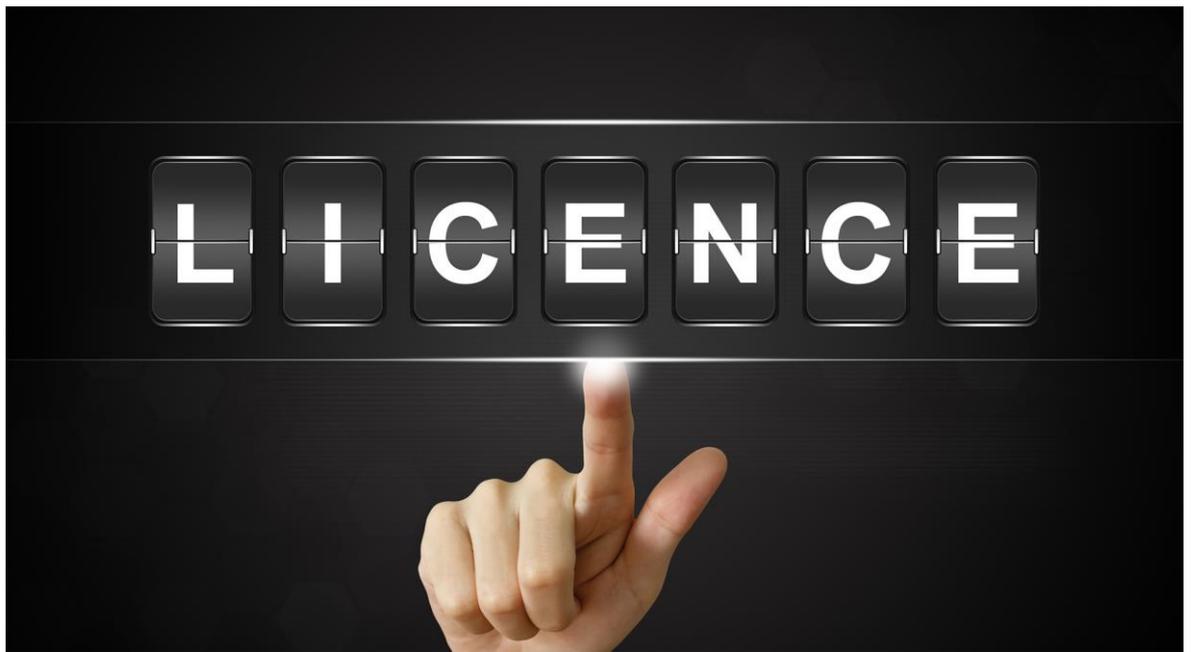


# A Concise Guide to Banking and Financial Services Licensing in Hong Kong



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## Foreword

Hong Kong has always been recognised as an international financial services centre in Asia. Various local or overseas banks and financial institutions have been carrying on banking and/or financial services in Hong Kong. To maintain the stability and integrity of the banking and financial systems in Hong Kong, and Hong Kong's role as an international financial centre, the Hong Kong Government has been working closely with various market regulators and participants in Hong Kong to promote confidence in the Hong Kong's banking and financial markets locally and globally.

The banking and financial markets in Hong Kong are regulated by two main regulators, namely the Hong Kong Monetary Authority (“**HKMA**”) and the Securities and Futures Commission (“**SFC**”). These regulators maintain the financial stability of Hong Kong by overseeing the banking and securities and futures industries respectively.

The regulatory framework of Hong Kong offers a comprehensive and sound guiding environment for both market practitioners and consumers in the banking and financial services industry. It is important for market practitioners and consumers to understand how the banking and financial regulatory systems work in Hong Kong prior to their making of any decisions on how to plan, invest and manage their or their clients' money in Hong Kong.

This booklet provides a simple guide to the market practitioners in acquiring, or the consumers to ensure the market practitioners have acquired, the right kind of banking authorisation and/or financial licence in order to properly conduct the relevant banking and/or financial services in Hong Kong. It begins with the banking authorisation regime in Hong Kong. Next, it will focus on the financial licensing regime in Hong Kong by introducing different types of regulated activities under the relevant rules and regulations, and followed by the necessary steps, requirements, exemption and other related information for a corporation and a person in obtaining the relevant licence.

This booklet intends to give an outline of the law and procedures on this subject as at the date set out below for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. We would be pleased to discuss the information in this booklet with you to adapt to your specific needs and situation. If any advice or assistance is required, please feel free to contact us at (852) 2810 1212 or email us at [onc@onc.hk](mailto:onc@onc.hk).

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## Chapter 1 – Banking Business

### 1.1 HKMA authorisation regime

Similar to most countries around the world, institutions that intend to carry on banking business or business of taking deposits in Hong Kong shall obtain a banking licence from the relevant authority. Hong Kong Monetary Authority (the “**HKMA**”) is the relevant authority and primary regulator in Hong Kong granting such authorisation.

Banking Ordinance (Cap. 155 of the Laws of Hong Kong) (the “**BO**”) provides the legal framework for the aforesaid HKMA authorisation regime.

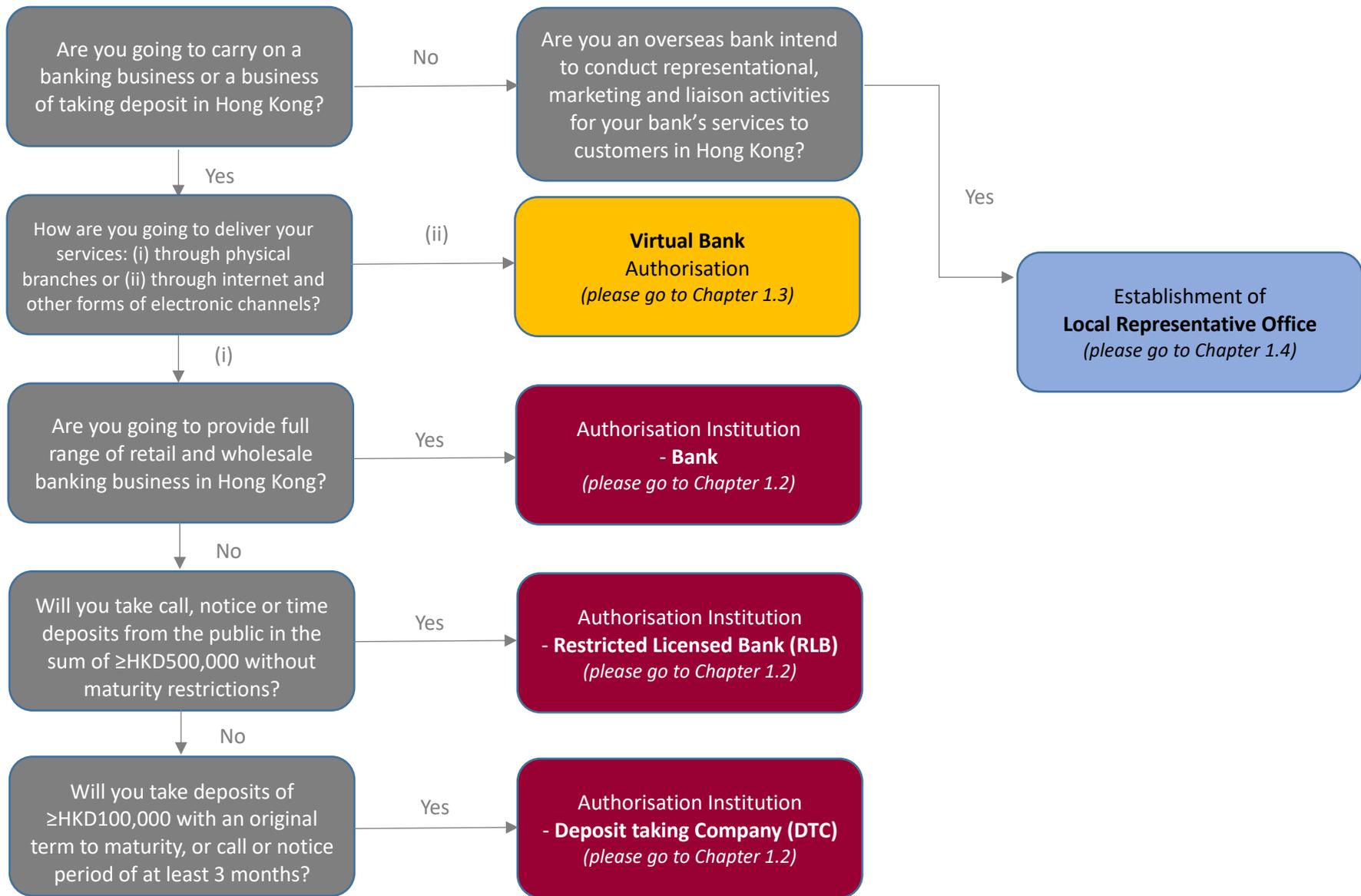
According to section 2 of the BO, “**banking business**” shall mean either or both of the followings:-

- (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than 3 months or at call or notice of less than 3 months, other than any float or SVF deposit as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584 of the Laws of Hong Kong);
- (b) paying or collecting cheques drawn by or paid in by customers.

The flow chart on the next page illustrates what authorisation you should obtain from the HKMA in order to conduct banking or related business in Hong Kong. Details for obtaining each of the related authorisations are set out in coming chapters 1.2, 1.3, and 1.4 for your reference.

Any institution authorised by the HKMA that intends to conduct any of the following regulated activities (except Types 3 and 8 regulated activities) is also required to register with the SFC as registered institutions. Such institution shall apply to the HKMA for consent to appoint at least 2 executive officers to be responsible for directly supervising the conduct of each activity. Please refer to Chapter 2 for detailed application process of different types of regulated activities.

- 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



## 1.2 Authorised institutions

### 1.2.1 Three-tier system – bank, RLB and DTC

Institutions which intend to carry on a banking business shall obtain an authorisation from the HKMA as “authorised institutions”<sup>1</sup>.

Hong Kong currently maintains a three-tier system of authorised institutions<sup>2</sup>, namely licensed banks (“**bank**”), restricted licensed banks (the “**RLB**”) and deposit taking companies (the “**DTC**”). An institution may be authorised by the HKMA as any one of them depending on the scope of banking business it intends to carry on in Hong Kong. The following table illustrates the restrictions on the business scopes and also the minimum share capital requirements of each of the authorised institutions:-

	Bank	RLB	DTC
Scope of banking business	Provide full range of retail and wholesale banking business, including operate current and saving accounts, accept deposits of any size and maturity from the public and pay or collect cheques drawn by or paid in by customers	Take call, notice or time deposits from the public in the sum of ≥HKD 500,000 without maturity restrictions	Take deposits of ≥HKD 100,000 with a term to maturity, or call or notice period of at least 3 months
Minimum share capital	HKD 300 million	HKD 100 million	HKD 25 million

### 1.2.2 Overseas applicants

Application for HKMA’s authorisations from overseas applicants will be accepted provided that such applicants, in the case of a banking licence or a RLB presence in Hong Kong, enter in the form of a branch or a locally incorporated subsidiary, and in the case of a DTC registration, enter in the form of a locally incorporated subsidiary.

### 1.2.3 Minimum criteria for authorisation

The HKMA has a general discretion to grant or refuse an application for authorisation<sup>3</sup>. Further, the HKMA shall refuse<sup>4</sup> to authorise an applicant if any one or more of the criteria specified in the Seventh Schedule of the BO are not fulfilled (the “**Minimum Criteria for Authorisation**”). The below outlines the Minimum Criteria for Authorisation for your easy reference:-

<sup>1</sup> Sections 11(1) and 12(1) of the BO.

<sup>2</sup> Section 15 of the BO.

<sup>3</sup> Section 16(1) of the BO.

<sup>4</sup> Section 16(2) of the BO.

Minimum Criteria <sup>5</sup>	Details	
<p><b>Para 2 - Adequacy of Local Supervision<sup>6</sup></b></p>	<p>An applicant which is incorporated outside Hong Kong must be a bank which is adequately supervised by the relevant banking supervisory authority in its place where it is incorporated.</p> <p>For the purposes of this criterion, a “bank” means a company which is either authorised or recognised as a bank in its place of incorporation, or may, whether or not in or outside its place of incorporation, lawfully take deposits from the general public, whether or not on current accounts.</p>	
<p><b>Para 3 – Identity of Controllers<sup>7</sup></b></p>	<p>The HKMA must be satisfied that it knows the identity of each of the controllers of the institution, including:-</p>	
	<p><b>Indirect controller</b></p>	<p>a person in accordance with whose directions or instructions, the directors of the institution or of another company of which it is a subsidiary are accustomed to act.</p>
	<p><b>Minority shareholder controller</b></p>	<p>a person who either alone or with associates controls 10% or more, but not more than 50%, of the voting rights of the institution or of another company of which it is a subsidiary.</p>
	<p><b>Majority shareholder controller</b></p>	<p>a person who either alone or with associates controls over 50% of the voting rights of the institution or of another company of which it is a subsidiary.</p>
<p><b>Paras 4 &amp; 5 – Fitness and propriety of directors, controllers, chief executives and executive officers<sup>8</sup></b></p>	<p>The HKMA must be satisfied that each of the directors, controllers, chief executive, or executive officers of the institution is fit and proper person to hold the particular position which he holds or is to hold.</p>	
	<p><b>Directors and Chief Executives</b></p>	<ul style="list-style-type: none"> <li>• <b>Approval from the HKMA<sup>9</sup></b></li> </ul> <p>HKMA’s approval is required for any person to become such persons of the institution incorporated in Hong Kong, while no such approval is required for the institution incorporated outside Hong Kong. However, the HKMA must satisfy himself that such persons are fit and proper under the Seventh Schedule of the BO.</p>

<sup>5</sup> The Seventh Schedule of the BO.

<sup>6</sup> Paragraph 2 of the Seventh Schedule of the BO.

<sup>7</sup> Paragraph 3 of the Seventh Schedule of the BO.

<sup>8</sup> Paragraphs 4 & 5 of the Seventh Schedule of the BO.

<sup>9</sup> Section 71 of the BO.

		<ul style="list-style-type: none"> <li>• <b>Number of board members</b> One-third of members of the board of directors, or three of its members, whichever is the higher, should be independent non-executive directors (the “INEDs”).</li> <li>• <b>Education Background of INEDs</b> In the case of a bank, at least two INEDs, or in the case of a RLB or a DTC, at least one INED, should possess a background in accounting, banking or other relevant financial industry.</li> <li>• <b>Skill and knowledge</b> Such person should have sufficient skills, knowledge, experience, and soundness of judgment properly to undertake and fulfil his particular duties and responsibilities.</li> <li>• <b>Probity</b> Such person’s reputation and characters, including whether he has any criminal record, regulatory non-compliance, acts of dishonesty or malpractice, are also relevant.</li> </ul>
	<b>Executive Officers</b>	<p>Any authorised institution which engages in any regulated activities shall appoint at least 2 individuals as executive officers to be responsible for directly supervising the conduct of each activity<sup>10</sup>.</p> <p>To determine the fitness and propriety of an executive officer, the HKMA will have regard to the conditions set out in section 129 of the Securities and Futures Ordinance (Cap. 571 of the laws of Hong Kong) (the “SFO”) as well as the Fit and Proper Guidelines and other supplementary guidance issued by the SFC, which will be further discussed in Chapter 2.</p>
	<b>Controllers</b>	<ul style="list-style-type: none"> <li>• <b>Approval from the HKMA<sup>11</sup></b> HKMA’s approval is required for any person to become controllers of the institution incorporated in Hong Kong, while no such approval is required for controllers of the institutions incorporated outside Hong Kong but the HKMA must satisfy himself such persons becoming controllers are fit and proper under</li> </ul>

<sup>10</sup> Section 71D of the BO.

<sup>11</sup> Section 70 of the BO.

		<p>the Seventh Schedule of the BO.</p> <ul style="list-style-type: none"> <li>• <b>Skill and knowledge</b> Such person should have the knowledge, experience, competence and soundness of judgment and diligence required for running an authorised institution the qualities and experience shall be in the same range that the HKMA would expect of the executive directors of an authorised institution.</li> <li>• <b>Probity</b> Such person should have the probity in the same range that the HKMA would expect of the directors and chief executives and the HKMA will also have regard to whether there could be conflicts of interest arising from the influence of the controller on the authorised institution.</li> <li>• <b>Future plan for the institution concerned</b> Prospective majority (and if appropriate, minority) shareholder controllers shall submit a clear and detailed plan for the institution concerned to illustrate their capability to the long term stability and healthy development of the institution.</li> <li>• <b>Involvement</b> Shareholder controllers shall have the willingness and capacity to contribute additional capital and/or liquidity support if required.</li> </ul>
<p><b>Para 5A – Adequate Systems of Control for Appointment of Managers<sup>12</sup></b></p>		<p>The HKMA must be satisfied that the institution has adequate systems of control to ensure each of its managers is a fit and proper person to hold the particular position which he holds or is to hold.</p> <p>For the purposes of this criterion, “<b>managers</b>” shall include all individuals appointed by the authorised institution for performing the duties set forth under the Fourteen Schedule to the BO, including but not limited to, the carrying on of banking, treasury or other business which is material to the authorised institution, the maintenance of accounts or accounting systems, system of control for systems intended to manage risk or relating to money laundering, and the functions of ensuring compliance of laws, regulations or applicable guidelines, etc.</p>

<sup>12</sup> Para 5A of the Seventh Schedule of the BO.

<b>Para 6 – Adequate Financial Resources<sup>13</sup></b>	<b>The HKMA must be satisfied that the institution presently has, and will if authorised continue to have, financial resources (whether actual or contingent) which are adequate for the nature and scale of its operations.</b>	
	<ul style="list-style-type: none"> <li><b>Minimum aggregate amount of paid-up share capital and balance of share premium account</b></li> </ul>	
	<b>Bank</b>	HKD 300 million or an equivalent amount in any other approved currency
	<b>RLB</b>	HKD 100 million or an equivalent amount in any other approved currency
	<b>DTC</b>	HKD 25 million or an equivalent amount in any other approved currency
	<ul style="list-style-type: none"> <li><b>Other compliances</b></li> </ul>	
	<b>Locally Incorporated Institution</b>	The institution must comply with the rules made under the Banking (Capital) Rules <sup>14</sup> , including but not limited to the minimum capital adequacy ratio, the buffer level, the minimum leverage ratio, etc.
<b>Institution incorporated outside Hong Kong</b>	The HKMA will take the views of the local supervisor into account but also make its own assessment. Institution shall submit its overall capital adequacy and results of most recent assessment of its capital adequacy under different stress scenarios, together with the basis of the assessment to the HKMA.	
<b>Para 7 - Adequate Liquidity<sup>15</sup></b>	<p>The HKMA must be satisfied that the institution presently maintains, and will if authorised continue to maintain, adequate liquidity to meet its obligations as they will or may fall due.</p> <p>Moreover, the institution must comply with the rules made under the Banking (Liquidity) Rules<sup>16</sup>, including but not limited to the minimum required levels of the four liquidity ratios namely the liquidity coverage ratio (LCR), the net stable funding ratio (NSFR), the liquidity maintenance ratio (LMR) and the core funding ratio (CFR), etc.</p>	

<sup>13</sup> Para 6 of the Seventh Schedule of the BO.

<sup>14</sup> Section 97C(1) of the BO (i.e. Banking (Capital) Rules (Cap. 155L of the Laws of Hong Kong).

<sup>15</sup> Paragraph 7 of the Seventh Schedule of the BO.

<sup>16</sup> Section 97H(1) of the BO (i.e. Banking (Liquidity) Rules (Cap. 155Q of the Laws of Hong Kong).

<b>Para 8 – Adequate Control of Large Exposures<sup>17</sup></b>	<b>The HKMA must be satisfied that an institution will, on and after authorisation, comply with the provisions of Part XV of the BO in relation to limitations on exposures and concentration of risks of the institution.</b>	
<b>Para 9 – Maintain Adequate Provisions<sup>18</sup></b>	The HKMA must be satisfied that an institution presently maintains, and will if authorised continue to maintain, adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities (including but not limited to contingent liabilities (such as guarantees or other off-balance sheet exposures and tax liabilities) which will or may fall to be discharged by it and for losses which will or may occur.	
<b>Para 10 – Maintain Adequate Accounting Systems and Adequate Systems of Control<sup>19</sup></b>	The HKMA must be satisfied that the institution presently has, and will if authorised continue to have, adequate accounting systems and adequate systems of control. In accessing the adequacy of such systems of an institution, the HKMA has regard to the nature, scale and complexity of its operations, the volume of transactions undertaken, its structure and organisation, and the geographical distribution of the business. Separately, the HKMA also expects the following from the institution:-	
	<b>Annual Audited Reports</b>	The HKMA also requires auditors' report to be submitted on an annual basis <sup>20</sup> .
	<b>Audit Reports on ad hoc basis</b>	The HKMA also has the power to require the auditors' reports to be submitted on an ad hoc basis <sup>21</sup> .
	<b>Money Laundering and Terrorist Financing</b>	The HKMA will conduct examinations on the institution to assess that they have adequate maintenance of effective and risk-based internal controls to combat money laundering and terrorist financing.
	<b>Risk Management System for trading of securities and derivatives</b>	The institution shall have comprehensive risk management systems to control the trading of securities and derivatives and the conduct of insurance and MPF intermediary activities, and there is adequate control over segregation of duties and responsibilities between the business units and the risk management and settlement functions.

<sup>17</sup> Paragraph 8 of the Seventh Schedule of the BO.

<sup>18</sup> Paragraph 9 of the Seventh Schedule of the BO.

<sup>19</sup> Paragraph 10 of the Seventh Schedule of the BO.

<sup>20</sup> Sections 63(3) and 63(3A) of the BO;

<sup>21</sup> Section 59(2) of the BO.

<b>Para 11 – Adequate Disclosure of Information<sup>22</sup></b>	The HKMA must be satisfied that it presently discloses, and will if authorised continue to disclose, adequate information about the state of its affairs, including its profit and loss and its financial resources (including capital resources and liquidity resources) and its audited annual accounts and in other parts of its annual report.
<b>Para 12 – Business to be conducted with integrity, prudence and competence<sup>23</sup></b>	The HKMA must be satisfied that the business (which includes any business that is not banking business or the business of taking deposits) of the institution is presently, and will if authorised continue to be, carried on with integrity, prudence and the appropriate degree of professional competence and in a manner which is not detrimental to the interest of depositors or potential depositors.
<b>Para 13 – Other criteria<sup>24</sup></b>	For institutions incorporated overseas, there must be an acceptable degree of reciprocity in respect of banks incorporated in Hong Kong seeking to carry on banking business in the place where the institution is incorporated, or that the place where the institution is incorporated is (or is part of a territory) a member of the World Trade Organisation.

#### 1.2.4 Steps for application for authorisation

**Application Procedures.** The usual procedures for applying for authorisation are set out in the flow chart on the next page. Please note that an applicant must be a body corporate. In respect of the list of documents required to be submitted with the HKMA for the application for authorisation, please refer to Chapter 1.2.5.

**Approval Panel.** Application for authorisation will be considered by a Banking Supervision Review Committee (BSRC) comprising senior officers of the HKMA and chaired by the Deputy Chief Executive (Banking).

**Authorisation condition.** The HKMA may attach to an authorisation such conditions as it thinks proper<sup>25</sup>. One condition example is restriction on the applicant’s banking business.

**Naming of a RLB.** A RLB may use a specified term<sup>26</sup> such as “restricted licence bank” or “merchant bank” if it is carrying on the business of taking deposits in Hong Kong; and a RLB branch of a bank incorporated outside Hong Kong may use the name of that bank, or a translation of it, in the name if it is carrying on the business of taking deposits in Hong Kong, provided that the name is used in immediate conjunction with, and is not more prominent than, the term “restricted licence bank” in the same language<sup>27</sup>.

**Licence Fees.** An authorised institution shall pay to the Director of Accounting Services within 14 days after the date on which it was authorised the banking licence fee as specified in the Second Schedule of the BO, which currently sits at HKD 474,340. For

<sup>22</sup> Paragraph 11 of the Seventh Schedule of the BO.

<sup>23</sup> Paragraph 12 of the Seventh Schedule of the BO.

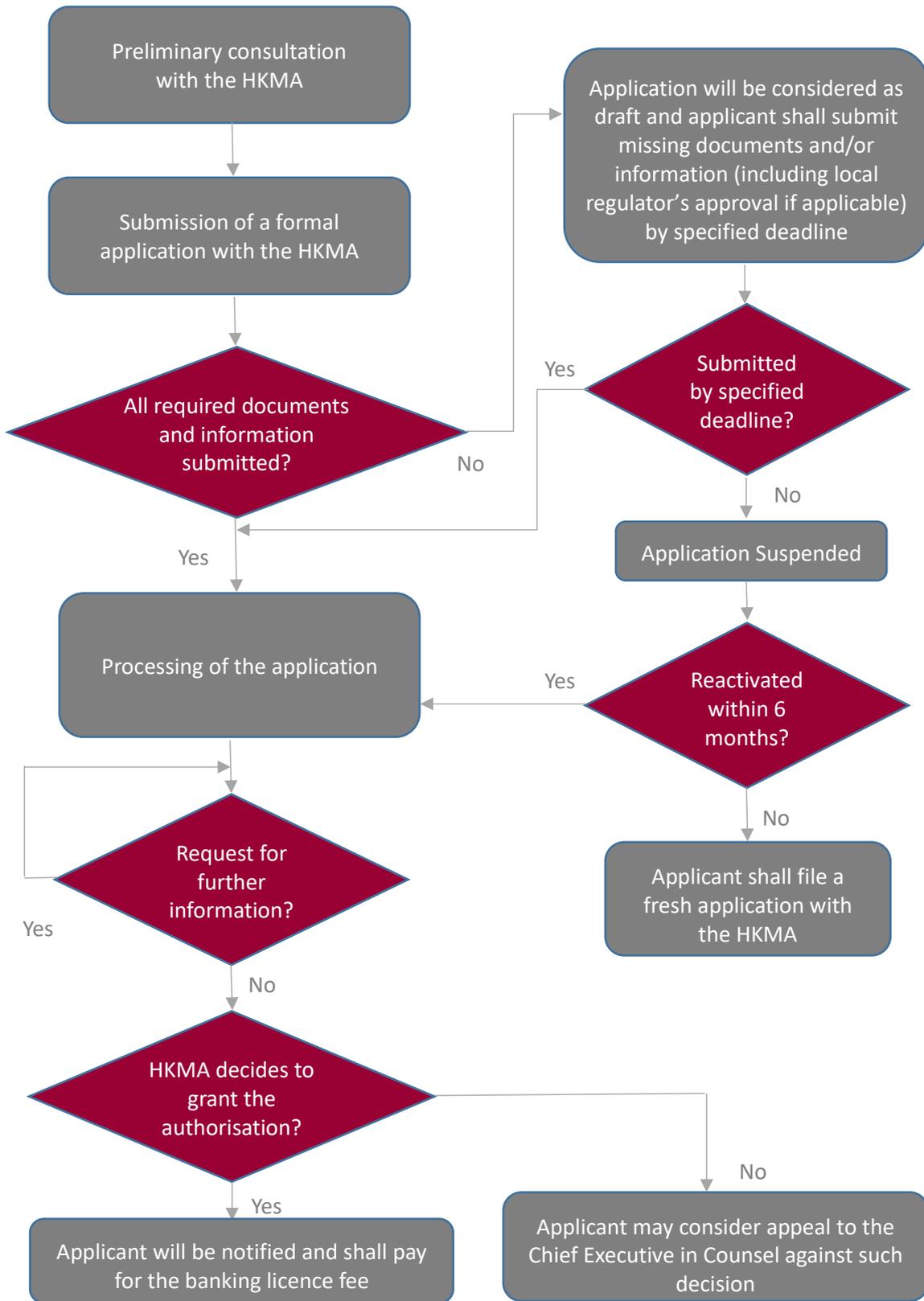
<sup>24</sup> Paragraph 13 of the Seventh Schedule of the BO.

<sup>25</sup> Sections 16(1)(a) and 16(5) of the BO.

<sup>26</sup> Sections 97(3) and 97(6) of the BO.

<sup>27</sup> Section 97(4) of the BO.

every year thereafter, authorised institution shall pay a renewal of banking licence fee specified in the Second Schedule of the BO, which also currently sits at HKD 474,340.<sup>28</sup>



<sup>28</sup> Section 19 of the BO.

### 1.2.5 List of required application documents

To lodge an application for Authorisation, the following documents should be submitted to the HKMA:

Applicants	List of required application documents
By both local or overseas applicants	<ul style="list-style-type: none"> <li>• A copy of the board resolution in support of the application, certified as a true copy by the chief executive (or senior executive of the parent bank).</li> <li>• Two copies of the memorandum and articles of association (or equivalent constitutional documents) of the applicant in English or Chinese, certified as true copies by the chief executive (or senior executive of the parent bank).</li> <li>• Two copies of the audited annual reports of the applicant (or of its parent if the applicant is a newly formed subsidiary) for the last three years immediately prior to application, certified as true copies by the chief executive (or senior executive of the parent bank).</li> <li>• A business plan for the first three years of operation in Hong Kong that sets out the intended nature and scale of the business and business strategies.</li> <li>• Where the applicant intends to adopt an offshore booking business model, it should submit details of such proposed business model, and legal opinions confirming compliance with all relevant legal and regulatory requirements.</li> <li>• Financial projections of the Hong Kong operation for the first three years, including projected balance sheet, capital and liquidity ratios and profitability.</li> <li>• Organisation chart and staffing plan of the proposed Hong Kong operation.</li> <li>• Internal control systems to be implemented in the Hong Kong operation including, but not limited to, liquidity management policy, money laundering guideline, foreign exchange limits, country exposure limits, management committees structure, etc.</li> <li>• A project plan or a description of how the applicant plans to ensure its management information systems will have the relevant reporting capabilities sufficient to be able to provide core information for resolution planning as set out in CI-1 - “Resolution Planning – Core Information Requirements” of the HKMA’s Code of Practice.</li> <li>• Questionnaires on the background of prospective directors and chief executive (including their alternates) of the applicant</li> </ul>

	<p>seeking the HKMA's approval under section 71 of the BO and of prospective controllers of the applicant seeking MA's approval under section 70 of the BO.</p> <ul style="list-style-type: none"> <li>• Authorities to be delegated to the chief executive of the applicant and his management team.</li> </ul>
<p><b>By local applicants only</b></p>	<ul style="list-style-type: none"> <li>• An application letter addressed to the HKMA that: <ul style="list-style-type: none"> <li>(a) states the reasons for the application for authorisation;</li> <li>(b) describes the background of the applicant and how the relevant authorisation criteria are, or will be, met by it;</li> <li>(c) is signed by the chief executive of the applicant if one has been appointed, or a senior executive of the parent bank who has the appropriate authority to sign.</li> </ul> </li> <li>• If it is a subsidiary of an overseas-incorporated institution, a letter from the relevant supervisory authority in the overseas jurisdiction confirming that consent has been given for the parent bank to establish an authorised subsidiary in Hong Kong</li> <li>• A copy of each of the following, certified as a true copy by the chief executive (or senior executive of the parent bank): <ul style="list-style-type: none"> <li>(a) Certificate of incorporation;</li> <li>(b) Return of allotment;</li> <li>(c) Incorporation Form – Company Limited by Shares (Companies Registry Form NC1);</li> <li>(d) Business registration certificate.</li> </ul> </li> <li>• A certificate by an auditor confirming that the capital of the applicant has been paid up in full, preferably with supporting documents.</li> </ul>
<p><b>By overseas applicants only</b></p>	<ul style="list-style-type: none"> <li>• A letter from the relevant supervisory authority in the relevant overseas jurisdiction confirming that it has given its consent to the applicant's plans in Hong Kong.</li> <li>• Copies of the applicant's internal capital adequacy assessment process and results of the most recent assessment of its capital adequacy under different stress scenarios, together with the basis of the assessment; whether such information cannot be provided, reasons should be given.</li> <li>• A list of the controllers of the applicant and their background.</li> </ul>

## 1.3 Virtual bank

Virtual banks are developing over the globe. It is different from e-banking or online banking which services are commonly provided by a bank with physical branches. For virtual banks, their services are also provided through internet or other form so of electronic channels but they do not have physical branches.

### 1.3.1 Overseas applicants

Application for HKMA's authorisations from overseas applicants will be accepted provided that such applicants are entered in the form of a locally incorporated bank.

### 1.3.2 Minimum criteria for authorisation

To grant an authorisation for virtual bank, the HKMA shall be satisfied that the applicant meets the following minimum criteria:

Minimum Criteria	Details
Minimum Criteria for Authorisation <sup>29</sup>	The applicant shall meet the Minimum Criteria for Authorisation as a bank as set out under Chapter 1.2.3.
Ownership	The applicant is expected to be:- <ul style="list-style-type: none"><li>operated in the form of a locally incorporated bank; and</li><li>more than 50% of its share capital is either (i) held by a bank or financial institution in good standing and supervised by a recognised in Hong Kong or elsewhere; or (ii) held through an intermediate holding company incorporated in Hong Kong with supervisory conditions imposed (such as capital adequacy, liquidity, large exposures, intra-group exposures and charge over assets, group structure, activities undertaken, risk management, fitness and propriety of directors and senior management and submission of financial and other information to the HKMA) on this intermediate holding company.</li></ul>
Ongoing supervision	Supervisory requirements applicable to conventional banks will also apply to virtual banks, with adaptation to suit the business models of virtual banks under a risk-based and technology-neutral based approach.
Physical Existence	Although virtual banks are not expected to establish local branches <sup>30</sup> , it must maintain a physical presence in Hong Kong, which will be its principal place of business, to provide an office in Hong Kong for interfacing with the HKMA, as well as with customers to deal with their enquiries or complains.

<sup>29</sup> The Seventh Schedule of the BO.

<sup>30</sup> Section 44 of the BO.

<b>Technology Risk</b>	The applicant should engage a qualified and independent expert to perform an independent assessment of the adequacy of its planned IT governance and systems. A copy of this assessment report should be submitted on application and a more detailed report with actual design, implementation and effectiveness of its computer hardware, systems, security, procedures and controls should be submitted before the virtual bank becomes operational.
<b>Risk Management</b>	The applicant must go through the eight basic types of risks (i.e. credit, interest rate, market, liquidity, operational, reputation, legal and strategic risk), analyse to what extent it will be affected and establish appropriate controls to manage these risks.
<b>Business Plan</b>	The applicant must present a credible and viable business plan which strikes a balance between the desire to build market share and the need to earn a reasonable return on assets and equity.
<b>Exit Plan</b>	The applicant must an exit plan which covers matters including the circumstances under which the plan will be triggered, the authority to trigger the plan, the channels to be used to repay depositors and the source of funding for making the payments.
<b>Customer Protection</b>	<p>The applicant should treat its customers fairly and adhere to the Treat Customers Fairly Charter and should observe the standards contained in the Code of Banking Practice issued by the Hong Kong Association of Banks and the DTC Association.</p> <p>The applicant should highlight in its terms and conditions how any losses from security breaches, systems failure or human error will be apportioned between the bank and its customers. The HKMA considers that unless a customer acts fraudulently or with gross negligence such as failing to properly safeguard his device(s) or secret code(s) for accessing the e-banking service, he should not be responsible for any direct loss suffered by him as a result of the unauthorised transactions conducted through his account.</p>
<b>Outsourcing</b>	The HKMA does not object in principle to the outsourcing of computer or business operations of a virtual bank to a third party service provider, which may or may not be part of the group owning the virtual bank, but the applicant should discuss its plans for material outsourcing with the HKMA in advance. In particular, the HKMA must be satisfied that the operations outsourced remain subject to adequate security controls, that confidentiality and integrity of customer information will not be compromised and that the requirements under the Personal Data (Privacy) Ordinance and common law customer confidentiality are complied with.
<b>Capital Requirement</b>	The applicant must maintain adequate capital commensurate with the nature of their operations and the banking risks they are undertaking.

## 1.4 Establishing a local representative office for a foreign bank in Hong Kong

Overseas banks may apply to the HKMA for an authorisation to establish a local representative office (the “LRO”) in Hong Kong<sup>31</sup>. Such overseas banks should be either recognised as a bank in the place where it is incorporated, or lawfully allowed to take deposits from the general public, but not an authorised institution nor recognised as the central bank of the place in which it is incorporated.

A LRO is not allowed to engage in any banking business and its role is confined mainly to representational and liaison activities, which may include marketing of the bank’s services to customers in Hong Kong and acting as a channel of communication between these customers and the rest of the bank. However, a LRO must not (a) engage in banking business or in any financial activities of a type or nature that are normally transacted between a bank and its customers, including but not limited to receiving of deposits; granting of loans; and transacting remittance business; and (b) carry on businesses in regulated activities or actively market such services in contravention of section 114 of the SFO.

### 1.4.2 Minimum criteria for authorisation

**Adequacy of local supervision**<sup>32</sup>. The HKMA must be satisfied that the applicant operates under a valid licence to transact a full range of banking business in the country of incorporation and that the authority responsible for supervising the applicant in that country has no objection to the applicant opening a representative office in Hong Kong. Please also refer to “Para 2 - Adequacy of Local Supervision” of Chapter 1.2.3 for details.

### 1.4.3 Applications for authorisation

**Application Procedures.** In order to apply for approval to establish a LRO, the chief executive of the applicant bank should send a letter to the HKMA stating the reasons for the application, how the criteria for approval are fulfilled and the name and address of the authority responsible for the supervision of the bank. The applicant should also enclose a copy of its latest signed and audited annual report.

**Authorisation condition.** The HKMA may attach to an authorisation such conditions as it thinks proper<sup>33</sup>.

**Naming of the LRO.** A LRO of a bank incorporated outside Hong Kong may use the name of that bank, or a translation of it, in the name under which the LRO is carrying on its functions and activities in Hong Kong, provided that the name is used in immediate conjunction with, and is not more prominent than, the term “representative office” in the same language<sup>34</sup>.

**Fees.** The LRO shall pay to the Director of Accounting Services a fee of HKD 22,400 upon establishment and the same amount as annual fee for its maintenance thereafter on the anniversary in each year of the date of the grant of the HKMA approval<sup>35</sup>.

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<sup>31</sup> Section 46(1) of the BO.

<sup>32</sup> Section 46(3) of the BO.

<sup>33</sup> Section 46(4) of the BO.

<sup>34</sup> Section 97(1A) of the BO.

<sup>35</sup> Section 48(1) of the BO.

## Chapter 2 – Financial Services Business

### 2.1 SFC licensing regime

Any corporation or institution, which (i) carries on any regulated activity in Hong Kong<sup>36</sup>, or (ii) actively markets itself, whether by itself or another person on behalf of itself and whether in Hong Kong or from a place outside Hong Kong, to the public or any class of the public of Hong Kong any services that it provides, which would constitute a regulated activity if provided in Hong Kong<sup>37</sup>, has to be respectively licensed as a licensed corporation and registered as a registered institution with the Security and Futures Commissions (the “SFC”), unless a specific exemption is applicable. Licensed corporations and registered institutions are collectively referred to as the “Intermediaries” which will be further detailed in Chapter 2.2.

Moreover, any individual, performing a regulated function for his/her principal which is a licensed corporation in relation to the regulated activity carried on as a business<sup>38</sup>, has to be licensed as a licensed individual with the SFC, unless a specific exemption is applicable. There are two types of licensed individuals, namely licensed representatives and responsible officers, which will be further discussed in Chapter 2.2.

Schedule 5 to the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the “SFO”) stipulates ten types of regulated activities that can be carried on by intermediaries or licensed individuals and provides a detailed definition for each of them:-

- 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

Apart from licensing and registration, the SFC supervises intermediaries and licensed individuals according to the SFO in respect of all the regulated activities carried on by such intermediaries or licensed individuals. Moreover, the SFC also regulates and governs the securities and futures markets, offers of investment products and general conduct in these markets.

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<sup>36</sup> Section 114(1) and (2) of the SFO.

<sup>37</sup> Section 115 of the SFO.

<sup>38</sup> Section 125(1) of the SFO. Please note that no license or registration is required for any individual who performs a regulated function for his/her principal which is a registered institution (RI).

## 2.2 Intermediaries and licensed individuals

Two types of intermediaries and two types of licensed individuals are governed by the SFC.

Intermediaries	
Licensed Corporation (LC)	Registered Institution (RI)
<p><b>Full licensed corporation.</b> A corporation (that is not an authorised financial institution<sup>39</sup>) which is granted a <u>licence</u> to carry on one or more regulated activities<sup>40</sup>.</p> <p><b>Temporary licensed corporation.</b> A corporation (that is not an authorised financial institution) which is granted a <u>temporary licence</u> to carry on, for a period not exceeding three months, one or more regulated activities other than any of the followings<sup>41</sup>:-</p> <ul style="list-style-type: none"> <li>• Type 3 - leveraged foreign exchange trading</li> <li>• Type 7 - providing automated trading services</li> <li>• Type 8 - securities margin financing</li> <li>• Type 9 - asset management</li> </ul>	<p>An authorised financial institution which obtains a <u>registration</u> with the SFC to carry on one or more than one regulated activities, other than any of the followings:-</p> <ul style="list-style-type: none"> <li>• Type 3 - leveraged foreign exchange trading</li> <li>• Type 8 - securities margin financing</li> </ul>
Licensed Individuals	
Licensed Representative (LR)	Responsible Officer (RO)
<p><b>Full licensed representative.</b> An individual who is granted a <u>licence</u> to carry on one or more regulated activities for a licensed corporation to which s/he is accredited<sup>42</sup>.</p> <p><b>Provisional licensed representative.</b> An individual who is granted a <u>provisional licence</u> to carry on one or more regulated activities for a licensed corporation to which s/he is accredited (prior to the grant of her/his full licence).<sup>44</sup></p> <p><b>Temporary licensed representative.</b> An individual who is granted a <u>temporary licence</u> to carry on, for a period not exceeding three months, one or more regulated activities for a licensed corporation to which s/he is accredited.<sup>45</sup></p>	<p>A licensed representative (LR) who obtained an <u>approval</u> as a responsible officer to supervise the regulated activity of the licensed corporation to which s/he is accredited<sup>43</sup>.</p>

<sup>39</sup> An authorised financial institution is defined in section 2(1) of the BO (i.e. a bank, RLB or DTC).

<sup>40</sup> Section 116 of the SFO.

<sup>41</sup> Section 117 of the SFO. Please note that temporary licensed corporations cannot hold any client assets in carrying on the regulated activity.

<sup>42</sup> Section 120(1) of the SFO. Please note that no license or registration is required for any individual who carries on one or more regulated activities for a registered institution (RI).

<sup>43</sup> Section 126 of the SFO.

<sup>44</sup> Section 120(2) of the SFO.

<sup>45</sup> Section 121 of the SFO. Please refer to Chapter 2.4.3 for details.

## 2.3 Licensing exemptions

### 2.3.1 Incidental exemption for certain licensee

Licensee for certain type of regulated activity (“**RA**”) is not required to be licensed for some of the other types of regulated activities, provided such activities are carried out wholly incidental to the businesses permitted under the permitted regulated activity under its licence. Details of the same are illustrated under the table below.

Type of RA	1	2	3	4	5	6	7	8	9	10	Remark
1				x		x		x	x		For Type 8, the licensee would need to satisfy a more stringent financial resources requirement in terms of paid-up capital in order to do so.
2					x				x		
9	x	x		x	x						For Types 4 and 5, such asset management business must involve the management of a portfolio under a collective investment scheme.

### 2.3.2 Exemption for certain service recipients

Any person will be allowed to provide a service which would constitute a regulated activity to certain types of service recipients. Please refer to the below table for details.

Service Recipient	Type of RA										Remark	
	1	2	3	4	5	6	7	8	9	10		
Licensee itself (i.e. internal use)											x	
Group Company <sup>46</sup>				x	x	x				x		Not applicable to advice in respect of, or management service to, that group company’s client assets.
Professional Investor <sup>47</sup>	x	x										

<sup>46</sup> Group Companies include your wholly owned subsidiaries, holding company which holds all your issued shares, or other wholly owned subsidiaries of that holding company.

<sup>47</sup> As defined under Part 1 of Schedule 1 to the SFO.

### 2.3.3 Exemption for certain service providers

Certain types of parties will be allowed to provide a service which would constitute a regulated activity to any person. The following table illustrates the details.

Service Provider	Type of RA										Remark	
	1	2	3	4	5	6	7	8	9	10		
Solicitor, counsel or professional accountant				x	x	x				x		Provided that such advice or service is wholly incidental to the provider's practice as a solicitor, a counsel or a professional accountant.
Broadcaster or journalist				x	x	x						Provided that such advice is provided through a publication such as newspaper, book or magazine or television/radio broadcast generally available to the public.
Trust company	x			x	x	x				x		Type 1 – provided that the provider has been registered under Part VIII of the Trustee Ordinance and acts as an agent for a collective investment scheme. Type 4, 5, 6, & 9 – provided that such service is wholly incidental to discharge of duty as a trustee.

## 2.4 Criteria for licensing or registration

The SFO has a general discretion to grant or refuse an application for licensing or registration. Applicant should ensure fulfilment of all pre-requisites set out under the SFO with respect to the related application.

### 2.4.1 Licensed corporations

The below outlines the criteria for licensing as a licensed corporation:-

Minimum Criteria	Details		
Jurisdiction	The applicant must be a company (but not a sole proprietorship or a partnership structure) incorporated in Hong Kong or an overseas company registered with the Companies Registry in Hong Kong.		
Financial Resources	Regulated activity	Minimum paid-up share capital	Minimum liquid capital
	Type 1		

	(a) in the case where the corporation is an approved introducing agent or a trader	Not applicable	\$500,000
	(b) in the case where the corporation provides securities margin financing	\$10,000,000	\$3,000,000
	(c) in any other case	\$5,000,000	\$3,000,000
	<b>Type 2</b>		
	(a) in the case where the corporation is an approved introducing agent or a trader or a futures non-clearing dealer	Not applicable	\$500,000
	(b) in any other case	\$5,000,000	\$3,000,000
	<b>Type 3</b>		
	(a) in the case where the corporation is an approved introducing agent	\$5,000,000	\$3,000,000
	(b) in any other case	\$30,000,000	\$15,000,000
	<b>Financial Resources</b>	<b>Type 4</b>	
(a) in the case where in relation to Type 4 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets		Not applicable	\$100,000
(b) in any other case		\$5,000,000	\$3,000,000
<b>Type 5</b>			
(a) in the case where in relation to Type 5 regulated activity, the corporation is subject to	Not applicable	\$100,000	

	the licensing condition that it shall not hold client assets		
	(b) in any other case	\$5,000,000	\$3,000,000
	<b>Type 6</b>		
	(a) in the case where the corporation acts as a sponsor:		
	<ul style="list-style-type: none"> <li>• hold client assets</li> <li>• not hold client assets</li> </ul>	\$10,000,000 \$10,000,000	\$3,000,000 \$100,000
	(b) in the case where the corporation does not act as a sponsor:		
	<ul style="list-style-type: none"> <li>• hold client assets</li> <li>• not hold client assets</li> </ul>	\$5,000,000 Not applicable	\$3,000,000 \$100,000
	<b>Type 7</b>	\$5,000,000	\$3,000,000
	<b>Type 8</b>	\$10,000,000	\$3,000,000
	<b>Type 9</b>		
	(a) in the case where in relation to Type 9 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets	Not applicable	\$100,000
	(b) in any other case	\$5,000,000	\$3,000,000
<b>Financial Resources</b>	<b>Type 10</b>		
	(a) in the case where in relation to Type 10 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets	Not applicable	\$100,000
	(b) in any other case	\$5,000,000	\$3,000,000

<b>Operating expenses</b>	<b>The applicant is required to provide a projection of its operating expenses to be incurred in the first six months after having been licensed. If its excess liquid capital cannot cover the projected expenses, the applicant should provide a plan demonstrating that additional funding would be forthcoming when needed.</b>
<b>Fit and proper</b>	<p>Substantial shareholders, officers and any other person who is or is to be employed by, or associated with the applicant for the purpose of regulated activity for which the application is made shall be fit and proper<sup>48</sup>.</p> <p>The SFC shall, in addition to any other matter that the SFC may consider relevant, have regard to the followings of the applicant or other relevant persons as appropriate<sup>49</sup>:-</p> <ul style="list-style-type: none"> <li>• financial status or solvency;</li> <li>• educational or other qualifications or experience having regard to the nature of the functions to be performed;</li> <li>• ability to carry on the regulated activity competently, honestly and fairly; and</li> <li>• reputation, character, reliability, financial integrity and honesty.</li> </ul>
<b>Competence</b>	The applicant has to satisfy the SFC that it has proper business structure, good internal control systems and qualified personnel to ensure the proper management of risks that it will encounter in carrying on its proposed business as detailed in its business plan.
<b>Responsible Officer</b>	<p>The applicant should appoint not less than 2 responsible officers to supervise the conduct of each regulated activity it applies for and at least one responsible officer must be an executive director.</p> <p>Moreover, the applicant must have at least one responsible officer available at all times for each regulated activity<sup>50</sup>. The same responsible officer may be appointed for more than one regulated activity provided that there is no conflict in the roles assumed.</p>
<b>Senior Management</b>	<p>Senior Management of the applicant, including the directors, the responsible officers and Managers-In-Charge of Core Functions (MICs) shall be approved by the SFC.</p> <p>Core Functions handled by MICs shall include overall management oversight, key business line, operational control and review, risk management, finance and accounting, information technology, compliance, and anti-money laundering and counter-terrorist financing.</p>

<sup>48</sup> Section 126 of the SFO.

<sup>49</sup> Section 129(1) of the SFO.

<sup>50</sup> At least two (instead of one) of such responsible officers are required for exchange participants of The Stock Exchange of Hong Kong Limited or Hong Kong Futures Exchange Limited.

<b>Insurance</b>	The applicant for a license for carrying on Type 1 and/or Type 2 regulated activities is required to take out and maintain insurance against specific risks for specified amount as required when SFC approves an applicable master policy of insurance.
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### 2.4.2 Registered Institutions

Only authorised financial institutions may apply for registering as a registered institution with the SFC and it is recommended that such institution should notify the HKMA before submitting an application for registration with the SFC. The requirements for registering as a registered institution are set out as follows:-

Minimum Criteria	Details
<b>Executive Officer</b>	<p>The applicant should appoint not less than 2 executive officers to directly supervise the conduct of each regulated activity it applies for.</p> <p>Moreover, the applicant must have at least one executive officer available at all times for each regulated activity. The same responsible officer may be appointed for more than one regulated activity provided that there is no conflict in the roles assumed.</p> <p>An executive officer is a person who has obtained the consent of the HKMA to act in such capacity under the BO, and is expected to meet the same competence requirements as a responsible officer of a licensed corporation.</p>
<b>Other relevant individuals</b>	Individuals engaged to carry on regulated activity on behalf of a registered institution are regarded as relevant individuals. Their names and certain particulars have to be entered into the register maintained by the HKMA. Such other relevant individuals are expected to be fit and proper and shall meet the same competence requirements as licensed representatives (to be discussed below).
<b>Fit and Proper</b>	Other relevant individuals, substantial shareholders, directors, chief executive, managers, executive officers, and any other person who is or is to be acting for the applicant for the purpose of regulated activity for which the application is made shall be fit and proper <sup>51</sup> .

### 2.4.3 Licensed representatives

The below outlines the criteria for licensing as a licensed representative:-

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<sup>51</sup> Section 129 of the SFO.

Minimum Criteria	Details
Fit and Proper	<p>The applicant should fulfil the fit and proper requirement, having regard to<sup>52</sup>:-</p> <ul style="list-style-type: none"> <li>• financial status or solvency;</li> <li>• educational or other qualifications or experience having regard to the nature of the functions to be performed;</li> <li>• ability to carry on the regulated activity competently, honestly and fairly; and</li> <li>• reputation, character, reliability, financial integrity and honesty.</li> </ul>
Competence <sup>53</sup>	<p>The applicant has to satisfy the SFC that it fulfils competence criteria relating to:</p> <ul style="list-style-type: none"> <li>• academic / recognized industry qualification;</li> <li>• relevant industry experience; and</li> <li>• local regulatory framework paper.</li> </ul>

**Temporary licensed representative.** The SFC may grant a temporary licence to an individual who is regulated by a relevant overseas regulatory body to carry on regulated activities in Hong Kong for a period of not exceeding three months. The applicant should fulfil the following additional requirements:-

- the applicant should carry on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity, either (i) under authorisation by a regulatory organisation in that place which, in the SFC's opinion, performs a function similar to the functions of SFC; or (ii) in compliance with the relevant rules, codes and/or guidelines issued by the overseas regulator that govern the conduct of the application in carrying out the regulated activities in that place and the overseas regulatory has the power to remove and prohibit unsuitable individuals from carrying out regulated activities under its jurisdiction;
- the licence, if granted, will be for a duration of not more than three months at any one time and the applicant will not be granted temporary licences for more than six months in total within any period of 24 months;
- the applicant may only carry on one or more of the following regulated activities:
  - Type 1 (dealing in securities);
  - Type 2 (dealing in futures contracts);
  - Type 4 (advising on securities);
  - Type 5 (advising on futures contracts);
  - Type 6 (advising on corporate finance); and
  - Type 10 (providing credit rating services).

<sup>52</sup> Section 129(1) of the SFO.

<sup>53</sup> Applicant who would like to engage in sponsor works is required to satisfy additional competence requirements in particular the requirement under paragraph 1.4A.1 of the Sponsor Guidelines. Such applicant may also have to pass the Licensing Examination Paper 16 administered by the Hong Kong Securities and Investment Institute.

## 2.4.4 Responsible officers

The applicant must be a licensed representative<sup>54</sup> who then applies to the SFC for an approval as a responsible officer. The below outlines the criteria for licensing as a responsible officer:-

Minimum Criteria	Details
<b>Fit and proper</b>	<p>The applicant should fulfil the fit and proper requirement, have regard to the followings<sup>55</sup>:-</p> <ul style="list-style-type: none"> <li>• financial status or solvency;</li> <li>• educational or other qualifications or experience having regard to the nature of the functions to be performed;</li> <li>• ability to carry on the regulated activity competently, honestly and fairly; and</li> <li>• reputation, character, reliability, financial integrity and honesty.</li> </ul>
<b>Competence<sup>56</sup></b>	<p>The applicant has to satisfy the SFC that it fulfils competence criteria relating to:</p> <ul style="list-style-type: none"> <li>• academic / recognized industry qualification;</li> <li>• relevant industry experience; and</li> <li>• local regulatory framework paper.</li> </ul>
<b>Authority</b>	<p>The applicant should have sufficient authority to supervise the business of the regulated activity in the licensed corporation that he/she will be accredited to. The applicant may or may not be a member of the board of directors of the licensed corporation, but an executive director<sup>57</sup> must be a responsible officer.</p>
<b>MIC</b>	<p>MICs of the two core functions, namely Overall Management Oversight function and the Key Business Line function, are required to seek SFC's approval to be responsible officers.</p>
<b>Overseas residents</b>	<p>The SFC will only grant licence to applicants if they will come to Hong Kong to carry on the regulated activities on behalf of the licensed corporations they are accredited to.</p> <p>If the applicant will be stationed overseas and will come to Hong Kong from time to time, s/he should expect a non-sole condition to be imposed on her/his license and her/his principal should ensure that it has sufficient onshore responsible officers who are free from any licensing condition on the related regulated activity.</p>

<sup>54</sup> Section 126 of the SFO.

<sup>55</sup> Section 129(1) of the SFO.

<sup>56</sup> The Sponsor Guidelines set out eligibility requirements for being a sponsor principal of a licensed corporation of Type 6 regulated activity that engages in sponsor work. To qualify as a sponsor principal under Options 2 or 3 (see paragraph 1.4.1 of the Sponsor Guidelines), you may pass the Licensing Examination Paper 15 administered by the Hong Kong Securities and Investment Institute.

<sup>57</sup> Section 113 of the SFO.

## **2.5 Application procedures**

### **2.5.1 Submission of application**

Completed application forms along with the supporting documents and a non-refundable applicable fee must be submitted to the SFC through the following channels:

- Individual-related applications should be submitted through the SFC Online Portal (<http://portal.sfc.hk/>).
- Corporation applications may be submitted via the SFC Online Portal or in paper form together with the application package to the SFC's office in person or by post to the Licensing Department of the SFC.

Moreover, in the application forms concerning licensed corporations, registered institutions or responsible officers, applicants are required to declare that the relevant board of directors has passed a resolution approving the application.

### **2.5.2 Expected turnaround time for new licence / registration**

Depending on the number of applications that the SFC is processing at any particular time, the types of service or product that the applicant proposes to provide, the quality of the application, and the turnaround time for the other regulatory bodies, the processing of an application submitted to the SFC by a new industry participant normally takes approximately:

- 7 business days (for a provisional licensed representative application);
- 8 weeks (for a normal licensed representative application);
- 10 weeks (for a responsible officer application); or
- 15 weeks (for a licensed corporation application).

The SFC will issue a written notification of the approval and a licence of certificate of registration to you if your application is successful.

### **2.5.3 Refusal of application**

SFC may reject an application if it fails to meet the statutory requirements. However, before rejecting the application, the SFC will give the applicant an opportunity to provide an explanation of the case.

If the application is still rejected after the explanation, the applicant can file an appeal within 21 days of the application being rejected with the Securities and Futures Appeals Tribunal. The review process can take up to several weeks.

### **2.5.4 Required application forms and supplements**

The commonly used applications forms and supplements required for applications for new corporate license / institution registration are set out below:-

Application	Required application forms and supplements
Licensed Corporation	<ul style="list-style-type: none"> <li>Form A</li> <li>Supplement A and B (if appropriate)</li> <li>Supplement C (at least two Responsible Officers), D and E</li> <li>Questionnaire A</li> <li>Questionnaire B (if appropriate)</li> </ul>
Registered Institution	<ul style="list-style-type: none"> <li>Form C</li> <li>Copies of application forms for approval to become an executive officer submitted to the HKMA (at least two executive officers)</li> </ul>

### 2.5.5 licencing fees

Type of application	Type of Regulated Activity (RA)	Application fee amount
Licensed corporation (LC)	Types 1, 2, 4, 5, 6, 7, 8, 9, 10	\$4,740 per RA <sup>58</sup>
	Type 3	\$129,730
Temporary LC	Types 1, 2, 4, 5, 6, 10	\$4,900 per RA
Registered institution (RI)	Types 1, 2, 4, 5, 6, 7, 9, 10	\$23,500 per RA <sup>59</sup>
Licensed representative (LR)	Types 1, 2, 4, 5, 6, 7, 8, 9, 10	\$1,790 per RA <sup>60</sup>
	Type 3	\$2,420
Provisional LR	Not applicable	\$800 per application on top of application fee for licensed representative.
Temporary LR	Types 1, 2, 4, 5, 6, 10	\$1,850 per RA
Approval to becomes responsible officer	Types 1 through 10	\$2,950 per RA <sup>61</sup>

<sup>58</sup> The application fee payable for Type 7 regulated activity is waived if the applicant's proposed carrying on of Type 7 regulated activity is incidental to the carrying on, or proposed carrying on, of Type 1 or Type 2 regulated activity by that applicant.

<sup>59</sup> Ditto.

<sup>60</sup> Ditto.

<sup>61</sup> Ditto.

## Chapter 3 – Other Money-related Business

### 3.1 Money lender business

Any person who would like to carry on the business as a money lender in Hong Kong must obtain a money lender’s licence (the “**ML Licence**”) granted under section 8 of the Money Lenders Ordinance (Cap. 163 of the Laws of Hong Kong) (the “**MLO**”), subject to the guidelines and requisitions of the relevant governing authorities.

#### 3.1.1 Governing authorities

The following three authorities govern money lender businesses in Hong Kong:

- **Licensing Court.** Responsible for determination of applications for and granting of money lenders licences<sup>62</sup>.
- **Registrar of Money Lenders** (the “**ML Registrar**”, presently performed by the Companies Registrar). Responsible for processing applications for, renewal of and endorsement on licenses, and keeping a register of money lenders for public inspection<sup>63</sup>.
- **Commissioner of Police** (the “**CP**”). Responsible for enforcing the MLO, including examining applications for, renewal of and endorsements on licences, and investigating complaints against money lenders<sup>64</sup>.

#### 3.1.2 Minimum criteria for licence

The following criteria (collectively the “**Money Lender Licensing Requirements**”)<sup>65</sup> will be considered by the Licensing Court for any new application of ML Licence:

Minimum Criteria <sup>66</sup>	Details
Fit and Proper Requirement <sup>67</sup>	The applicant (or its partners, directors or controllers, or any person responsible for the management of its business) is a fit and proper person to carry on business as a money lender (e.g. knowledge, qualification and experience in relation to money lending business).
Suitability of Premises Requirement <sup>68</sup>	Any of the premises to which the application relates are suitable for the carrying on of the business of money-lending (e.g. usage of the premises and permission from the landlord and tenant).
Proper Name Requirement <sup>69</sup>	The name under which the applicant applies to be licensed is not misleading or otherwise undesirable.
Public Interest Requirement <sup>70</sup>	The grant of such ML Licence is not contrary to public interest.

<sup>62</sup> Section 10 of the MLO.

<sup>63</sup> Section 6 of the MLO.

<sup>64</sup> Section 9 of the MLO.

<sup>65</sup> Section 11 of the MLO.

<sup>66</sup> Section 11 of the MLO.

<sup>67</sup> Section 11(5)(a), (b) and (c) of the MLO.

<sup>68</sup> Section 11(5)(e) of the MLO.

<sup>69</sup> Section 11(5)(d) of the MLO.

<sup>70</sup> Section 11(5)(g) of the MLO.

### 3.1.3 Steps for application for licence

**Application Procedures.** The usual procedures for applying for authorisation are set out in the flow chart on the next page. Please note that an applicant may be an individual, a company or a partnership.

**Prescribed Fees.** The application for a licence shall be accompanied by the prescribed fees, including as of today HKD 8,800 to the ML Registrar and HKD 1,910 to the Licensing Court.

**Material Date<sup>71</sup>.** It is either 60 days after the date of the application being lodged by the applicant, or the date on which the CP notifies the ML Registrar that the investigation as to whether there are any grounds for objecting the application has been completed, whichever is the earlier.

**Licence Grant<sup>72</sup>.** Once the Licensing Court is satisfied that the Money Lender Licensing Requirements are met, it shall grant a ML Licence which will be valid for 12 months from the date of it being granted.

**Timeframe for application.** The application for a ML Licence can take up to three to four months from the date of delivery of the application.

**Appeal<sup>73</sup>.** Appeals against the decisions of the Licensing Court of an application for ML Licence can be lodged to the Court of First Instance of the High Court, where the decision of the Court of First Instance shall be final.<sup>74</sup>

### 3.1.4 List of required application documents

To lodge an application for a ML Licence, an applicant shall:

- (a) deliver **two** sets of manually signed application form and statement form and **one** set of supplementary information sheet to the Information Counter of the Money Lenders Section<sup>75</sup> together with the application fee<sup>76</sup>, as well as:
- (b) evidence of authorisation (if the applicant is a limited company); or
- (c) character or business reference (if the applicant is an individual or a partner of a firm);
- (d) deliver **one** set of the application and statement form to the Money Lenders Licensing Section of the Police Headquarters' Licensing Office.

In respect of the application forms to be submitted by an applicant, please refer to the table on the next page.

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<sup>71</sup> Section 9(3) of the MLO.

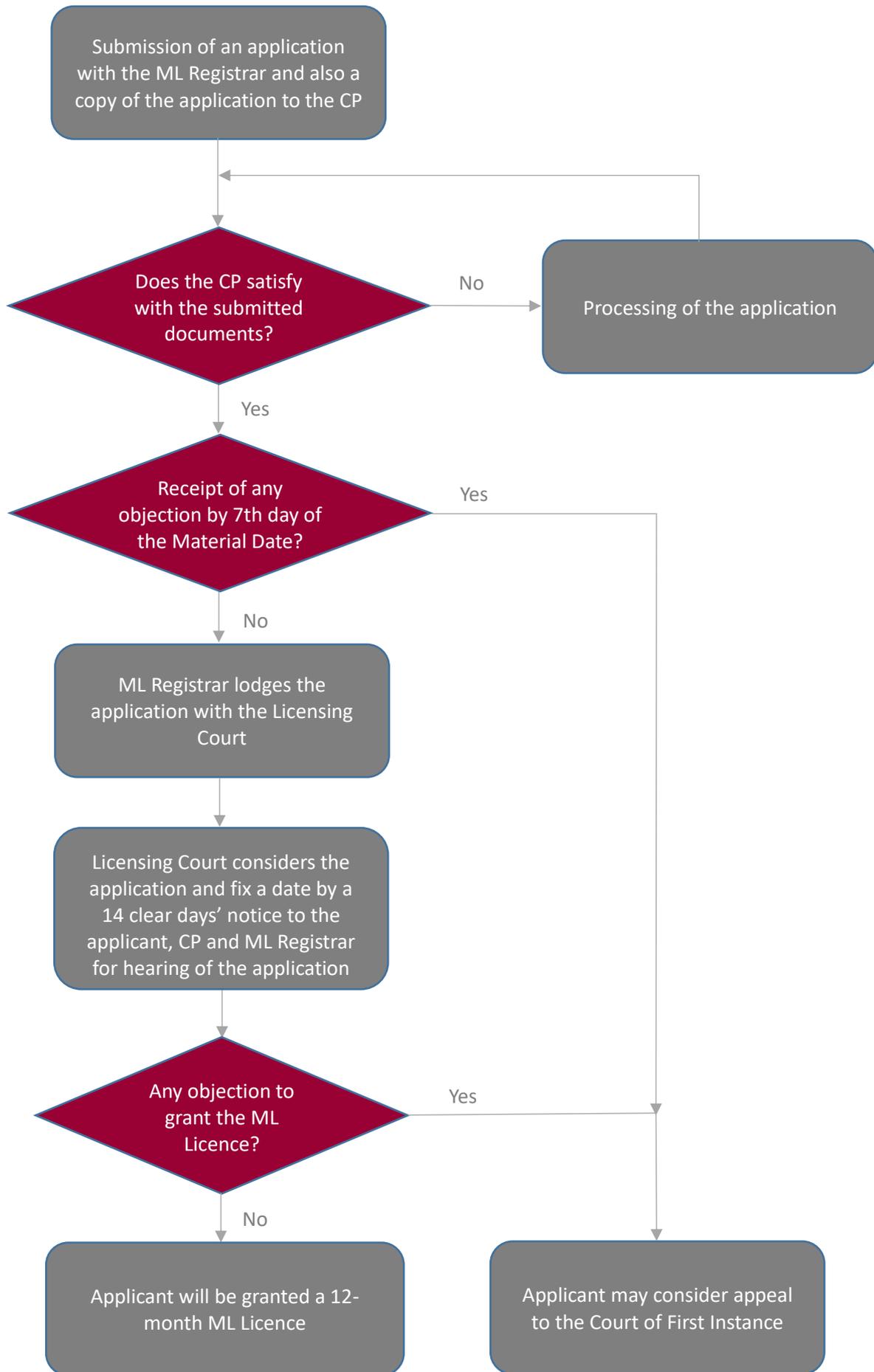
<sup>72</sup> Section 12 of the MLO.

<sup>73</sup> Section 16 of the MLO.

<sup>74</sup> Section 16 of the MLO.

<sup>75</sup> Currently located at the 13<sup>th</sup> floor of Queensway Government Offices.

<sup>76</sup> Please refer to Chapter 3.1.3 for details.



Form No.	Description of Form
<b>Application for a ML Licence – by individual / partnership</b>	
2	Application by an individual for a licence for himself or for a partnership
4	Statement in support of an application by an individual for a licence for himself or for a partnership
SIS-2	Supplementary Information Sheet - Application by an individual for a money lenders licence for himself or for a partnership
<b>Application for a ML Licence – by company</b>	
3	Application by a company for a licence
5	Statement in support of an application by a company for a licence
SIS-1	Supplementary Information Sheet - Application by a company

The CP may also require the applicant to provide, including but not limited to, the following additional documents (in sets of **two**) to the Commission of Police:

<b>Additional supporting documents</b>
<ul style="list-style-type: none"> <li>• Reference <b>letter</b> of previous experience in the money lender business or relevant certificate, etc.</li> <li>• Bank statements of the applicant, and where it is a corporate, of its directors and shareholders.</li> <li>• Tenancy agreement for premises intended to be used for the money lending business.</li> <li>• If the premise is sublet, written consent from the landlord and the tenant for the intended use of the premises to operate a money lending business.</li> <li>• If the “<b>permit to occupy a new building</b>” issued by the <b>Buildings Department does not allow the use of premises for the purposes of “office” or “shop”, permission from Building Department, District Lands Office and/or Town Planning Board for the change of use</b> is required.</li> <li>• Land search result obtained from the Hong Kong Land Registry showing the ownership of the premises.</li> <li>• Floor plan of the premises showing the partitions and equipment inside the premises.</li> <li>• Annual Return of the applicant where it is a corporation showing its directors and <b>shareholders</b>.</li> </ul>

## 3.2 Money broker business

Money brokers in Hong Kong mainly act as name-passers and therefore do not pose significant “systemic” risks to the interbank foreign exchange and deposit markets or raise consumer/depositor protection issues. It is therefore, not considered necessary to introduce an elaborate regulatory regime similar to that for authorised institutions.

The BO enables HKMA to apply appropriate regulatory measures to individual brokers and monitor their compliance with the approval criteria and other regulatory standards. The BO also empowers HKMA to attach conditions to the certificate of approval of money brokers, to vary, add or delete such conditions, to conduct examinations of approved brokers and to obtain information from them.

### 3.2.1 Legal framework of money brokers in Hong Kong

**Approval.** The BO provides that no person shall act as a money broker unless approved by the HKMA.<sup>77</sup>

**Definition of Money Broker.** Money broker is defined under the BO to mean a person who, for reward, carries on the business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating, whether by electronic means or otherwise, agreements between other persons: –

- (a) in respect of the making of deposits of any currency, any currency transaction, or the transaction of an instrument specified in a notice under the BO<sup>78</sup> by the HKMA;
- (b) one of which is an authorized institution; and
- (c) as agent for, or as the provider of a dealing service to, at least one of those persons,

where “dealing service” shall mean a service, offered in person or by electronic means or otherwise, whereby the persons with the ability to quote bids or offer prices/rates for the purposes of effecting an agreement of the type described in para (a) above.

**No Requirement on residence.** A money broker needs not be a resident in Hong Kong or be carrying on a business in Hong Kong. Money brokers who are overseas residents and provide services to persons in Hong Kong (one of which is an authorized institution) will be subject to the said approval requirement.

**Approval not required for certain professionals.** The legislation is not intended to cover persons such as solicitors, professional accountants, investment advisers, securities dealers, who may technically act as money brokers (such as by way of arranging to place deposits on behalf of their clients) but in a way that is wholly ancillary or incidental to their main businesses.

### 3.2.2 Criteria for approval

Only a body corporate may apply to the HKMA for approval to be a money broker. The HKMA shall refuse to grant approval if any one or more of the following minimum criteria are not satisfied by the applicant:

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<sup>77</sup> Section 118A(1) of the BO.

<sup>78</sup> Section 2(14)(a) of the BO.

Minimum Criteria <sup>79</sup>	Details
Identity of Controller <sup>80</sup>	The HKMA must be satisfied that he knows the identity of each controller of the applicant.
Fit and Proper <sup>81</sup>	<p>If the applicant is incorporated in Hong Kong, the HKMA is satisfied that each person who is, or is to be, a director, controller or chief executive of the applicant is a fit and proper person to hold the particular position which he holds or is to hold.</p> <p>If the applicant is incorporated outside Hong Kong, the HKMA is satisfied that each person who is, or is to be (a) a chief executive of the business in Hong Kong of the applicant; or (b) a director, controller or chief executive of the business of the applicant in the place where it is incorporated, is a fit and proper person to hold the particular position which he holds or is to hold.</p>
Adequate financial resources <sup>82</sup>	The applicant has and will continue to have adequate financial resources (whether actual or contingent) for the nature and scale of its operations and, without prejudice to the generality of the foregoing, the aggregate amount of its paid-up capital and balance of its share premium account (if any) is not less than HKD 5 million or an equivalent amount in any other approved currency.
Account systems <sup>83</sup>	The HKMA is satisfied that the applicant has and will continue to have adequate accounting systems and systems of control.
Integrity, Prudence and Competence <sup>84</sup>	The HKMA is satisfied that the business of the applicant is and will be carried on with integrity, prudence and the appropriate degree of professional competence.
Overseas Applicant	Overseas applicant shall apply for registration as a registered non-Hong Kong company within one month after establishing a place of business in Hong Kong.

Notwithstanding the aforesaid, the HKMA has general discretionary power to approve or refuse applications for approval as money brokers. It may refuse an application which may give rise to prudential concerns not falling within the criteria set out in the Eleventh Schedule to the BO.

### 3.2.3 Steps for application for approval

**Approval Procedures.** First of all, the applicant is encouraged to first discuss its plan

<sup>79</sup> Eleventh Schedule to the BO.

<sup>80</sup> Paragraph 2 of Eleventh Schedule to the BO.

<sup>81</sup> Paragraphs 3 and 4 of Eleventh Schedule to the BO.

<sup>82</sup> Paragraph 5 of the Eleventh Schedule to the BO.

<sup>83</sup> Paragraph 6 of the Eleventh Schedule to the BO.

<sup>84</sup> Paragraph 7 of the Eleventh Schedule to the BO.

with the licensing team of the HKMA prior to its submission of a formal application.

**Overseas applicant.** For a corporate applicant incorporated outside Hong Kong, the HKMA may consult the relevant overseas supervisors in relation to: –

- (a) the financial soundness of the applicant;
- (b) whether the applicant's directors, controllers and chief executive officer are fit and proper persons,
- (c) whether the applicant's records comply with relevant statutes, codes and guidelines; and
- (d) any other relevant information.

**Approval Conditions.** The HKMA may attach conditions to the certificates of approval of money brokers, to change the conditions, to examine approved money brokers and to seek information from them.

**Appeal.** Where an applicant is aggrieved by the HKMA's decision (for example, refusing to approve its application, attaching or changing conditions attached to its certificate of approval, proposing revocation of the approval etc.), it may appeal against such decision to the Chief Executive in Council.

### 3.2.4 List of required application documents

The applicant should submit its application with the following supporting documents/information to the HKMA:

Supporting documents
<ul style="list-style-type: none"><li>• The applicant's financial statements of the past three years;</li><li>• A description of the applicant's organization and staff resources;</li><li>• Documents on the applicant's constitution;</li><li>• Questionnaire regarding the background, experience, and qualifications of the applicant's directors;</li><li>• Particulars of the applicant's direct and indirect ownership, including the names of all controllers and the amount of their shareholdings;</li><li>• Particulars of its accounting systems and internal control systems;</li><li>• A statement stating whether its operations are already supervised and by whom;</li><li>• Where the applicant is to establish an operation in Hong Kong, a business plan for the first three years of operations stating the intended nature and scale of its business and its business strategies; and</li><li>• Where the applicant is resident abroad and intends to provide a service to persons in Hong Kong (one of which is an authorized institution), the intended scope, scale, and nature of its money broking services to be provided to persons in Hong Kong for the first three years.</li></ul>

### 3.3 Stored value facilities business

Stored value facilities (the “SVFs”) are licensed and supervised by the HKMA. An SVF is defined under sections 2 and 2A of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584 of the Laws of Hong Kong) (the “PSSVFO”) that a facility is a SVF if:-

- (a) it may be used for storing the value of an amount of money that paid into the facility from time to time and may be stored on the facility under its rules; and
- (b) it may be used for either or both of the following purposes:-
  - (i) as a means of making payments for goods or services, or
  - (ii) as a means of making payments to another person (other than payments mentioned in sub-paragraph (i) above),

under an undertaking (whether express or implied) given by the issuer.

The above definition of SVF shall cover both device-based SVF (e.g. value stored in an electronic chip on a card or a physical device such as prepaid cards and watches) and non-device based SVF (e.g. value stored on a network-based account which can be accessed through internet, a computer network or mobile network such as e-wallets).

#### 3.3.1 Mandatory SVF licensing regime

**Licence for multi-purpose SVF.** Issue of a SVF in Hong Kong is regulated under a mandatory licensing regime administered by the HKMA. Unless exempted under the PSSVFO, issuer of a multi-purpose SVF must obtain a SVF licence from the HKMA.

**Licence not required for single-purpose SVF.** A single-purpose SVF<sup>85</sup>, which is a facility that may only be used as a means of prepayment for goods and services provided by the SVF issuer but not those provided by participating merchants, is not subject to the licensing requirement under PSSVFO.

**SVF exempted from licensing.** Certain types of multi-purpose SVFs are exempted from the aforesaid licensing regime<sup>86</sup>, including:-

- (a) SVFs used for certain cash reward schemes;
- (b) SVFs used for purchasing certain digital products;
- (c) SVFs used for certain bonus point schemes;
- (d) SVFs used within limited group of goods or services providers<sup>87</sup>; and
- (e) SVFs used within certain premises<sup>88</sup>.

<sup>85</sup> Section 2A(5) of the PSSVFO.

<sup>86</sup> Section 8ZZZB of and Schedule 8 to the PSSVFO.

<sup>87</sup> Unless the amount of float of the facility exceeds HKD 1,000,000 or its equivalent or the issuer issued more than one such facility and the aggregate amount of the float of such facilities exceeds HKD 1,000,000 or equivalent.

<sup>88</sup> Ditto.

The HKMA may also exempt<sup>89</sup> an SVF from the PSSVFO if it is satisfied that the SVF poses immaterial risks to the user or potential user or payment or financial system of Hong Kong.

**Licence not required for licensed banks.** Licensed banks in Hong Kong are regarded as being granted an SVF licence, in other words, a SVF licence is not required for licensed banks<sup>90</sup>.

### 3.3.2 Criteria for licence

The HKMA may grant a SVF licence to a SVF applicant only if it is satisfied that all the below minimum licensing criteria are met<sup>91</sup>:-

Minimum Criteria <sup>92</sup>	Details
Principal Business <sup>93</sup>	Principal business of the applicant must be the issue of SVF under a SVF licence. The applicant should not engage in business not related to the issue of SVF unless the conduct of such business is necessary for the operation of the SVF business. However, the applicant may provide remittance and/or money changing services as ancillary or incidental services to its principal business.
Financial Resources <sup>94</sup>	The applicant must satisfy either of the following: <ul style="list-style-type: none"> <li>its paid-up share capital is not less than HKD 25 million or equivalent;</li> <li>its other financial resources that are equivalent to or exceed those mentioned above.</li> </ul>
Fit and Proper, Knowledge and Experience <sup>95</sup>	Each chief executive, director, controller, senior executives and key personnel of the applicant must be a fit and proper person and has sufficient skill, knowledge and experience to fulfil his duties and responsibilities of his position or to run the SVF business of the applicant. The applicant must ensure the HKMA is kept informed of the identity of the chief executive, director and controller of the applicant and consent from the HKMA is received prior to such appointment.
Prudential and Risk Management <sup>96</sup>	The applicant must have in place prudential and appropriate risk management policies and procedures to manage risks arising from the operation of its SVF business.

<sup>89</sup> Section 8ZZZD of the PSSVFO.

<sup>90</sup> Section 8G of the PSSVFO.

<sup>91</sup> Part 2 of Schedule 3 to the PSSVFO.

<sup>92</sup> Part 2 of Schedule 3 to the PSSVFO.

<sup>93</sup> Paragraph 1 of Part 2 of Schedule 3 to the PSSVFO.

<sup>94</sup> Paragraph 2 of Part 2 of Schedule 3 to the PSSVFO.

<sup>95</sup> Paragraphs 3 & 4 of Part 2 of Schedule 3 to the PSSVFO.

<sup>96</sup> Paragraph 5 of Schedule 3 to the PSSVFO.

<b>AML / CFT measures<sup>97</sup></b>	The applicant must have in place in the SVF scheme adequate and appropriate systems of control for preventing or combating possible money laundering or terrorist financing (ML/TF) and ensure it complies with (a) the provisions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the Laws of Hong Kong) that are applicable to the applicant and (b) the measures (if any) promulgated by the HKMA whether in the form of rules, regulations, guidelines or otherwise, to prevent, combat or detect ML/TF.
<b>Management of Float and SVF Deposit<sup>98</sup></b>	The applicant has in place adequate risk management policies and procedures for managing the float and SVF deposit to ensure that there will always be sufficient funds for the redemption of the stored value that remains on the facility.
<b>Redemption of outstanding stored value<sup>99</sup></b>	The applicant must redeem in full the total of the stored value that remains on the facility as soon as practicable after being requested by the user to do so.
<b>Purpose and soundness of relevant scheme<sup>100</sup> and operating rules<sup>101</sup></b>	The applicant must satisfy the HKMA that the SVF scheme and its operating rules will be prudent and sound, and the scheme is operated prudently and with competence and in a manner that will not adversely affect the stability of any payment system in Hong Kong or the interest of the user or potential user of the SVF to which the SVF scheme relates.
<b>Applicant<sup>102</sup></b>	The applicant must be a company to apply for a SVF licence from the HKMA. Overseas applicant shall apply for registration as a registered non-Hong Kong company within one month after establishing a place of business in Hong Kong.

### 3.3.3 Steps for application for licence

**Approval Procedures.** The applicant is encouraged to first discuss its plan with the licensing team of the HKMA prior to its submission of a formal application.

In the case where the applicant's parent company is also engaging in a SVF business and regulated in its country of incorporation, the HKMA may consult the relevant overseas supervisors in relation to (a) the financial soundness and the overall internal control of the parent company; and (b) whether there is any concern for the parent company to extend its SVF business to Hong Kong.

**Licence Fee.** Where the applicant being granted a SVF licence by the HKMA, the licensee shall pay to the HKMA a licence fee of HKD 113,020 (as at March 2020) within 14 days after the date on which its licence takes effect (and then annually on or before each anniversary date).

<sup>97</sup> Paragraph 6 of Schedule 3 to the PSSVFO.

<sup>98</sup> Paragraph 7 of Schedule 3 to the PSSVFO.

<sup>99</sup> Paragraph 8 of Schedule 3 to the PSSVFO.

<sup>100</sup> Paragraph 10 of Schedule 3 to the PSSVFO.

<sup>101</sup> Paragraph 9 of Schedule 3 to the PSSVFO.

<sup>102</sup> Section 8E(2) of the PSSVFO.

**Approval Conditions**<sup>103</sup>. The HKMA may attach conditions to the SVF licence such as imposing a higher level of capital requirement, restrictions on SVF business, requirements relating to protection of the float or SVF deposit, cessation of the issue of the SVF or the receipt of any amount for the storage of the SVF, or disclosure of any information relating to the business of the licensee, and restrictions as to the maximum amount of value that may be stored on an SVF, etc..

**Decision Review.** Where an applicant is aggrieved by the HKMA's decision, it may refer the decision to the Payment Systems and Stored Value Facilities Appeals Tribunal for review<sup>104</sup>.

### 3.3.4 List of required application documents

The applicant should submit its completed application form for SVF licence with the following supporting documents/information to the HKMA:

Supporting documents
<ul style="list-style-type: none"><li>• A report on paid-up capital certified by external auditor;</li><li>• A copy of the ownership structure;</li><li>• The latest audited financial statements for each institutional controller;</li><li>• Completed application form(s) for each controller;</li><li>• Outline of the senior management and staff structure;</li><li>• Completed application forms for chief executive, alternate chief executive and director;</li><li>• Information on the systems of control for the appointment of managers;</li><li>• Independent assessment report(s) on (i) corporate governance and risk management; (ii) float management; (iii) anti-money laundering and counter-terrorist financing (AML/CFT) systems; (iv) technology risk management; (v) payment security management; and (vi) business continuity management;</li><li>• Copies of risk management policies and procedures on AML/CFT systems;</li><li>• A copy of money laundering and terrorist financing risk assessment report;</li><li>• Copies of risk management policies and procedures for managing the float and SVF deposit;</li><li>• A copy of the investment policy for managing the investment of float;</li><li>• A copy of contract, and terms &amp; conditions between the applicant and the user;</li><li>• A copy of operating rules for each SVF scheme;</li></ul>

<sup>103</sup> Section 8F(2) of the PSSVFO.

<sup>104</sup> Section 35 of the PSSVFO.

- A copy of contractual agreements which describe the rights and obligations of the related parties involved in the SVF scheme;
- Business plan that covers a three-year time horizon;
- Business projection for the upcoming three years of operations;
- Board resolution in support of the application, certified as true copy by the chief executive;
- Two copies of the articles of association (or equivalent) of the applicant company in English or Chinese, certified as true copies by the chief executive;
- Two copies of the applicant's audited annual reports and/or audited financial statements for the past three financial years immediately prior to application. The reports should be certified as true copies by the chief executive;
- Each of the followings (certified as true copy by the chief executive): (i) Certificate of incorporation; (ii) Return of allotments; (iii) Incorporation Form–Form NC1 or NNC1; and (iv) Business registration certificate.

### 3.4 Money service operators business

Money service operators (the “**MSO**”) refer to persons who operate or wish to operate a money service, including money changing service or remittance service and such persons shall apply for a licence (the “**MSO Licence**”) from the Commissioner of Customs & Excise (the “**CCE**”) for operating such money service.

A money changing service refers to service for exchanging of currencies that is operated in Hong Kong as a business, but does not include such a service that is incidental to the main business e.g. retail business accepting foreign currencies in transactions or that is operated by a person who manages a hotel if the service: (a) is operated within the premises of the hotel primarily for the convenience of guests of the hotel; and (b) consists solely of transactions for the purchase by that person of non-Hong Kong currencies in exchange for Hong Kong currency.

A remittance service means a service of one or more of the following that is operated in Hong Kong as a business: –

- (a) sending or arranging for the sending of money to a place outside of Hong Kong;
- (b) receiving or arranging for the receipt of money from a place outside Hong Kong;
- (c) arranging for the receipt of money in a place outside of Hong Kong.

#### 3.4.1 Licensing exemption

According to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (the “**AMLO**”), the MSO licensing requirement does not apply to

the Government nor to<sup>105</sup>: -

- (a) an authorised institution<sup>106</sup>;
- (b) a licensed corporation<sup>107</sup>, an authorised insurer<sup>108</sup>, a licensed insurance broker<sup>109</sup>, a licensed insurance agent<sup>110</sup>, an SVF licensee<sup>111</sup>, a system operator<sup>112</sup> or settlement institution<sup>113</sup> of a designated retail payment system, that operates a money service that is ancillary to its principal business; or

### 3.4.2 Criteria for licensing

The CCE may grant a MSO Licence to an applicant only if it is satisfied that all the below minimum licensing criteria are met:-

Minimum Criteria <sup>114</sup>	Details		
<b>Fit and Proper Person<sup>115</sup></b>	The CCE may grant a licence to an applicant only if the CCE is satisfied that the applicant (or its partner or director if it is a partnership or a corporation respectively) and its ultimate owner (as defined below) is a “fit and proper person”, where “ultimate owner” <sup>116</sup> means:-		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; vertical-align: top;">Individual</td> <td>(a) means another individual who ultimately owns or controls the money service business; or  (b) if such individual is acting on behalf of another person, means the other person.</td> </tr> </table>	Individual	(a) means another individual who ultimately owns or controls the money service business; or  (b) if such individual is acting on behalf of another person, means the other person.
	Individual	(a) means another individual who ultimately owns or controls the money service business; or  (b) if such individual is acting on behalf of another person, means the other person.	
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; vertical-align: top;">Partnership</td> <td>means an individual:- (a) is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;  (b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or  (c) exercises ultimate control over the management of the partnership.</td> </tr> </table>	Partnership	means an individual:- (a) is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;  (b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or  (c) exercises ultimate control over the management of the partnership.	
Partnership	means an individual:- (a) is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;  (b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or  (c) exercises ultimate control over the management of the partnership.		

<sup>105</sup> Section 25 of the AMLO.

<sup>106</sup> As defined under section 2(1) of the BO.

<sup>107</sup> As defined under section 1 of Part 1 of Schedule 1 to the SFO.

<sup>108</sup> It shall mean an insurer authorised under the Insurance Ordinance (Cap. 41 of the laws of Hong Kong) (the “IO”).

<sup>109</sup> As defined under section 2(1) of the IO.

<sup>110</sup> As defined under section 2(1) of the IO.

<sup>111</sup> As defined under section 2 of the PSSVFO.

<sup>112</sup> As defined under section 2 of the PSSVFO.

<sup>113</sup> As defined under section 2 of the PSSVFO.

<sup>114</sup> Part 5 of the AMLO.

<sup>115</sup> Section 30(3) of the AMLO.

<sup>116</sup> Section 24 of the AMLO.

	Corporation	<p>means an individual who:</p> <p>(a) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;</p> <p>(b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or</p> <p>(c) exercises ultimate control over the management of the corporation.</p>
<b>Particular Premises</b>	<p>The particular premises for the operation of the MSO business shall be considered by CCE to be suitable for the operation of a money service. If there are no particular premises, the applicant must provide a local management office and a correspondence address in the application form. In case where such premises are domestic premises, the applicant should obtain a written consent from every occupant for any authorized person who is authorized by the CCE to enter the premises for exercising the powers under section 9 of the AMLO, including inspecting and making copies of documents relating to business carried on by an MSO, etc..</p>	

### 3.4.3 Application for approval

**Application for Licence.** An application for grant of an MSO Licence must be made to the CCE by submitting an application form (Form 1), the relevant annex, a business plan, AML/CFT policies, together with the Fit and Proper Person Declaration Form(s), supporting documents and payment of the application fee.

**Business Plan.** The business plan should be a comprehensive overview of the business, which includes but not limited to detailed operation mode, organizational structure, payment system, target customer, staffing, and finance of the company.

**AML/CFT policies.** The AML/CFT policies should set out the applicant's own policies, procedures and controls in the relevant operational areas with a view to mitigating any potential ML/TF risks and fulfilling the relevant statutory and regulatory requirements.

**Application Fee.** The applicant shall pay to the CCE an application fee for the grant of a MSO Licence of HKD 3,310, plus HKD 2,220 and HKD860 for each additional business premises and each person who is subject to the fit and proper person test respectively.

**Term of Licence.** An MSO Licence is normally valid for 2 years beginning on the date on which the licence is granted.

## Chapter 4 – Trust and Company Service Business

### 4.1 Trust and company service licensing regime

Any person who would like to carry on a trust and company service business in Hong Kong shall apply for a Trust and Company Service Provider (the “**TCSP**”) licence from the Hong Kong Companies Registry (the “**CR**”). The licensing regime for TCSP is governed under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the Laws of Hong Kong) (the “**AMLO**”).

A trust or company service business<sup>117</sup> means the business of provision, in Hong Kong, by a person of one or more of the following services to other persons:-

- (a) forming corporations or other legal persons;
- (b) acting, or arranging for another person to act (i) as a director or a secretary of a corporation; (ii) as a partner of a partnership; or (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address for a corporation, a partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act (i) as a trustee of an express trust or similar legal arrangement; or (ii) as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market.

### 4.2 Licensing exemption

According to section 53B of the AMLO, the TCSP licensing requirement (including the fit and proper test) does not apply to the Government nor to: -

- (a) an authorised institution<sup>118</sup>;
- (b) a licensed corporation<sup>119</sup> that operates a trust or company service business in Hong Kong that is ancillary to the corporation’s principal business;
- (c) an accounting professional;
- (d) a legal professional; or
- (e) a person of a class or description prescribed by the Secretary for Financial Services and the Treasury by regulation.

### 4.3 Criteria for licensing

The CR may grant a TCSP licence to an applicant only if it is satisfied that all the below licensing criteria are met<sup>120</sup>:-

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<sup>117</sup> Section 1 of Part 1 of Schedule 1 to the AMLO.

<sup>118</sup> As defined under section 2(1) of the BO.

<sup>119</sup> As defined under section 1 of Part 1 of Schedule 1 to the SFO.

<sup>120</sup> Section 53H of the AMLO.

Minimum Criteria	Details	
Fit and Proper Person <sup>121</sup>	The CR may grant a licence to an applicant only if the CR is satisfied that the applicant (or each partner or each director if the applicant is a partnership or a corporation respectively) and each ultimate owner (as defined below) of the applicant is a “fit and proper person”, where “ultimate owner” <sup>122</sup> shall have the following meaning:-	
	Individual	(a) means another individual who ultimately owns or controls the trust or company service business; or  (b) if such individual is acting on behalf of another person, means the other person.
	Partnership	means an individual:-  (a) is, directly or indirectly, entitled to or controls, more than a 25% share of the capital or profits of the partnership, or entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or  (b) exercises ultimate control over the management of the partnership.
	Corporation	means an individual who:-  (a) is, directly or indirectly, entitled to or controls, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation, or entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or  (b) exercises ultimate control over the management of the corporation.

#### 4.4 Application procedures

**Application for Licence.** An application form (Form TSCP1), together with the Fit and Proper Person Statement Form(s), a valid business registration certificate, supporting documents and payment of the application fee should be submitted to the CR.

**Application Fee.** The applicant shall pay to the CR an application fee of HKD 3,440, plus HKD 975 for each additional person who is subject to fit and proper person test.

**Term of Licence.** A TCSP licence is normally valid for 3 years beginning on the date on which the licence is granted.

<sup>121</sup> Section 53H of the AMLO.

<sup>122</sup> Section 24 of the AMLO.

## About us

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## Contact us

We are pleased to assist you in exploring business opportunities in Hong Kong. For enquiries, please contact members of our Corporate & Commercial Department:



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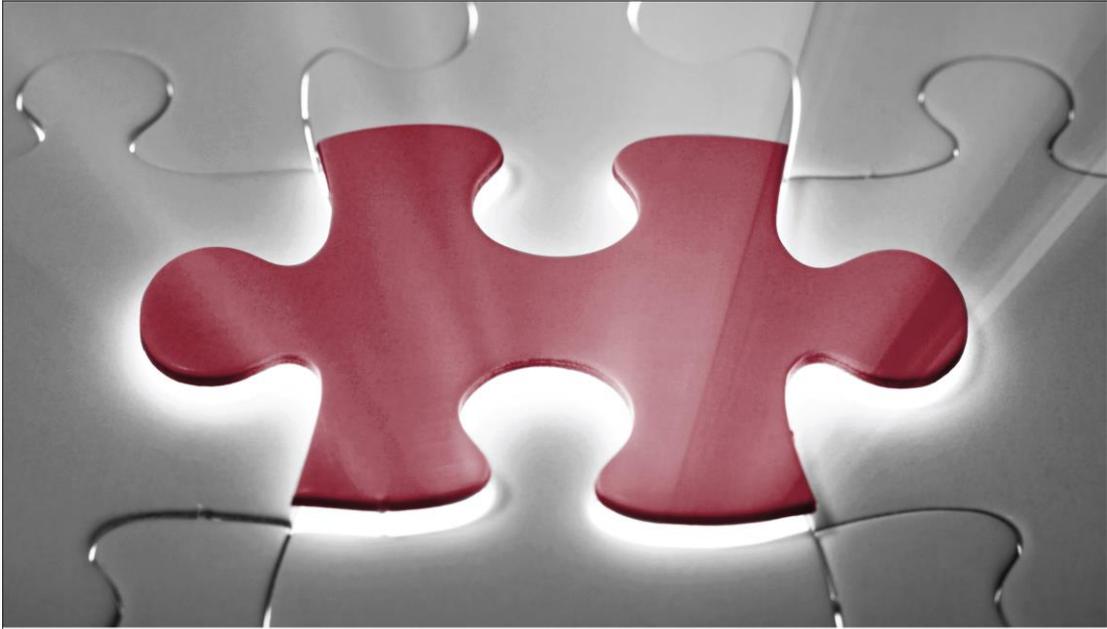


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