for which CMS was one of the sponsors.

The SFC found that Wu failed to discharge his duties as a sponsor principal and an RO of CMS, in that he had failed to: exercise due skill, care and diligence in handling the listing application; ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by CMS; and diligently supervise his subordinates and the sponsor work undertaken by CMS.

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ComplianceDirect Consulting Limited

Address: Unit A, 21/F, Wing Hang Insurance Building, 11 Wing Kut Street, Central, Hong Kong

Phone: 2606 1800

Website: www.compliancedirecthk.com
