Global Financial Services Regulatory Guide - Hong Kong SAR

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

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# 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.

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