Global Financial Services Regulatory Guide - Hong Kong SAR

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Hong Kong's financial services regulatory regime is industry-based, and there is no single super-regulator. The regulatory status of an institution (e.g., bank, financial intermediary or insurance company) determines which regulator will have primary responsibility for overseeing its activities from both a prudential and a business conduct perspective. Depending on the nature of the business activities, an institution may be subject to supervision by multiple regulators.

The principal regulators for each sector are as follows:

Securities and Futures Commission (SFC) – The SFC is responsible for regulating the securities and futures markets in Hong Kong, and is the principal supervisor of intermediaries (e.g., brokers, investment advisers and fund managers), which carry out regulated activities under the Securities and Futures Ordinance (SFO). Within this framework, the SFC also has regulatory oversight of the Hong Kong Exchanges and Clearing Limited (HKEx) and oversees the performance of the Stock Exchange of Hong Kong Limited (SEHK) as the frontline regulator of listing matters. The SFC also regulates operators of virtual asset trading platforms (VATP) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) where the virtual assets (VA) fall within the definition under the AMLO and are not securities, futures contracts or other products falling within any of the VA carve outs under the AMLO.

Hong Kong Monetary Authority (HKMA) – The HKMA is the principal prudential regulator and supervisor of banks and deposit-taking institutions (including virtual banks) in Hong Kong, pursuant to the Banking Ordinance (BO). Where such institutions also conduct SFO-regulated activities in Hong Kong, they must, in most cases, also be registered with the SFC. Where an authorized institution has dual registrations with the HKMA and the SFC, the HKMA will be the lead regulator responsible for overseeing compliance with statutory and regulatory requirements. In addition to banks and deposit-taking institutions, the HKMA regulates money brokers. Under the Payment Systems and Stored Value Facilities Ordinance (PSSVFO), the HKMA regulates issuers of certain stored value facilities, as well as operators and settlement institutions of certain payment systems. The HKMA is Hong Kong's de facto central bank and is responsible for maintaining monetary and banking stability.

Insurance Authority (IA) – The IA is the regulator under the Insurance Ordinance, which is the legislation governing the operation of insurance companies and insurance intermediaries. The IA is an independent statutory body established under the Insurance Ordinance.

Mandatory Provident Fund Schemes Authority (MPFA) – The MPFA regulates the operations of mandatory provident fund (MPF) schemes and occupational retirement schemes in Hong Kong. The MPFA is also the authority that administers the registration, prescribes conduct requirements, and imposes disciplinary sanctions for registered MPF intermediaries. The HKMA, IA and SFC remain the frontline regulators for the supervision and investigation of registered MPF intermediaries whose respective core businesses are in the banking, insurance and securities sectors.

Customs and Excise Department (CED) – The CED regulates the provision of money-changing (currency exchange) services and/or cross-border money remittance services in Hong Kong, pursuant to the money service operators (MSO) licensing regime under the AMLO. The CED also regulates the dealers in precious metals and stones under the AMLO.

Companies Registry (CR) – The CR regulates the provision of trust services in Hong Kong, pursuant to the trust or company service provider licensing regime under the AMLO.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Securities and Futures Ordinance (SFO) – The SFO (along with its subsidiary legislation) is the principal legislative instrument that governs the securities and futures markets and the non-bank leveraged foreign exchange market in Hong Kong. The SFO also defines and governs the powers, roles and responsibilities of the SFC to administer the legal and regulatory framework within which intermediaries should operate. This includes making rules (in the form of subsidiary legislation) and issuing codes and guidelines (which are non-statutory in nature) across a wide range of areas.

Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO) and the Companies Ordinance (CO) – The CO is the principal legislation governing the incorporation and operation of companies in Hong Kong. The CWUMPO imposes registration requirements on prospectuses for offering shares/debentures by companies (whether incorporated in or outside of Hong Kong) to the Hong Kong public.

Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) – The AMLO provides for the imposition of requirements relating to customer due diligence and record-keeping on specified financial institutions and designated non-financial businesses and professions. The AMLO also covers the licensing/registration and regulatory requirements on money service operators, trust or company service providers, VA service providers, and dealers in precious metals and stones.

Banking Ordinance (BO) – The BO (along with its subsidiary legislation) provides the legal framework for banking supervision in Hong Kong. In addition, there is a large body of HKMA-issued regulatory guidelines and circulars and a number of HKMA-endorsed non-statutory codes published by industry bodies. The development of the regulatory framework for the Hong Kong banking sector is guided by international standards, such as those recommended by the Basel Committee on Banking Supervision.

Payment Systems and Stored Value Facilities Ordinance (PSSVFO) – The PSSVFO empowers the HKMA to designate certain payment systems and their operators and/or settlement institutions for HKMA supervision. Initially applied only to large-value clearing and settlement systems for securities and bank payments, the PSSVFO now also empowers the HKMA to regulate retail payment systems. It also regulates the issuing and facilitation of certain stored value facilities.

Insurance Ordinance – The Insurance Ordinance (along with its subsidiary legislation) governs the regulation of insurance companies and insurance intermediaries, and it provides for the authorization and prudential supervision by the IA of insurers carrying out insurance business in, or from, Hong Kong. The IA is empowered by the Insurance Ordinance to supervise and regulate authorized insurers and licensed insurance intermediaries.

Mandatory Provident Fund Schemes Ordinance (MPFSO) – The MPFSO (along with its subsidiary legislation) is the principal legislation that governs the administration and management of MPF schemes. The MPFSO also provides for the approval of persons as trustees of MPF schemes and the control of such approved trustees, as well as the regulation of sales and marketing activities in relation to MPF schemes. The MPFA is a statutory body established under the MPFSO to perform the above functions. The MPFA also acts as Registrar of Occupational Retirement Schemes, which is another type of retirement scheme that can be set up voluntarily by employers to provide retirement benefits for their employees.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Hong Kong regulates a broad range of activities, including the following:

Financial services "regulated activities" – The SFC currently supervises 10 types of regulated activities (RAs) in Hong Kong (see Note 1). Companies (such as securities brokers and fund managers), individuals and authorized institutions that intend to carry out a business in RAs in Hong Kong must generally be licensed or registered under the SFO to carry out the relevant type of RAs. The types of RAs are as follows:

Type 1: Dealing in securities

Type 2: Dealing in futures contracts

Type 3: Leveraged foreign exchange trading

Type 4: Advising on securities

Type 5: Advising on futures contracts

Type 6: Advising on corporate finance

Type 7: Providing automated trading services

Type 8: Securities margin financing

Type 9: Asset management

Type 10: Providing credit rating services

**Note 1:** The regulatory regime for depositaries of collective investment schemes authorized by the SFC under the SFO (i.e., Type 13 regulated activity (“RA 13”)) will commence on 2 October 2024. Type 11 (dealing in / advising on OTC derivative products) and Type 12 (providing client clearing services for OTC derivative transactions) licensing regimes are not yet in operation and the effective date for which is not yet confirmed.

Exemptions from the licensing requirements for certain RAs may be available in some limited circumstances. For example, the performance of RAs (such as Type 4 - advising on securities, Type 6 - advising on corporate finance, and/or Type 9 - asset management) that are wholly incidental to the carrying out of another RA for which a person is already licensed (such as Type 1 - dealing in securities) does not require additional licenses to be obtained.

Banking and deposit-taking – This covers typical retail and wholesale banking activities involving the operation of current and deposit accounts. Engaging in such business activities in Hong Kong requires authorization by the HKMA under the BO. Hong Kong operates a three-tiered authorization regime, which covers licensed banks, restricted license banks and deposit-taking companies (collectively known as authorized institutions (AIs)).[[1]](file:///C%3A/Users/bmskbd/Documents/Knowledge/FSR/2024/Hong%20Kong%20SAR%20and%20rp_Hong%20Kong%20-%20ELES%20-%20KG.docx#_ftn1)

This regime also covers "virtual banks," which the HKMA defines as banks that primarily deliver retail banking services through the internet or other forms of electronic channels instead of physical branches. Under new guidelines for the authorization of virtual banks adopted by the HKMA in May 2018, a virtual bank must be incorporated in Hong Kong.

The HKMA does not currently impose additional licensing requirements for VA-related activities of AIs. However, such activities are subject to additional regulatory requirements set out in various regulatory guidelines and circulars (including notifying the HKMA in advance where an AI intends to engage in activities involving VAs or it intends to make changes to such activities).

Local representative offices – The establishment and operation of a Hong Kong representative office by a foreign bank or deposit-taking institution that is not an AI requires prior HKMA approval under the BO. Such offices can only engage in limited marketing, representation and liaison activities, but not in substantive business activities (such as receiving or holding funds, making loans, exchanging currencies and money remittances).

Money brokering – Intermediaries who broker certain currency trading and deposit agreements between parties that are (or include) AIs require HKMA approval under the BO. The money broker approval regime applies to voice-broking and online/electronic broking.

Issuing (or facilitating the issuing) of certain stored value facilities – Stored value facilities are prepaid payment facilities. The stored value facility licensing regime under the PSSVFO applies, with certain exemptions, to card and account-based stored value facilities in physical and other forms, which are regulated by the HKMA.

Retail payment systems and their system operators and settlement institutions – The PSSVFO enables the HKMA to regulate retail payment systems. The retail payment system designation regime is intended to cover, in particular, the larger payment card schemes, merchant acquirers, payment gateways and mobile infrastructure (e.g., the infrastructure of the trusted service manager (TSM) of NFC mobile payment services).

Virtual assets -

VA trading platforms – The SFC regulates the operators of VA trading platforms under the SFO and the AMLO. It captures centralized platforms providing trading services in VA using an automated trading engine that matches client orders and also providing custody services as an ancillary service to their trading services. For VAs which are in the form of securities, the SFO regime is applicable. For VAs that are not in the form of securities, the AMLO regime is applicable. Based on the existing SFC policy framework, given that the terms and features of a VA may evolve over time affecting its "securities" classification, the SFC mentions that it would be appropriate for VA trading platforms to apply for licences under both the SFO and AMLO regimes.

Providing services on VA-related products – The HKMA and the SFC have imposed additional compliance requirements on AIs and SFC-regulated intermediaries in distribution of investment products with exposures to VAs (e.g., distribution of VA funds), provision of VA dealing services, provision of asset management services in respect of VA and provision of VA advisory services. Intermediaries are reminded to notify the SFC (and the HKMA, where applicable) in advance if they intend to engage in any activities involving VAs.

Stablecoins - In December 2023, the Financial Services and the Treasury Bureau (FSTB) and the HKMA issued a public consultation paper on the legislative proposal for implementing the regulatory regime for stablecoin issuers. Under such proposed regime, an issuer would be required to obtain a license from the HKMA if it issues a stablecoin that references the value of one or more fiat currencies (“fiat-referenced stablecoin”) in Hong Kong. The HKMA has also recently launched the stablecoin issuer sandbox arrangement in March 2024.

OTC VA trading – In February 2024, the Hong Kong government launched a public consultation on legislative proposals to introduce a new licensing regime for providers of OTC trading services of VA. Under such proposed regime, persons conducting a business in providing services of spot trades of any VA for money in Hong Kong would be required to be licensed with the CED.

Operation of a money service – This covers the operation of a money-changing (currency exchange) service and/or a cross-border money remittance service in Hong Kong. Persons providing these services as a business in Hong Kong require a license from the CED under the AMLO. There are some limited exceptions to this requirement, which apply, for example, to AIs.

Providing a trust and company service – This covers the provision of trust or company services as a business in Hong Kong (e.g., a service of acting or arranging for another person to act as a trustee of an express trust or a similar legal arrangement). Subject to certain exceptions (e.g., for AIs), persons carrying out such business in Hong Kong require a license from the CR under the AMLO.

Lending – Hong Kong retains "old-style" money lenders legislation that, while aimed primarily at preventing "loan sharking," is capable of catching genuine non-bank commercial lending activities. Where applicable, the Money Lenders Ordinance (MLO) imposes licensing and other compliance obligations on consumer and non-consumer lenders. The MLO provides for various exemptions, but only AIs are wholly exempted from the MLO.

Operating an insurance business – In general, any person who wishes to carry out insurance business in or from Hong Kong will need to apply to the IA for authorization to do so. Authorization to carry out insurance business in or from Hong Kong will only be granted to those insurers who meet the authorization requirements prescribed under the Insurance Ordinance and other conditions that the IA may impose.

The IA took over the supervision of authorized insurers and licensed insurance intermediaries in 2017 and 2019, respectively. A concept of "regulated activity" for insurance intermediaries was introduced. The regulatory regime for insurance intermediaries is currently activity-based. The IA regulates five different types of licensed insurance intermediaries under the Insurance Ordinance, as follows:

 Licensed Insurance Agency (Insurance Agency License)

 Licensed Individual Insurance Agent (Individual Insurance Agent License)

 Licensed Technical Representative (Agent) (Technical Representative (Agent) License)

 Licensed Insurance Broker Company (Insurance Broker Company License)

 Licensed Technical Representative (Broker) (Technical Representative (Broker) License)

The regime prohibits a person from carrying on or holding themselves out as carrying on a regulated activity in the course of the person's business or employment or for reward, unless the person is a licensed insurance intermediary. A regulated activity includes the carrying out of activities such as negotiating or arranging a contract of insurance or inviting or inducing another person to enter into a contract of insurance. The IA also monitors compliance by licensed insurance intermediaries who are also registered with MPFA as Mandatory Provident Fund Intermediaries.

MPF sales and marketing activities – In general, a person will be regarded as carrying out a regulated activity under the MPFSO if such person: (a) invites or induces, or attempts to invite or induce another person to make a specified MPF decision (e.g., joining an MPF scheme or making/transferring MPF contributions); or (b) gives advice to another person concerning a specified MPF decision. Persons wishing to conduct such regulated activities in Hong Kong generally must be registered as MPF intermediaries under the MPFSO. Accordingly, if a person engages in MPF sales and marketing activities that may influence a prospective/existing participant of an MPF scheme in making a decision that affects such participants benefits in an MPF scheme, such person is required to be registered with the MPFA as an MPF intermediary.

Dealing in precious metals and stones – The AMLO has been amended to introduce a registration regime for dealers of precious metals and stones, which commenced on 1 April 2023. Any person who is seeking to carry on a business of dealing in precious metals and stones in Hong Kong and engage in any transaction(s) with total value at or above HKD 120,000 in Hong Kong is required to register with the CED.

[[1]](file:///C%3A/Users/bmskbd/Documents/Knowledge/FSR/2024/Hong%20Kong%20SAR%20and%20rp_Hong%20Kong%20-%20ELES%20-%20KG.docx#_ftnref1) The HKMA conducted a public consultation in 2023 regarding the proposed simplification of the three-tier authorization regime (i.e., licensed banks, restricted license banks and deposit-taking companies) into a two-tier system during a five-year transition period. Under the proposed new two-tier regime, licensed banks would continue to form the first tier and restricted license banks the second tier, but deposit-taking companies (i.e., the current third tier) would be "merged" into the second tier. However, the consultation conclusions have not yet been released.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Dealings with customers or counterparties in Hong Kong by a firm from outside of Hong Kong may be subject to Hong Kong laws and regulations, which may include the application of Hong Kong licensing/authorization requirements. The overseas firm will also need to consider Hong Kong marketing regulations.

The SFO requires any person that carries out a business in an RA in Hong Kong to be licensed by the SFC. The AMLO contains similar provisions regarding regulated VA activities. They are generally understood to apply to an activity conducted in Hong Kong, or where there is otherwise a sufficient nexus to Hong Kong.

The SFO and the AMLO also extend the licensing requirements to situations where the carrying out of the business in an activity that may be an RA or a regulated VA activity by a person is conducted from outside Hong Kong but there is active marketing of such services to the Hong Kong public. Therefore, even if no nexus with Hong Kong can be established, the second line of inquiry regarding the marketing activities by an overseas person will nevertheless need to be considered as it can separately trigger the licensing requirements.

While any analysis will depend on the relevant facts and circumstances of each case, the key question is whether an overseas person has actively marketed its SFC-regulated services to the Hong Kong public. Examples of this may include frequently calling upon Hong Kong investors and marketing the services (including offering products), running a mass media program targeting the investing public in Hong Kong, and conducting internet activities specifically targeting Hong Kong investors. A particularly important consideration is whether the relevant services are sought out by the customers on their own initiative and the intermediary has acted passively in response to the request by the customers. Note, however, that these factors are not definitive and any cross-border activities targeted at Hong Kong persons must be structured with care to ensure compliance with the licensing requirements.

In certain circumstances, the SFC may grant a temporary license to a corporation or individual who is regulated by a relevant overseas regulatory body in order to carry out an RA in Hong Kong, which is equivalent to that being carried out principally outside Hong Kong, for a short period of time. Temporary licenses are not valid for more than three months, and the same entity or person will not be granted temporary licenses for more than six months within any two-year period. One of the key considerations in granting a temporary license is whether the overseas regulator concerned performs a function similar to the functions of the SFC and is empowered to investigate and, where applicable, to take disciplinary action for the conduct of the applicant in Hong Kong. There is also the potential for itinerant professionals to obtain a representative license to perform RAs for short periods of time, subject to conditions determined by the SFC (e.g., that they shall not carry on activities in Hong Kong for more than 30 days in each calendar year, or shall at all times be accompanied by another SFC-licensed person in carrying on any RAs in Hong Kong).

The authorization and approval requirements for authorized institutions and local representative offices under the BO and the stored value facility licensing requirements under the PSSVFO generally apply only if the relevant activities are carried out in Hong Kong. For example, the receipt and holding of deposits outside Hong Kong would not normally constitute carrying out a deposit-taking business in Hong Kong. On the other hand, the money broker approval requirement does not necessarily require that the money broker carry out business in Hong Kong  ̶  it is sufficient if the money broking service is provided from outside Hong Kong to persons in Hong Kong. Cross-border marketing activities in Hong Kong may be subject to restrictions under the BO or the PSSVFO. By way of example, there are mandatory disclosure requirements for invitations to place offshore deposits with a non-authorized institution that targets the Hong Kong public. There are also strict prohibitions on non-authorized institutions representing themselves (expressly or impliedly) as conducting business as an authorized institution in Hong Kong. This includes restrictions on the use of the word "bank" and derivatives thereof (e.g., banking) by persons other than HKMA-licensed banks or recognized central banks.

All financial institutions that are regulated and licensed in Hong Kong must comply with the AMLO in applying anti-money laundering and counter-financing of terrorism (AML/CFT) requirements; in the case of licensed money lenders, with equivalent AML/CFT guidelines issued by the CR. The Hong Kong regulators have each issued guidance setting out their expectations regarding how the AMLO applies to specific business activities.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The basic approval criteria for obtaining authorization will vary, depending on the regulator and the type of business activity for which authorization is sought. Please see below the licensing criteria imposed by the SFC, the HKMA, the IA and the MPFA. If you would like more details on the approval criteria in other industry sectors (e.g., money remittance, trust services, money lending), please feel free to reach out to us.

**SFC licensing requirements**

While the specific requirements may vary depending on the proposed activity and the regulatory regime under which the activity is regulated (i.e., under the SFO and/or the AMLO), the licensing criteria imposed by the SFC generally include the following:

Fit and proper – The SFC would consider the fitness and properness of the applicant (including itself, its substantial shareholders / ultimate owners and its officers). The factors in the assessment cover, among others, the applicant's financial status or solvency; its relevant educational or other qualifications or experience having regard to the nature of the functions to be performed; its general ability to act competently honestly and fairly; and its reputation, character, reliability and financial integrity.

Incorporation – The applicant company must be incorporated in Hong Kong or (in the case of an overseas company) registered with the CR.

Competence – The applicant company has satisfied the SFC that it has a proper business structure, good internal control systems and qualified personnel to ensure that relevant risks can be properly managed. Individuals seeking a license will need to demonstrate that they have the appropriate skills, knowledge and experience to properly manage and supervise the business.

Responsible officers – The applicant company must appoint at least two responsible officers (with at least one acting as an executive director) to actively participate in or directly supervise the carrying out of each RA or a regulated VA service. All executive directors will need to obtain the SFCs approval as responsible officers.

Manager-in-Charge (MIC) – The applicant company shall designate at least one person to be the MIC of each of the following eight core functions: (i) Overall Management Oversight; (ii) Key Business Line; (iii) Operational Control and Review; (iv) Risk Management; (v) Finance and Accounting; (vi) Information Technology; (vii) Compliance; and (viii) Anti-Money Laundering and Counter-Terrorist Financing. The SFC generally expects that the MIC of the Overall Management Oversight function and the Key Business Line function should seek the SFCs approval as responsible officers.

Financial resources – The applicant company is required to maintain no less than a specified amount of paid-up share capital and liquid capital at all times, and the amount depends on the type of licence applied for.

External assessment reports – Applicants for the operation of VA trading platforms are required to engage an external assessor to assess their policies, procedures, systems and controls, and to submit the assessor’s reports to the SFC: (i) when submitting the licence application (Phase 1 Report); and (ii) after approval-in-principle is granted (Phase 2 Report).

Similar role overseas – Where a firm wants to apply for a temporary license regarding an RA, it must demonstrate that it is carrying out a business principally outside Hong Kong in an activity that, if carried on in Hong Kong, would constitute an RA. The license will relate solely to the carrying out in Hong Kong of that particular activity. Such firms will also need to be authorized by a relevant regulatory organization in their home jurisdiction to carry out the relevant activity or business.

**HKMA authorization requirements**

In order to be recognized as an authorized institution, an applicant must satisfy the HKMA that it fulfills certain minimum authorization criteria. Many of these criteria apply equally to all authorized institutions, regardless of the place where the authorized institution is incorporated and its type of authorization (i.e., authorization as a licensed bank, restricted license bank or deposit-taking company). The minimum authorization criteria include the following:

Adequate financial resources – Applicants must have adequate financial resources to carry out the relevant regulated activities. This includes, among other things, compliance with prescribed minimum paid-up share capital requirements (which differ, depending on the type of authorization sought).

Adequate liquidity – Applicants must maintain adequate liquidity to meet their obligations as they will or may fall due (including compliance with statutory liquidity ratio requirements).

Adequate provisions – Applicants must maintain adequate provisions for depreciation or diminution in value of their assets for potential liabilities and losses.

Adequate accounting and control systems – Applicants must satisfy the HKMA that they have adequate accounting systems and systems of control.

Integrity, prudence and competence – Applicants are required to conduct all their business activities with integrity, prudence and competence so as not to be detrimental to the interests of actual or potential depositors.

Fitness and propriety – The HKMA must be satisfied that the AIs's senior executives and controllers are fit and proper to hold their positions. In some cases, this requires formal HKMA approval.

Money brokers are subject to similar (if somewhat less extensive) approval criteria. Similarly, the PSSVFO sets out extensive licensing criteria for licensed stored value facility issuers and facilitators.

In view of the limits on their permitted activities, the approval criteria for local representative offices of foreign banks and deposit-taking institutions are much less burdensome.

The HKMA has wide discretion to attach further conditions to authorizations, approvals and licenses granted under the BO and the PSSVFO.

**IA authorization requirements**

Incorporation – Companies interested in applying to the IA for authorization to carry out insurance business in or from Hong Kong can be either incorporated in Hong Kong or a non-Hong Kong company registered with the CR (i.e., a branch).

Fitness and properness of management and shareholders – The Insurance Ordinance requires that any person who is a director or "controller" or key persons of the control functions of an insurer must be "fit and proper" to hold such position. Prior approval of the IA is required for the appointment of their controllers. In applying the fit and proper test, the IA will take into account, among other things, the character, qualifications and experience of the directors or "controllers" or "key persons of the control functions" of the applicant company.

Financial resources – The minimum paid-up capital is currently HKD 10 million, or HKD 20 million for a composite insurer (i.e., carrying on both general and long-term business) or for an insurer wishing to carry out statutory classes of insurance business. However, in practice, the IA would require a capital amount that is commensurate with the business plan of the applicant. Also, no further composite insurer license will be issued.

Solvency requirement – An insurer shall maintain an excess of assets over liabilities of not less than a required solvency margin. The objective is to provide a reasonable safeguard against the risk that the insurer's assets may be inadequate to meet its liabilities arising from unpredictable events, such as adverse fluctuations in its operating result or the value of its assets and liabilities. There are separate provisions regarding the solvency requirements for a general business insurer, a long-term business insurer and a captive insurer.

Adequacy of reinsurance arrangements – The IA requires that there must be adequate arrangements for the reinsurance of risks of those classes of insurance that are to be carried out by the insurer.

**MPFA authorization requirements**

There are two types of MPF intermediaries, namely, principal intermediary and subsidiary intermediary, both of which must be registered with the MPFA.

Principal intermediary – The MPFA may register any of the following business entities as a principal intermediary for carrying out regulated activities:

An authorized financial institution (e.g., a licensed bank) registered or a corporation licensed under the SFO for Type 1 (dealing in securities) and/or Type 4 (advising on securities) RAs

An insurer authorized under the IO to carry out long-term insurance business

An authorized long-term insurance broker under the IO

Subsidiary intermediary – A subsidiary intermediary generally refers to a person who is registered as an intermediary for carrying out regulated activities on behalf of the principal intermediary to which the person is attached. A subsidiary intermediary needs to fulfill certain qualification requirements (e.g., examination and training requirements).

Both principal intermediaries and subsidiary intermediaries must be regulated by an industry regulator (e.g., HKMA, IA and SFC in the banking, insurance and securities sectors, respectively) and be of good standing.

Responsible officer – A principal intermediary must have at least one responsible officer who is from a subsidiary intermediary attached to it. The responsible officer must ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance with the MPFSO. A principal intermediary must ensure that the responsible officer has sufficient authority, resources and support within the principal intermediary for carrying out its specified responsibilities.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

The formal processes for obtaining authorization will also vary according to the regulator and type of business activity being conducted. Please see below the licensing process of the SFC, the HKMA, the IA and the MPFA. If you would like more details on the licensing process in other industry sectors (e.g., money remittance, trust services, money lending), please feel free to reach out to us.

**SFC licensing process**

General – To lodge a license application, applicants will need to complete certain prescribed licensing forms and supplements and pay an application fee. The submission is made via the SFCs online system called WINGS. The application includes relevant information describing the following key areas:

Proposed business activities – The applicant shall provide basic corporate information and information on the scope of its proposed business activities. The applicant shall complete the SFC questionnaires on its internal controls, business operations, policies and procedures, and other systems and controls.

Corporate structures – This will include information in relation to the shareholding structure of the corporation. The applicant shall also provide its organization structure showing the key personnel (including the MICs) and the reporting lines.

Responsible officers – The proposed responsible officers shall complete SFC application forms and other supporting documents (e.g., their resumes) to demonstrate their competence.

Directors – All the directors (executive and non-executive) of the applicant will need to complete SFC forms.

Substantial shareholders and (in the case of VA trading services operators) also ultimate owners – Substantial shareholders / ultimate owners (as the case may be) and their directors will need to complete SFC forms.

Bank accounts – Bank accounts information shall be provided, and the SFC may require copies of the bank statements to demonstrate compliance with the regulatory capital requirements.

External assessment reports – Applicants for the operation of VA trading platforms are required to engage an external assessor to assess their policies, procedures, systems and controls, and to submit the assessor’s reports to the SFC: (i) when submitting the licence application (Phase 1 Report); and (ii) after approval-in-principle is granted (Phase 2 Report).

The applicant may be asked to complete other supplements and provide additional information to the SFC where appropriate.

The SFC has indicated that the processing of an application submitted by a new industry participant for an RA license normally takes approximately 15 weeks from official acceptance of the application. The SFC does not commit to any specific timeframe regarding the issuance of a VA related license.

**HKMA authorization process**

Before submitting an application – The HKMA generally encourages applicants to meet or discuss their plans with the HKMA first before an application is submitted. Although the HKMA maintains standard lists of required licensing materials, it is generally advisable to ask for a list on a case-by-case basis.

Application materials – An application for authorization as an AI will typically need, at a minimum, to be composed of the following materials:

Application letter setting out the reasons for the application and the applicant's background and describing how the relevant authorization criteria will be met

Certified copies of the applicant's audited annual reports for the last three years and certified copies of certain corporate documents (e.g., the board resolution approving the application and the applicant's constitutional documents)

Business plan and financial projections (including projected balance sheet, capital and liquidity ratios and profitability) for the first three years of the proposed Hong Kong operation

Organizational chart, staffing plan and details of proposed internal control systems for the proposed Hong Kong operation

Certain resolution planning-related information

Questionnaires for certain senior executives of the Hong Kong operation (e.g., chief executive, alternate chief executive) and controllers

In the case of a foreign applicant, a letter from its home regulator confirming its consent to the applicant's Hong Kong plans.

The HKMA has wide discretion to ask for additional information (which it almost always exercises).

Prescribed time periods apply only to the processing of applications for HKMA consent to the appointment of certain senior executives and (where required) controllers of an AI. The HKMA is generally required to approve or deny such applications within three months of receiving the completed application. However, the actual processing period is often longer because the "clock stops running" if the HKMA raises further information requests and until the requested information is provided to the HKMA.

The BO does not prescribe the time period within which the HKMA must process an application for authorization as an AI, and its processing may, depending on the circumstances, take substantially longer.

The approval/licensing process for money brokers (under the BO) and issuers/facilitators of regulated stored value facilities (under the PSSVFO) is similar.

**IA authorization process**

Preliminary meeting with IA – A preliminary meeting with the IA will usually be arranged before the application form is completed. Documents such as the market feasibility study report, background of the applicant and its group (if applicable) — including a corporate structure chart and the latest financial statements of the applicant and its group (if applicable) — as well as an overview of its business plan may need to be submitted to the IA for prior consideration. The meeting will enable both the applicant and the IA to understand each other better as well as enable the IA to give its informal views.

Draft application – The applicant may proceed to prepare the application after it has discussed its proposal with the IA and it is considered acceptable to the IA. The application is normally submitted in draft form, and the IA will consider the information in detail and revert to the applicant on outstanding issues or deficiencies if necessary. As part of the draft application, the applicant will also need to submit documents such as corporate and proposed organizational charts, prescribed forms for individual and corporate controllers of the applicant, financial projections (prepared based on different assumptions), copies of reinsurance treaties, policies or manuals on internal control, underwriting, claims handling and reserving, reinsurance, investment, and AML policies.

Formal application – As soon as the applicant receives positive notification of the IA's initial assessment, it may proceed to make a formal application to the IA.

Decision on the application – Provided that the formal application has been properly prepared and contains all the relevant information and documents adequate for the IA to make a decision, the IA will advise the applicant of its decision on the application after a certain period. If authorization can be given, the IA will give its approval-in-principle to the applicant and at the same time advise it of the requirements that should be complied with before formal authorization will be given.

On-site inspection – The applicant may need to arrange a site visit to its office by the IA when it has made all the preparations necessary to commence business. During the visit, the applicant will need to satisfy the IA that all operational systems and staff are in place to enable the applicant to commence business immediately.

Formal authorization – If the IA is satisfied that the applicant has fulfilled all the requisite requirements, a formal authorization will be issued.

**MPFA authorization process**

A corporation seeking to be a principal intermediary must complete an application form for registration as a principal intermediary. There should be at least an accompanying application for registration as a subsidiary intermediary (an individual) who will act as a responsible officer of the principal intermediary. The individual must complete an application form for registration as a subsidiary intermediary and approval of attachment of a subsidiary intermediary to a principal intermediary.

Principal intermediaries with a large number of subsidiary intermediaries attached to it are encouraged to have more than one responsible officer to oversee the regulated activities. This will minimize the risk of the principal intermediary and subsidiary intermediaries not being able to carry out regulated activities if the approval of the only responsible officer is revoked or suspended.

As soon as practicable after the MPFA has registered a principal intermediary and/or subsidiary intermediary, the MPFA will assign an industry regulator as the frontline regulator (i.e., HKMA, IA and SFC in the banking, insurance and securities sectors, respectively) of such intermediary.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

While many of the Hong Kong regulators are involved in a number of international and regional financial cooperation initiatives, none of these arrangements enable a financial services provider to operate in Hong Kong or undertake a regulated activity without directly holding the relevant license or alternatively operating through a licensed financial institution.

# 8. Authors and contact information

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