

Recent key regulatory issues and points to note for Applying for Licenses from the Hong Kong Securities and Futures Commission (SFC)(March 2024)

1. Disclosure of Substantial Shareholders and Controllers:

Accurate disclosure of the ultimate beneficiary owner or controller of the Licensed Corporation (LC) applying for the Securities and Futures Commission (SFC) license is imperative to avoid severe consequences and potential breaches of Section 383 of the Securities and Futures Ordinance in Hong Kong. According to section 383(1) of the SFO, individuals commit an offense if they make false or misleading representations regarding material particulars or are aware, or reckless, about the falsity or misleading nature of such representations.

A Licensed Corporation changed its shareholding structure without triggering necessary approval of new substantial shareholder and notified the SFC of the change. Subsequent investigations revealed nominee agreements between previous and new shareholders, raising questions about the true and legitimate beneficiary ownership or control of the LC.

2. Hidden Controller Concerns:

Misrepresentation: New shareholders falsely claim no association despite shared addresses or past affiliations, leading to regulatory compliance concerns.

3. Fit and Proper Concerns on Controller:

Inclusion of Regulatory Alerts: Comprehensive disclosure of regulatory concerns in other jurisdictions is essential. Failure to disclose regulatory alerts such as orders to cease operations or receipts of regulatory warnings may result in application rejection. It is advisable to consult compliance advisors or professionals for transparent disclosure before submitting the application.

4. Business Operations and Internal Controls:

Some applicants submitted inaccurate or inconsistent information regarding their business operations and internal controls. For instance, a Type 9 license applicant asserted that they would not hold client funds, yet their application forms indicated otherwise, with intentions to hold such funds and engage in additional regulated activities. Providing inconsistent, inaccurate, or incomplete details may result in the rejection or delayed approval of license applications.

5. Suspicious Business Relationships:

Fabrication of Addresses: Use of another existing SFC-licensed company addresses or provision of non-existent addresses undermines credibility of the information provided in the Application may result in application rejection.

6. Financial Strength and Support Concerns:

Some Licensed Corporations window dressed their financial position in the application stage that they did not maintain sufficient funding for their operation. Following the granting of the license, some



Licensed Corporations swiftly withdrew their liquid capital and funding resulting in breach of the liquid capital requirements.

7. Disciplinary Actions Disclosure:

Non-Disclosure: Complete transparency regarding past or ongoing disciplinary actions or records is crucial for providing a truthful and accurate application to the SFC. Failure to disclose such actions may potentially breach Section 383 of the Securities and Futures Commission, triggering regulatory investigation and criminal proceedings.

8. From the Stage of SFC's Approval in Principle to Formal Grant of SFC License:

Timely Actions Required: Opening bank accounts promptly and preparing office space is crucial, as the SFC's Approval in Principle typically lasts for three months only.

Resignation Procedures: Consideration of Responsible Officers' (RO) resignation notice period is necessary for their onboarding for the full license grant. This will prevent delays full grant of the license.

Conclusion:

This brief note highlights the critical importance of transparency, accuracy, and prompt action in the application process. Compliance with regulatory requirements is paramount to avoid application rejection or regulatory sanctions. Potential applicants must adhere to these key points for successful licensing applications. Additional guidance or clarification can be sought from CompliancePlus that we are always here to help.

About CompliancePlus:

CompliancePlus is an independent consulting firm specializing in providing comprehensive compliance solutions to fund management companies and hedge fund managers in Asia. Our team of experienced compliance officers possesses extensive knowledge and experience in managing and mitigating regulatory, operational, and reputational risks. We offer real-time compliance support and proactive recommendations to various hedge funds, including start-ups and multi-strategy hedge funds. By partnering with CompliancePlus, clients gain access to trusted compliance solutions and up-to-date knowledge of regulatory policies and procedures, along with personalized advisory services tailored to navigate the complex regulatory landscape.

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