HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

12 Sep 2002

Register of relevant individuals to be maintained by the HKMA under the Banking (Amendment) Ordinance 2002

Our Ref : G4/26/5C
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12 September 2002

To: The Chief Executive
All Authorized Institutions

Dear Sir/Madam,

Register of relevant individuals to be maintained by the HKMA under the Banking (Amendment) Ordinance 2002

You will be aware from my letter of 5 July 2002 that the HKMA will maintain a register of "relevant individuals" (HKMA Register) in accordance with the Banking (Amendment) Ordinance 2002 (BAO 2002) under the new securities supervisory regime. In this regard, I am writing to advise you of the key features of the HKMA Register and the necessary preparatory work regarding the submission of information for this purpose. In addition, this letter covers some other important issues relating to relevant individuals that require early preparation, if it is your institution's intention to register with the Securities and Futures Commission (SFC) under the Securities and Futures Ordinance (SFO).

You are advised to pay due attention to the following sections which may have a bearing on your institution and take appropriate measures to meet the relevant requirements, where applicable. Unless otherwise specified, the terms used in this circular have the same meaning as in the BAO 2002 and the SFO.

It should be noted that only those individuals whose names are entered, or are deemed to have been entered during the transitional period, in the HKMA Register may engage in any regulated function in any regulated activity of a registered institution (RI) or a deemed RI when the new regime commences.

The HKMA Register

The revised section 20 of the Banking Ordinance (BO) requires that the HKMA Register shall contain specified particulars of every relevant individual of a RI[1] and be made available for public inspection in the form of an on-line record.

We intend to make the HKMA Register available from the date of commencement of the BAO 2002 and the SFO (you will be notified of the actual commencement date when it is fixed). The specified particulars of relevant individuals that will be included in the HKMA Register are set out in ***Annex 1***.

The specified particulars of relevant individuals to be included in the HKMA Register will be in line with those required for licensed representatives under the proposed Securities and Futures (Licensing and Registration - Information) Rules[2] in respect of the SFC's public register insofar as they are applicable. The HKMA Register will therefore include, among others, the records of public disciplinary actions taken against every relevant individual by the HKMA and the SFC in the past 5 years.

Transitional arrangements

This section sets out the transitional arrangements that will apply to those individuals who are engaged by an AI to perform any act which would constitute a regulated function in a regulated activity under the SFO immediately before the commencement of the transitional period.

As described in my letter of 5 July 2002, under Schedule 10 of the SFO, there will be a transitional period of two years from the commencement of the Ordinance for the following categories of AIs (deemed RIs) to apply for migration to the new regime (i.e. to apply for registration with the SFC):

1. An AI which immediately before the commencement of the SFO is an **exempt dealer** under the to-be-repealed Securities Ordinance shall be deemed to have been registered with the SFC for Type 1, Type 4, Type 6 and (subject to the condition of not providing a service of managing a portfolio of futures contracts for another person) Type 9 regulated activities during the transitional period.
2. Where an AI falling under (1) above carries on a business in providing **automated trading services** (e.g. providing to investors or other market participants an electronic trading system for securities, which includes dealing through the Internet) immediately before the commencement of the SFO, it shall be deemed to have been registered for Type 7 regulated activity as well.
3. An AI which immediately before the commencement of the SFO is **either a licensed bank that engages in investment advisory activities or an exempt investment adviser** under the to-be-repealed Securities Ordinance shall be deemed to have been registered with the SFC for Type 4, Type 6 and (subject to the condition of not providing a service of managing a portfolio of futures contracts for another person) Type 9 regulated activities during the transitional period.

Where immediately before the commencement of the transitional period, an individual is engaged by a deemed RI to perform any act which would constitute a regulated function in a regulated activity under the SFO, that individual shall be regarded as a relevant individual in respect of that regulated activity and his name shall be deemed to have been entered in the HKMA Register during the transitional period.

Notwithstanding this transitional provision in the SFO, it is the intention of the HKMA to place the names of all "deemed individuals" on its register using the powers under the revised section 20 of the BO when that comes into operation along with the SFO.

The reason for this is to avoid a situation where the names of some individuals would be placed on the register during the transitional period (i.e. those newly engaged after the commencement date) while others (i.e. the deemed individuals) would not. This could be a potential source of confusion. The HKMA Register will provide a clear indication that the deemed individuals are "registered under transitional arrangements".

This means that every AI which is currently an exempt dealer, an exempt investment adviser, and/or a licensed bank that engages in investment advisory activities should prepare as soon as possible (if they have not already done so), and thereafter maintain, a list of those individuals who perform any act that would constitute a regulated function in a regulated activity when the new regime commences. These AIs should also maintain the particulars of those individuals as specified in Annex 1.

AIs will be required to submit to the HKMA a list of those individuals (together with their particulars) as of a specified date (which will be advised later) before the commencement of the BAO 2002 and the SFO via the STET system in the form of a standard spreadsheet set out in ***Annex 2***[3].

Any subsequent amendments to the list i.e. additions or deletions after the submission of the spreadsheet up to the commencement of the BAO 2002 and the SFO as well as changes to the previously reported particulars of individuals should be notified to the HKMA. The final list of names immediately prior to commencement of the two Ordinances will comprise the "deemed individuals" referred to above.

The subsequent amendments will be handled by a web-based electronic form through on-line submission. This is also to be adopted on an on-going basis after the commencement of the new regime (see below). Further details of this on-line submission mechanism will be provided in due course.

The purpose of collecting the list of names and the particulars of the relevant individuals before the commencement of the two Ordinances is to give enough time for the setting up of the HKMA Register on the first day of the new regime. The names and the specified particulars of the individuals will be placed on the register on that date.

It should be noted that certain personal data (e.g. Hong Kong Identity Card/passport number and date of birth) are obtained for administrative purposes only and will not be included in the HKMA Register for public inspection. This information will however be passed to the SFC in order to obtain any record of public disciplinary actions taken against the individual during the last 5 years (if the individual was previously engaged in an activity that brought him or her within the scope of the SFC's disciplinary powers). Such record of disciplinary action will be included in the HKMA Register.

AIs should notify each individual concerned of the HKMA's collection of his or her personal data, the purpose of such collection as mentioned herein and the individual's rights under the Personal Data (Privacy) Ordinance (PDPO) as summarised in Annex 3. The HKMA will treat all data about the individuals concerned in accordance with the PDPO. Any disclosure of such data to other persons will be in accordance with sections 120 and 121 of the BO.

Arrangements for individuals engaged after the start of the transitional period

This section sets out the arrangements that will apply to those individuals who are engaged by either a deemed RI or a newly registered RI to perform any act that would constitute a regulated function in a regulated activity under the SFO after the commencement of the transitional period, i.e. once the SFO and the BAO 2002 have come into operation.

It should be noted that such individuals will not be "deemed individuals" under the transitional arrangements.

The names and particulars (as set out in Annex 1) of the relevant individuals should be submitted to the HKMA for inclusion on the HKMA Register prior to their beginning to act for the RI or deemed RI in respect of any regulated activity. They should not begin to act in that capacity until their names and specified particulars have been entered in the register.

As mentioned, the submission of the names and particulars of the relevant individuals will be made by on-line submission to the HKMA via STET. The same system will be used to notify RIs that the information has been placed on the HKMA Register. Further details of this reporting mechanism will be provided in due course.

A RI must notify the HKMA of any subsequent changes to the information submitted for the purpose of the HKMA Register, within seven business days after such changes take place. This also applies to information relating to "deemed individuals".

The HKMA will conduct vetting of the relevant individuals with the SFC prior to placing their names and specified particulars on the HKMA Register. Under normal circumstances, it is envisaged that the entry will be made on the register within five business days after submission to the HKMA.

Arrangements in respect of Executive Officers (EOs)

Special arrangements will apply in respect of those individuals who will act in the capacity of EOs with responsibility for directly supervising the conduct of a regulated activity.

It should be noted that there is no statutory requirement for deemed RIs to appoint EOs during the transitional period[4]. However, those institutions which apply for and are granted registered status under section 119 of the SFO will need to appoint at least two EOs in respect of each of the regulated activities they undertake.

Under the new section 71C of the BO no person may become an EO of a RI without the consent in writing of the Monetary Authority. RIs or applicants for RI status will therefore need to submit to the HKMA in writing their applications for consent for individuals to become EOs under section 71C. The individual concerned should not act as an EO prior to obtaining the HKMA's consent.

If consent is granted, the HKMA will notify the RI and the EO concerned and will enter the name and specified particulars of the EO concerned in the HKMA Register. Further details of the arrangements in respect of EOs will be given in due course.

Fitness and propriety of relevant individuals

AIs need to ensure that the relevant individuals engaged by them in regulated activities, i.e. those whose specified particulars are to be included in the HKMA Register, are fit and proper for the purpose. This will be a statutory condition of registration under the new regime, but AIs should ensure that those individuals engaged to act on their behalf prior to the commencement of the SFO and the BAO 2002 (i.e. deemed individuals) are also fit and proper. In this regard, AIs are required to observe the SFC Fit and Proper Criteria as well as the supplementary Guidance Notes on Competence and Continuous Professional Training.

Regarding competence, it should be noted that different regulated activities may require a pass in different papers of the recognised industry qualifications. For instance, the recognised examinations to be taken by persons who deal in/advise on securities and those who deal in/advise on futures contracts are not entirely the same. In other words, a relevant individual who has passed the recognised examinations for dealing in/advising on securities may not be considered competent for engaging in Type 2 (dealing in futures contracts) and Type 5 (advising on futures contracts) regulated activities. You should refer to the Frequently Asked Questions for Guidance Note on Competence posted on the SFC's web-based Regulatory Handbook for more details.

AIs should put in place adequate policies and procedures to ensure that their relevant individuals (whether "deemed" or not) are and continue to be fit and proper, according to the Fit and Proper Criteria and the supplementary Guidance Notes. Set out in *Annex 4* are the internal controls that should be implemented in this connection.

Temporary engagement

To be in line with the SFC's granting of temporary licences for representatives under the SFO, a RI may temporarily engage an individual in the conduct of a regulated function in one or more regulated activities (other than providing automated trading services (Type 7) and asset management (Type 9)) provided that:

i. the engagement is for a period not exceeding 3 months;
ii. such engagements of the same individual should not in total exceed 6 months in any period of 24 months;
iii. such individual carries on the relevant activity for or on behalf of the RI or one of its group companies in a place outside Hong Kong;
iv. the RI is satisfied that the individual is a fit and proper person to be so engaged for the regulated activity; and
v. the RI must implement proper internal control procedures and maintain adequate records to demonstrate that the above conditions have been satisfied.

The specified particulars of such temporarily engaged staff would also need to be included in the HKMA Register, i.e. they are also relevant individuals. It is therefore the responsibility of the RI to ensure that all temporarily engaged staff are fit and proper to be so engaged for the regulated activity. In assessing the competence of such temporarily engaged staff, authorization by an overseas regulator and industry knowledge gained outside Hong Kong will be taken into account. Such staff will not be required to fulfil the continuous professional training requirements since each period of temporary engagement will not exceed 3 months. These arrangements are in line with those applicable to the temporary licences granted by the SFC.

Notification of certain events to the HKMA

To be in line with the reporting requirements imposed by the SFC on licensed representatives under the proposed Securities and Futures (Licensing and Registration - Information) Rules, RIs will be required to notify the HKMA in writing within seven business days upon knowledge of the occurrence of certain matters (including any subsequent changes) which might reasonably be considered relevant to the fitness and propriety of any of their relevant individuals (both EOs and non-EOs), whether deemed or otherwise, to act in such capacity under the new regime.

As proposed, these include whether the individual is or has been:

i. convicted of or charged with any criminal offence (other than a minor offence[5]) in Hong Kong or elsewhere;
ii. subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body[6] (as the case may be) in Hong Kong or elsewhere;
iii. subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
iv. engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and propriety of the individual; or
v. bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance.

While the proposed Rules have yet to be finalized, we expect those AIs that will become deemed RIs or intend to apply for registration under the SFO to ensure they have adequate procedures and systems in place to meet the reporting requirements upon the commencement of the new regime. This should also be clearly communicated to all relevant individuals. We will inform you of the finalized list of events to be notified to the HKMA in due course.

Should you have any questions relating to this letter, please contact Miss Maisy Chang at 2878-1604, Mr. Neville Ng at 2878-8283 or Mr. Samuel Leung at 2878-1541.

Yours faithfully,

D T R Carse
Deputy Chief Executive

Encl. Annex 1 (PDF file, 75KB)
Annex 2
- Proforma Spreadsheet for the HKMA Register (PDF file, 103KB)
- Notes of completion (PDF file, 128KB)
Annex 3 (PDF file, 56KB)
Annex 4 (PDF file, 61KB)

cc: FSTB (Attn: Miss Emmy Wong)
SFC (Attn: Mrs Alexa Lam)

[1] A relevant individual in relation to a RI is defined in the revised section 20 of the BO as an "individual who performs for or on behalf of or by an arrangement with the institution any regulated function in a regulated activity".

[2] As proposed this will replace the draft Securities and Futures (Intermediary Information) Rules published earlier for consultation.

[3] The actual spreadsheet template will be provided via STET nearer the time of submission.

[4] Notwithstanding this, AIs should identify well in advance the individuals that will fulfil the role of EOs in each of the regulated activities they will undertake. It should be noted that individuals who perform functions similar to that of an EO but who are not formally appointed as EOs during the transitional period are nevertheless relevant individuals, and as such their specified particulars should be included in the HKMA Register.

[5] For this purpose, "minor offence" means an offence punishable by a fixed penalty, under the Fixed Penalty (Traffic Contraventions) Ordinance, or the Fixed Penalty (Criminal Proceedings) Ordinance, or the Fixed Penalty (Public Cleanliness Offences) Ordinance, or equivalent legislation of a place outside Hong Kong.

[6] For this purpose, a "criminal investigatory body" means the Hong Kong Police Force and the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance, and bodies carrying out criminal investigatory functions in Hong Kong or elsewhere.

Last revision date : 01 August 2011