

TOPIC 1 - OVERVIEW

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1. INTRODUCTION

1.1 Background

- **Why Regulate:** Asset management industry represents a significant amount of money investment in a wide range of products by a wide range of people
- **Regulatory Objective:** Ensure that this significant market operates in an orderly, competitive and efficient manner (although many assets are under management outside of Hong Kong)
- Regulation needs to cover products, services, intermediaries and investors
- Main asset management products are “**Collective Investment Schemes (CISs)**” involving unit trusts and mutual funds and include:

- | | |
|-----------------------------------------------------------------|---------------------------------------------------------|
| ➤ Equity funds | ➤ Hedge funds |
| ➤ Bond funds | ➤ Structured funds |
| ➤ Feeder funds | ➤ Funds that invest in financial derivative instruments |
| ➤ Umbrella funds | ➤ Listed open-ended funds |
| ➤ Money market funds | ➤ Closed-ended funds |
| ➤ Unlisted index funds and index tracking exchange traded funds | |

- **Service providers (intermediaries) and services** include:

Service providers	Services
➤ Fund houses	➤ Management of CISs
➤ Fund management companies	➤ Discretionary portfolio management
➤ Stock brokers	➤ Sales, marketing and distribution
➤ Banks	➤ Trustee services
➤ Trustees	➤ Custodian services
➤ Custodians	➤ Provision of advice on funds
➤ Financial planners	➤ Financial planning and advising, including portfolio planning
➤ Independent financial advisers	

- **Investors** include:
 - Private banking clients or high net worth individuals (HNWI)
 - Retail clients
 - Institutions

1.2 General Approaches Adopted by Regulators

- **SFC** is primary regulator of the securities and futures industry, whereas the HKMA carries out day-to-day supervision of institutions authorised under the Banking Ordinance

1.2.1 Securities and Futures Commission (SFC)

- **Mission:** “To strengthen and protect the integrity and soundness of the Hong Kong securities and futures markets for the benefit of investors and the industry”
- **International aspects:** Seeks to maintain a regulatory regime consistent with prevailing international practice and is an active member of the International Organisation of Securities Commissions (IOSCO), cooperating with overseas counterparts
- **Collaborative approach:** SFC collaborates with other relevant regulators in Hong Kong and overseas
- **Underlying philosophy:** The SFC does not seek to protect investors from all risks, or assume the responsibilities of senior management of intermediaries, or guarantee that no intermediary will fail. The emphasis is on a balanced approach and an appropriate degree of protection
- **Balance and transparency:** SFC consults both industry practitioners and the public on proposed regulatory developments
- **Exercise of judgment:** SFC seeks to balance interests between legitimate business interests and the interests of both the market and the investing public
- **Principles-based regulation:** The SFC promotes high-level principles, leaving businesses to decide how to implement, thereby securing compliance
- **Intermediary responsibility:** Open dialogue with industry to achieve flexibility within principles of regulation
- **Risk-based regulation:** More attention is paid to where the SFC regards a greater risk to exist
- **Fairness and consistency:** The SFC’s operations are subject to internal controls and external judicial review, as well as review by the Process Review Panel
- **Supervisory approach:** The SFC adopts a balanced approach in supervising intermediaries with particular focus on their business conduct and financial soundness
- **Prudential and business conduct supervision:** The aim is to identify and manage potential risks to contain the damage that may arise
- **Enforcement:** The SFC’s Enforcement Division will investigate major breaches or non-compliance and take disciplinary action
- **Feedback and development:** The SFC’s supervisory work may give rise to feedback to the industry

1.2.2 Hong Kong Monetary Authority (HKMA)

- HKMA has signed MOU with SFC
- Authorized financial institutions (AFIs), which distribute CIS products, are engaged in the fund management industry and are required to be registered institutions within the SFC framework

1.2.3 Mandatory Provident Fund Authority (MPFA)

- MPFA set up to **regulate, supervise and monitor** Mandatory Provident Fund Schemes and oversee compliance with MPFSO
- MPFA approves the scheme **trustees and custodians** and the registration of intermediaries engaged in selling and marketing or giving advice on schemes
- **SFC remains responsible** for authorizing offer documents and marketing material and for approval of investment managers
- MPFA does not have to ensure that schemes are operated to maximise capital or income growth
 - Not part of its obligations to ensure schemes achieve growth specified or are appropriate schemes to achieve investors aims

1.2.4 Insurance Authority (IA)

- IA regulates and supervises insurance industry and has the power to:
 - Issue licenses for insurance intermediaries
 - Conduct supervisory visits and investigations
 - Apply disciplinary sanctions of up to the greater of HK\$10m or three times the profit gained or loss avoided

2. FRAMEWORK OF LAWS AND REGULATIONS

- Securities and Futures Ordinance (SFO) establishes regulatory responsibility of SFC to:
 - License intermediaries
 - Authorise CISs (including REITs)
- SFC implements responsibility through the issue of regulatory rules (Codes of Conduct, Guidelines and Circulars)

2.1 Licensing and Registration Requirements

- SFC operates a single licensing regime
- Each license indicates which one or more of 10 regulated activities is permitted
- Under SFO Schedule 5 Type 9 “Asset Management” is a regulated activity
- Therefore, any person engaging in a regulated activity needs to be licensed by the SFC, unless exempt, and staff and representatives will need to be licensed as representatives
- AFIs engaged in asset management need to register with the SFC as registered institutions and are jointly regulated by the HKMA and SFC for these activities, although HKMA remains **front-line regulator**
- Key **SFO definitions**:

Asset management

Defined as: providing the service of either “**real estate investment scheme management**” or “**securities or futures contracts management**”.

REITs are covered in Topic 3. **Securities or futures contracts management** is defined as: “managing a portfolio of securities or futures contracts for another person by a person other than certain excluded persons”.

Specifically excluded from the above definition are:

- (i) Corporations which only carry on business for **wholly owned subsidiaries or fellow subsidiaries and their holding companies**
- (ii) Persons licensed for Type 1 and/or 2 activities (dealing in securities and/or futures contracts) where asset management is **wholly incidental** to regulated activity
- (iii) AFIs registered with SFC for Type 1 and/or 2 activities (dealing in securities and/or futures contracts) where asset management is **wholly incidental** to regulated activity
- (iv) Certain members of staff of such AFIs where activity is **wholly incidental** to Type 1/Type 2 activities
- (v) Solicitors, counsel, professional accountants and trustees who provide asset management services **wholly incidental** to their professional practices

Securities

Definition covers a wide range of instrument, including:

- Shares, stocks, debentures, loan stocks, funds, bonds or notes
- Rights, options or interests in the above instruments
- Certificates of interest or participation in, or warrants to subscribe for or purchase, the above instruments
- Interests, rights or property commonly known as securities
- Interests in any CISs

Specifically **included** are derivatives such as options (and warrants) in respect of underlying shares

Specifically **excluded** are shares in a private company and interests in CIS which are registered MPF Schemes or contracts of insurance

Futures contracts

A contract or an option on a contract made under a futures market

Collective Investment Scheme (CISs)

Key elements are:

- (i) Arrangement to manage property where day-to-day management is not under control of scheme's participants and:
 - a. Property is managed as a whole by or for person operating arrangement
 - b. Participants' contributions and accruing profits or income are pooled
- (ii) Purpose of the arrangement is to enable participants to receive profits, income or other payments or returns from property or dealings related to it

However, definition specifically excludes:

- (i) Arrangement where participants and operator are in same group of companies
 - (ii) Franchise arrangements
 - (iii) Arrangements where solicitor holds money for clients in professional capacity in course of his work
- Financial Secretary has right to prescribe other interests, rights, property or arrangements as being (or not being) securities, futures contracts or CISs

2.2 Authorization of Collective Investment Schemes (CISs)

- CIS must be authorized by SFC to be offered to the public in Hong Kong
- Part V of SFO provides powers for SFC to regulate offering of investments, and the advertising of these investments, in Hong Kong.
- SFC may, for both the **advertisement and the offering**:
 - Grant authorization subject to additional conditions
 - Withdraw authorization once given
 - Refuse authorization
- SFC requires details of an approved individual to receive notices and decisions
- **SFC must approve** all advertisements, invitations and documents which invite the public to:
 - Enter into an agreement to acquire, dispose of, subscribe for or underwrite securities
 - Enter into a regulated investment agreement
 - Acquire an interest in or participate in a CIS
- **Documents exempt from SFC authorization** include:
 - Prospectuses complying with Companies Ordinance
 - Listing and other documents approved by HKEx
 - Documents issued by certain licensed corporations (for securities, holders of Type 1, 4 or 6 licenses and for futures contracts, holders of Type 2 or 5 license)
 - Advertisements for securities or CISs which will **only be sold to professional investors**
- Sellers or publishers of newspapers containing advertisements in ordinary course of business are excluded from liability
- SFO provisions on **misrepresentation** have general application and apply to advertising
- Section 107 SFO: **Criminal offence** for a person to make any fraudulent or reckless misrepresentation to induce a person to invest with fine and/or imprisonment
- Section 108 SFO: **Civil remedies** for fraudulent, reckless and negligent misrepresentation with compensation for pecuniary loss and/or injunction
- Civil remedies are extended to all directors of company who authorize the misrepresentation
- SFO definitions:

Fraudulent misrepresentation

Any statement which is known by the person making it, at the time it is made, to be false, misleading or deceptive

Reckless misrepresentation

Any statement that, at the time it is made, is false, misleading or deceptive and is made recklessly

Negligent misrepresentation

Any statement, which at the time it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy

Authorisation of Structured Products

- Asset managers may also be involved in authorised structured products
- The SFC may grant authorisation, subject to “any other conditions it considers appropriate”
- There must be an SFC approved person to receive notices and decisions served by the SFC (person must be Type 1 or Type 4 licensed)

2.3 Open-ended Fund Companies (OFCs)

- SFO provides for the creation and regulation of OFCs with limited liability and variable share capital, providing them flexibility to meet investor applications and redemptions
- OFCs are a form of CIS
- Core aspects of this legislative provision include:
 - It is an offence punishable by fine/imprisonment to carry on as an OFC without being SFC registered
 - Key requirements for incorporation/naming/registration of an OFC
 - How shares are to be issued/redeemed and priced
 - Administration and operation of an OFC, including details of directors, investment manager, custodian and auditor
 - An OFC’s disclosure and reporting obligations and governance standards to be complied with
 - SFC regulatory powers regarding OFCs
- SFC has the power to make subsidiary legislation and issue codes/guidelines regarding OFCs. See Topic 2 for coverage of the Securities and Futures (Open-ended Fund Companies) Rules and Topic 3 for coverage of the Code on Open-ended Fund Companies (OFC Code)

2.4 Regulatory Rules issued by SFC

- SFC can issue **Codes of Conduct, Guidelines and Circulars** setting out standards for intermediaries (licensed corporations and registered institutions) and their representatives
- Important codes that apply to all licensed or registered persons include:
 - Code of Conduct
 - Internal Control Guidelines (ICG)
 - Guideline on Anti-Money Laundering and Counter-Terrorist Financing
- Codes specifically concerned with asset management, CISs and MPF products (and covered in Topic 3) include:
 - **Fund Managers Code of Conduct (FMCC)**: conduct requirements for discretionary management of CISs, whether SFC authorised or not, and management of discretionary accounts
 - **SFC's Handbook**: covers a wide range of investment products offered to the public. Section 1 sets out the Overarching Principles
 - **Code on Unit Trusts and Mutual Funds (CUTMF)**: contained in Section II of the Handbook, it sets out requirements for SFC authorization, including documents, minimum operating procedures, and form and substance of advertisements
 - **Code on Real Estate Investment Trusts (Code on REITs)**: guidelines for the authorisation of REITs setting out requirements for the management company, the trustee and their agents
 - **SFC Code on MPF Products**: guidelines on authorization of master trust schemes, industry schemes and pooled investment schemes
 - **OFC Code**: Public OFCs need to comply with both the OFC and the CUTMF. The Code addresses appointment of directors, investment managers and custodians
- **Codes of Conduct and Guidelines** do not have the force of law (they are not primary nor subsidiary legislation). A Court can take breach of them into account
- **Primary impact of a breach** of Codes of Conduct or Guidelines is on assessment of whether intermediary or representative is “fit and proper” and thus, impacts license status
- **Circulars** clarify or confirm practice in relation to specific issues
- Where a code concerning a product, offering document or advertisement authorised by the SFC is breached, the SFC may:
 - Withdraw or impose conditions on the authorisation
 - Not authorise further products, offering documents or advertisements

2.5 Mandatory Provident Fund Schemes Ordinance (MPFSO)

- MPFSO provides for:
 - Establishment of MPF schemes
 - Creation of Mandatory Provident Fund Authority (MPFA) to oversee schemes
 - Arrangement of contributions to and registration and regulation of schemes
 - Exemptions from making contributions
 - Approval, control and regulation of trustees of schemes
- There are three main pieces of subsidiary legislation:
 - **Mandatory Provident Fund Schemes (General) Regulation:** details operational requirements, including trustees, service providers, enrolment, contributions, portability, withdrawal of accrued benefits and investment requirements
 - **Mandatory Provident Fund Schemes (Exemption) Regulation:** details of interface between Occupational Retirement Schemes Ordinance (ORSO) and MPF schemes
 - **Mandatory Provident Fund Schemes (Fees) Regulation:** details fee charging structure for MPF schemes
- MPFA has issued two codes to regulate trustees, service providers and scheme participants:
 - **Code on MPF Investment Funds:** details registration of MPF schemes and approval of MPF products
 - **Code on Disclosure for MPF Investment Funds:** details disclosure of information on MPF schemes, particularly on fees, charges and performance
- MPFA has issued several guidelines on licensing, reporting requirements, investment, scheme operations and interface with ORSO

2.6 Occupational Retirement Schemes Ordinance (ORSO)

- ORSO enacted before setting up of the MFP to:
 - Regulate voluntary ORSO schemes operating in Hong Kong
 - Ensure ORSO schemes are properly administered and funded
 - Provide greater certainty that benefits under schemes would be paid

3. REGULATORS

3.1 Securities and Futures Commission (SFC)

- The SFC is an independent statutory body (created by law under SFO, not part of the Government or civil service)
- The SFC has the duty of regulating the securities and futures industry in Hong Kong
- The directors of SFC are appointed by the Chief Executive of HKSAR and are:
 - The Chairman
 - The Chief Executive Officer
 - At least five other directors, majority of whom must be non-executive directors from suitable sectors of community with industry involvement (directors of listed companies, bankers, lawyers and accountants)

3.1.1 Main Operational Units

- There are five main operating units, as follows
 - **Investment Products Division (IP)**
 - Regulates and approves investment products offered to public
 - Monitors disclosures and ongoing compliance of authorised investment products
 - Develops platforms for market growth and product innovation
 - Registers open-ended fund companies
 - **Intermediaries Division**
 - Primarily responsible for administering licensing requirements and ongoing supervision of licensed corporations
 - Comprises the Licensing Department and the Intermediaries Supervision Department
- Licensing Department**
- Licenses corporations and individuals seeking to conduct an SFC regulated activity in Hong Kong
 - Issues codes and guidelines concerning the fitness and properness of corporations and individuals
 - Deals with issues relating to the continuing suitability of licensed corporations and individuals to be licensed
- Intermediaries Supervision Department**
- Supervises licensed corporations and individuals on ongoing basis

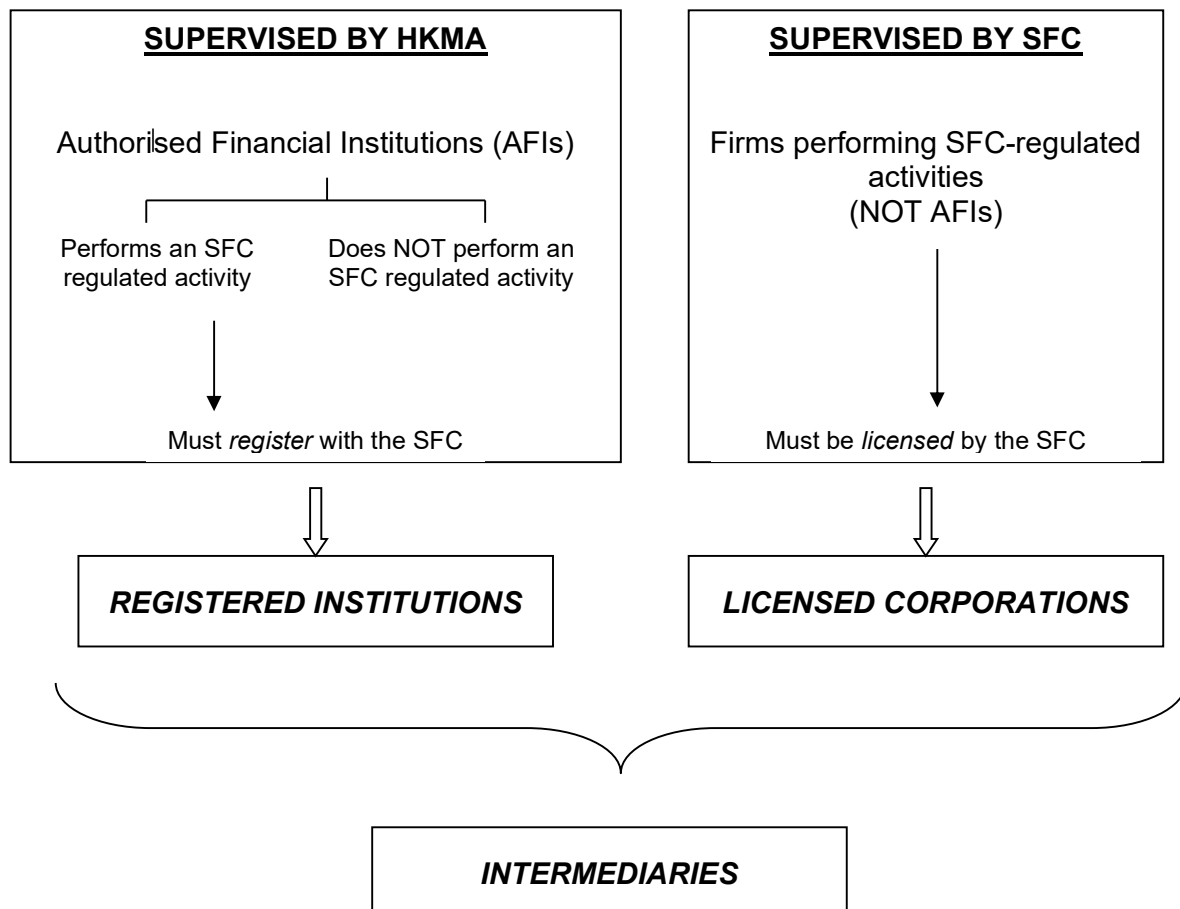
- **Supervision of Markets Division**
 - Supports operation of exchanges in Hong Kong
 - Authorizes Automatic Trading Services (ATS)
 - Strengthens market infrastructure
 - Oversees Investor Compensation Fund
 - Co-ordinates market contingency planning
- **Corporate Finance Division**
 - Administers The Code on Takeovers and Mergers and Share Repurchases
 - Oversees listing related functions of SEHK
 - Administers dual filing regime under SFO
- **Enforcement Division**
 - Monitors market to detect possible market misconduct
 - Investigates breaches of SFO and codes
 - Inspects listed companies suspected of impropriety
 - Enforces SFO laws

3.1.2 Regulatory committees, panels and tribunals

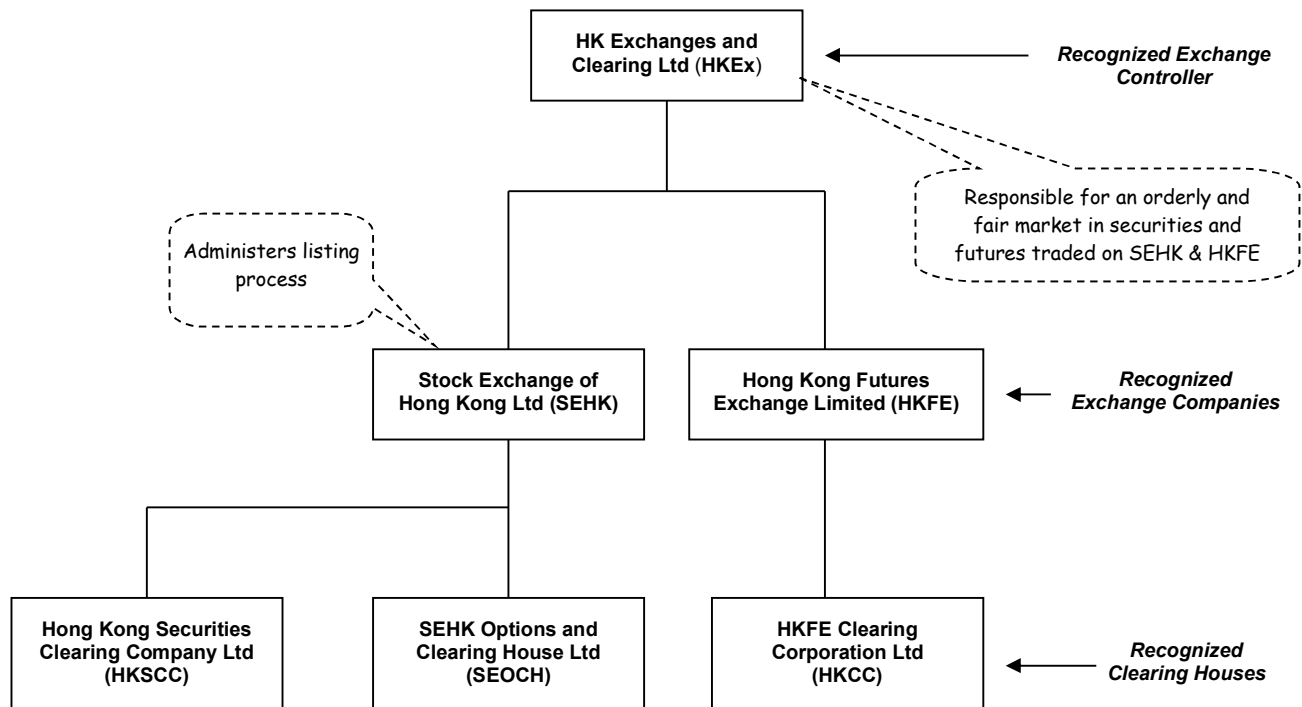
- SFC committees, panels and tribunals concerning asset management include:
 - **Products Advisory Committee (PAC)**
 - Set up for the purpose of consultation and advice on matters relating to the Handbook
 - Purely advisory – the power to authorise products, offering documents and advertisements is retained by SFC
 - Consists of industry representatives, professionals and academics with market knowledge and expertise
 - Chairperson, 20 members, six SFC reps and a secretary
 - **The Committee on Real Estate Investment Trusts (REIT)**
Advises on
 - Policy matters or regulatory issues on REITs
 - Overall market development of REITs
 - Property, security market or investment management in Hong Kong
 - Professional practices or guidelines involved in operation of REITs
 - **The Securities and Futures Appeals Tribunal (SFAT)**
 - Independent statutory body established by SFO chaired by judge and members appointed by Chief Executive of HKSAR to hear appeals against decisions of SFC and its delegated committees

3.2 Hong Kong Monetary Authority (HKMA)

- Headed by a Chief Executive with several deputies
- Manages the Exchange Fund
- Manages Hong Kong's monetary policy
- Required to maintain currency stability
- Ensures the safety and stability of the banking system
- Promotes the efficiency, integrity and development of the financial system
- Supervises the banking system
- Under the SFO and the Banking Ordinance, **Authorized Financial Institutions (AFI's)**, which are regulated by the HKMA and include banks, have to be registered with SFC as **registered institutions** if they wish to carry out an **SFC-regulated activity**
- HKMA is frontline regulator of AFIs and takes the leading role in vetting applications for registration with the SFC and in supervising their SFC-regulated activities, including on-site inspection
- HKMA applies all SFC criteria in supervising AFIs registered with the SFC



3.3 Hong Kong Exchanges and Clearing Limited (HKEx)



- The board of HKEx is a mix of directors appointed by the Government (the majority) and those elected by shareholders
- The SFC supervises and monitors the activities of all HKEx companies
- All exchange companies and clearing houses are 100% owned subsidiaries of HKEx
- Except in relation to the enforcement of their own listing, trading, clearing and settlement rules, the above entities are not responsible for front-line regulation of market participants, which is carried out by the SFC

3.4 Mandatory Provident Fund Schemes Authority (MPFA)

- **The MPFA has responsibility for:**
 - Ensuring compliance with the MPFSO
 - Registering MPF schemes and approving trustees
 - Regulating sales and marketing activities and the giving of advice
 - Making rules and guidelines for the payment of mandatory contributions
 - Considering and proposing reforms to ORSO/MPFSO legislation
 - Promoting and encouraging development of Hong Kong retirement scheme industry

- Management Board of MPFA:
 - Chairman with 5 executive directors and 10 non-executive directors
 - Managing Director oversees day-to-day operations
 - Member protection and services report to the Executive Director; supervision and enforcement divisions report to Chief Operating Officer

3.5 Insurance Authority (IA)

- **Principal functions** are to ensure that the interests of insurance policy holders are protected and to promote the general stability of the Hong Kong insurance industry
- **Major duties and powers** include:
 - Regulate and supervise the insurance industry
 - Licensing of insurance intermediaries
 - Ensuring that the interests of policy holders are protected
 - Regulation of insurance companies and insurance intermediaries – if no SFC-regulated activities performed by these entities, there is little linkage between activities of IA and SFC

3.6 Inter-relationships among the regulators

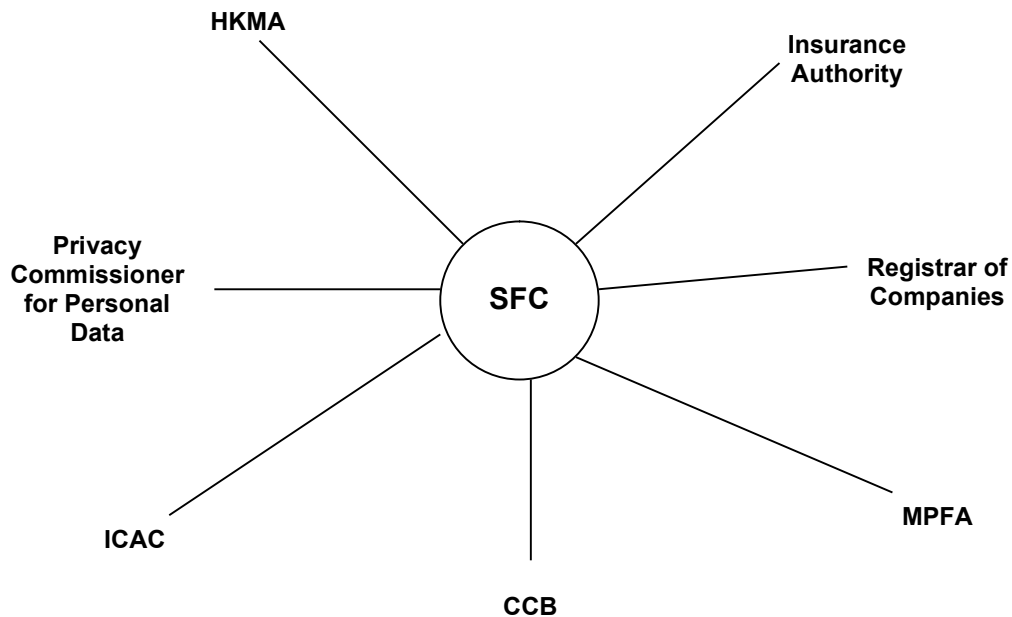
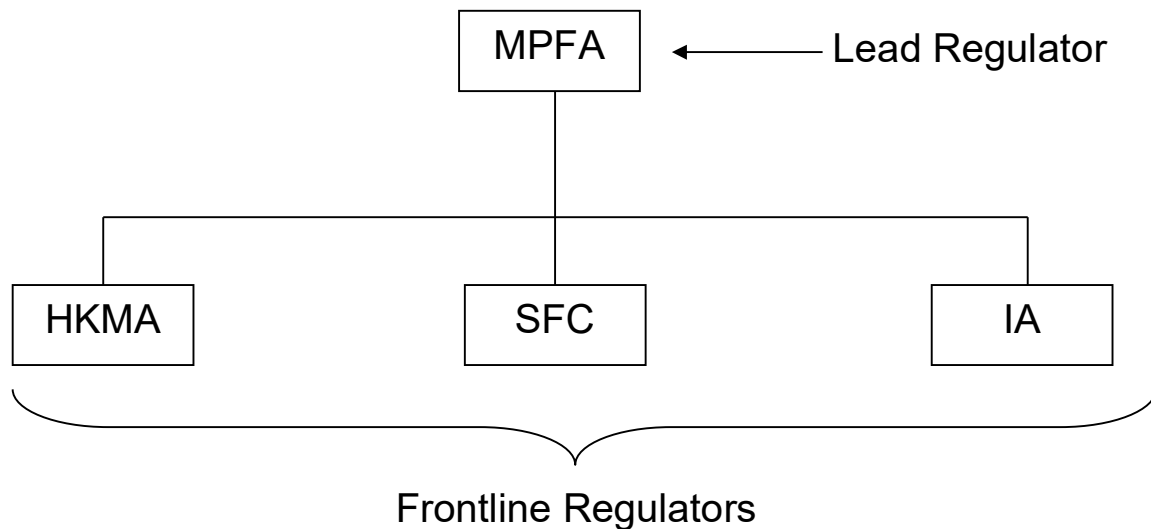


Figure: The SFC and its regulatory counterparts (including some enforcement agencies)

Supervision of Intermediaries Engaged in the MPF Investment Management Industry



The MPFA:

- Monitors compliance of MPF products with MPFSO
- Approves and monitors trustees of MPF products
- Investigates alleged breaches of MPFSO
- Investigates alleged breaches by trustees
- Investigates public complaints and may refer to the SFC

The SFC:

- Registers, approves and monitors investment managers
- Supervises investment advisors and securities dealers of MPF products
- Investigates alleged breaches of SFC Code of MPF Products
- Vets and authorises products and related marketing materials in line with the SFC Code on MPF Products and relevant ordinances

- A Memorandum of Understanding has been signed between the MPFA and the SFC clarifying their roles and responsibilities to minimize any overlaps

4. LICENSING AND REGISTRATION OF INTERMEDIARIES UNDER SFO

4.1 Intermediaries Involved

4.1.1 Asset Managers

- Fund houses, fund managers and portfolio managers
- Require Type 9 license for asset management, unless exempt

4.1.2 Distributors

- AFIs, independent financial advisers, securities dealers, financial planners and insurers
- Asset managers may distribute directly to investors
- Require Type 1 license for dealing in securities, unless exempt
- If activity is solely for purpose of Type 9 activity, then likely to be exempt
- If only introduces business, holds no client assets and does not incur any liabilities, then can apply to be an **“approved introducing agent”** which still requires Type 1 license but will have much lower capital requirements

4.1.3 Dealers acting on behalf of clients investing in CISs

- Persons who **buy and sell interests in CISs** for their clients require Type 1 license for dealing in securities, unless exempt
- Type 9 licensed fund manager that markets funds not under its own management would need Type 1 license

4.1.4 Investment Managers of OFCs

- An OFC must appoint an investment manager to manage the scheme's assets in accordance with the OFC's constitution
- While more than one investment manager may be appointed, at least one must be SFC Type 9 licensed (Asset Management)

4.1.5 Distributors and Fund Managers Engaging in Activities Related to Virtual Assets

- Where virtual assets (eg cryptocurrencies) constitute a security or futures contract as defined in the SFO, the usual SFC laws and regulations will apply
- Licensing requirements will apply to persons who distribute shares or CIS units, irrespective of what the CIS invests in
- Virtual asset fund managers are subject to additional terms and conditions

4.1.6 Others

- Trustees, custodians (see Topic 3) and professionals such as lawyers, accountants and investment advisors
- If carrying on core competency, then will not be carrying out a regulated activity so will not require a license, other than investment advisers who require Type 4 license for advising on securities
- Trustees/custodians may engage in other activities and these activities may require licensing – eg, a custodian engaging in stock borrowing and lending may be considered to be dealing in securities and would therefore need to hold a Type 1 license

4.2 Exclusions from Regulated Activities

A number of parties are not required to be licensed for certain activities, including:

- **Professional accountants, solicitors, and counsel** conducting Types 4, 5, 6 and 9 regulated activities that are wholly incidental to their profession
- **Trust companies** conducting Types 4, 5, 6 and 9 regulated activities, wholly incidental to the discharge of their trustee duties
- **Persons licensed or registered to conduct Type 9** regulated activity who carry out Types 1, 2, 4 and 5 regulated activities solely for the purposes of their Type 9 regulated activity
- Corporations carrying out Types 4, 5, 6 and 9 regulated activities solely for their **wholly owned subsidiaries**, holding companies holding all their issued shares or other wholly owned subsidiaries of the holding company
- **Persons licensed or registered to conduct Type 1** regulated activity conducting Types 4, 6 or 9 regulated activities, wholly incidental to Type 1
- **Persons licensed or registered to conduct Type 2** regulated activity conducting Types 5 or 9 regulated activities, wholly incidental to Type 2

4.3 Issue of Licenses

Conditions

- In order to obtain a license:
 - There must be one responsible officer for a corporation or executive officer for a registered institution available at all times to supervise the business of each regulated activity
 - The SFC interprets this requirement to mean that **at least one responsible officer for each regulated activity must be based in Hong Kong**
 - The person must be fit and proper per SFC requirements – see 4.9 below

Types of license

- There are two types of license: one for licensed corporations and one for licensed representatives
- Licensed representative must be accredited to a licensed corporation (principal)
- Accreditation can be transferred to another corporation
- If a licensed representative ceases to act for a principal, the principal must notify SFC of change within 7 days and representative must return license
- Representative must apply to SFC for a transfer and new license within 180 days or license will be revoked

Board responsibility

- Ultimately, an intermediary's board is responsible for the conduct, operations and financial soundness of the intermediary
- An intermediary's board should be appropriately involved in applying for an SFC license

4.4 Responsible Officers

- A responsible officer is a licensed representative who:
 - Actively participates in or supervises a regulated activity;
 - Is nominated by the licensed corporation; and
 - Is approved by the SFC
- Although the SFO does not provide a definition of responsible officer, the SFC has stated:
 - **Every executive director*** of a licensed corporation is required to obtain the approval of the SFC as a responsible officer; and
 - Every licensed corporation must have, for each regulated activity for which it is licensed, **at least two responsible officers** approved by the SFC – at least one of them must be an executive director
 - At least one responsible officer, who is based in Hong Kong, should be available at all times to supervise the business of the regulated activity for which the corporation is licensed

* *A director who actively participates in, or is responsible for directly supervising, the business of a regulated activity for which the corporation is licensed (s113, SFO)*

- Failure to comply is an offence with fine on conviction

- The SFC also expects the following two types of managers-in-charge (MIC) to be licensed and approved as responsible officers:
 - Any person who undertakes the overall management oversight of an intermediary (ie responsible for directing and overseeing the effective management of the overall operations of the corporation on a day-to-day basis). Examples are CEO and COO
 - Any person who undertakes a key business line function (ie responsible for directing and overseeing a line of business which comprises one or more types of regulated activities). Eg Head of Marketing

4.5 Authorized Financial Institutions (AFIs)

- Registered institutions must have **relevant individuals** and **executive officers** (equivalent of licensed representatives and responsible officers)
- Relevant individuals must have their names entered in register maintained by HKMA
- The Banking Ordinance requires that at least **two executive officers** be responsible for supervising regulated activities – at least one to be available at all times

4.6 Restrictions on Conducting Regulated Activities

- A person must be licensed by or registered with SFC to carry out any regulated business
- A person who contravenes this, without reasonable excuse, commits an offence and will be liable:
 - On conviction and indictment:
 - Fine HK\$5 million and imprisonment for 7 years
 - Continuing offence: further fine of HK\$100,000 per day
 - On summary conviction:
 - Fine of HK\$500,000 and imprisonment for 2 years
 - Continuing offence: further fine of HK\$10,000 per day
- In addition, a person must be a licensed representative or entered in the register maintained by the HKMA as a relevant individual to carry out any **regulated function** associated with a regulated activity
- A person who contravenes this, without reasonable excuse, commits an offence and will be liable:
 - On conviction and indictment:
 - Fine HK\$1 million and imprisonment for 2 years
 - Continuing offence: further fine of HK\$20,000 per day
 - On summary conviction:
 - Fine of varying amounts and imprisonment for 6 months
 - Continuing offence: further fine of HK\$2,000 per day

4.7 Substantial Shareholders

- Substantial shareholders have a special relevance in the licensing regime
- All substantial shareholders of licensed corporations must be approved by the SFC
- Under this legislation, a substantial shareholder is a person who, alone or together with his associates:
 - Has an interest of more than 10% of the total number of issued shares
 - Directly or indirectly has more than 10% of the voting power of the company at a general meeting
 - Is able to exercise 35% or more of the voting power of another company at a general meeting which in turn has more than 10% of the voting power of the company at a general meeting
- A substantial shareholder, who has not been approved by the SFC as such, commits an offence and is liable:
 - on conviction and indictment, to a fine of HK\$1million and 2 years imprisonment
 - a further fine of HK\$5,000 for every day during which the person continues to commit the offence
 - on summary conviction to a fine at level 6 and 6 months imprisonment plus HK\$500 per day for continuing the offence
- A defence to the above charges is not being aware of being a substantial shareholder, even with reasonable diligence, as long as on finding out, application for approval is made as soon as reasonably practical (3 business days is considered reasonable)

4.8 Information for Licensing Application

- **Securities and Futures (Licensing and Registration) (Information) Rules (“Information Rules”)** specifies information required for applications set out in the Licensing Information Booklet, including:
 - Licensing of corporation or individuals
 - Approval and transfer of accreditation of individuals
 - Approval of responsible officer
 - Variation of type of regulated activity
 - Approval of premises to store records
 - Approval to become or continue to be a substantial shareholder
 - Modifications or waivers

- Corporations (and individuals to the extent that it applies) will need to provide:
 - Basic information on applicant: controllers (directors and substantial shareholders), responsible officers, subsidiaries, related corporations, associated entities and their executive officers, any registrations or authorizations
 - Contact person and complaints officers
 - Any matters relevant to fitness and properness of applicant
 - Academic, professional and employment records of directors, responsible officers and executive officers
 - Financial information, business plans, structures, capital structures, shadow directors
 - Bank accounts, auditors, business addresses and premises where records will be stored

4.9 Fitness and Properness

- Corporate and individual applicants for licensing and registration must satisfy fitness and properness requirements as stated in the **Fitness and Properness Guidelines, the Guidelines on Competence and the Guidelines on Continuous Professional Training** issued by SFC
- These apply to all licensed and registered persons
- There are 4 main categories:
 - Financial status or solvency
 - Educational or other qualifications or experience
 - Ability to carry on the regulated activity competently, honestly and fairly
 - Reputation, character, reliability and financial integrity

4.9.1 Fit and Proper Guidelines for Intermediaries

Financial Status or Solvency

- A licensed corporation should:
 - Be able to comply with capital requirements: FRR for licensed corporations; and HKMA's capital adequacy requirements for registered institutions
 - Not be subject to insolvency proceedings
 - Not have directors, managers, substantial shareholders, responsible officials or other supervisors who have bankruptcy records or who are involved with insolvent corporations

Competence and Capability

- A licensed corporation is expected to demonstrate that it is competent and conducts its regulated activities efficiently and effectively
- Competence includes **proper business structures** with corporate governance principles and effective lines of authority and reporting, **sound internal control and risk management systems** with independent audit and compliance functions, **effective IT support and centralized systems, competent personnel** (supervisory staff with at least three years' relevant experience) and **suitable training programmes**

Character and Integrity

- A licensed corporation must:
 - Be reliable
 - Have a good reputation
 - Have financial integrity
- It's directors, managers, substantial shareholders, responsible officers and other supervisors must not have been:
 - Found to be fraudulent or dishonest
 - Censored or reprimanded
 - Disqualified from being a director
 - Breached any of the SFC codes or guidelines

4.9.2 Fit and Proper Guidelines for Licensed Representatives and Responsible Officers

Financial Status or Solvency

- An individual applicant should **not**, in Hong Kong or elsewhere:
 - Be an undischarged bankrupt
 - Be a recently discharged bankrupt
 - Be involved in bankruptcy or similar proceedings
 - Have failed to meet any judgment debt

Competence and Capability

- An individual applicant should:
 - Be 18 years or older
 - Satisfy the competence tests involving experience and educational qualifications

Character and Integrity

- An individual applicant should satisfy the SFC (or HKMA) that he:
 - Is of **good character**
 - Has **not breached** any SFC codes or guidelines
 - Has not been subject to **disciplinary action** by professional associations
 - Has not been disqualified by the court from **acting as a director**
 - Has not been a director/substantial shareholder/management of an **insolvent corporation**
- Individuals who are granted a license must continue to meet the above requirements on an ongoing basis

4.10 Guidelines on Continuous Professional Training

- Every individual licensee is expected to undertake a minimum of **5 CPT hours** every calendar year for **each** regulated activity **competence group** (eg Types 1 and 4 are in the same Group; Types 1 and 9 are in different Groups)
- Activities **allowed as CPT**:
 - Attending courses, workshops, lectures and seminars
 - Distance learning
 - Self-study with submission of assignments to recognized institutions
 - Research
 - Publications
 - Speeches
- Activities **not allowed as CPT**:
 - Reading financial journals, newspapers and other technical publications
 - Normal work
 - Activities which do not involve interaction with other individuals

5. CODE OF CONDUCT

- Full title: **Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission**
- Considered as the “mother” code, it does not apply to management companies carrying out discretionary management of CISs (whether authorized or unauthorized) – they must comply with the Fund Manager Code of Conduct
- FMCC states that it does not replace other codes, including the Code of Conduct
- Where there is an inconsistency between the FMCC and another code, the **more stringent provision will apply**. Therefore, asset managers must consider the provisions of the Code of Conduct
- The Code will apply to asset managers which may undertake a range of regulated activities, including acting as a distributor (Type 1 or 2) and acting as a discretionary manager of individual portfolios (Type 9)
- A failure to comply with a code of conduct is **not a legal offence**. However, breaches will be taken into account:
 - By the SFC when considering whether an intermediary or its representative is fit and proper to remain licensed or registered
 - By the courts when hearing legal proceedings under the SFO
- In applying provisions of Code of Conduct to representatives who do not have the requisite level of control, the SFC will consider their **level of responsibility, supervisory duties** and **levels of control/knowledge**

5.1 The Nine General Principles

- The Code of Conduct is based on nine general principles:
 1. Honesty and fairness
 2. Diligence
 3. Capabilities
 4. Information about clients
 5. Information for clients
 6. Conflicts of interest
 7. Compliance
 8. Client assets
 9. Responsibility of senior management

5.1.1 General Principle 1 – Honesty and Fairness

- A **licensed/registered person** should act honestly, fairly and in the best interests of its clients and the integrity of the market. More specifically:
 - Representations and information to clients should be **accurate and not misleading**
 - **Charges** to clients should be **fair and reasonable**
 - **Invitations and advertisements** should not contain information that is false, misleading or deceptive; no negative advertising
 - Actions should comply with the **Prevention of Bribery Ordinance** and any related guidelines issued by the **ICAC**
- A representative acting as an agent should not solicit or receive money/gift/employment/services without permission from the principal

5.1.2 General Principle 2 – Diligence

- A **licensed/registered person** should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market. Some practical examples of this are:
 - Client orders should be executed promptly in accordance with clients' instructions – **prompt execution**
 - Client orders should be executed on the best available terms – **best execution**
 - Orders executed for clients should be promptly and fairly allocated to those clients – **prompt and fair allocation**
 - Advice should be given to clients with due skill, care and diligence
- **Telephone orders** should be centrally recorded. Recordings should be kept for at least **6 months**
- The use of **mobile phones** for taking client orders is **strongly discouraged** – time of order receipt and details should be recorded immediately

5.1.3 General Principle 3 – Capabilities

- A **licensed/registered person** should have and employ effectively the resources and procedures which are needed for the proper performance of its business activities. It should have:
 - Staff who are fit and proper to carry out their duties
 - Adequate and diligent supervision of staff
 - Satisfactory internal control procedures, financial resources, operational systems and technology
- Further expanded in Internal Control Guidelines – Section 6 below

5.1.4 General Principle 4 – Information about Clients

- A **licensed/registered person** should seek information about a client's financial situation, investment experience and investment objectives.
Three sections to be covered:
 - Know your client (KYC)
 - Client agreements
 - Discretionary accounts

Know Your Client

- A **licensed/registered person** should take all reasonable steps to establish a client's:
 - True and full identity
 - Financial situation or strength
 - Investment experience
 - Investment objectives
- Requirements intended to improve the transparency of trading in securities or futures contracts
- Where the **SFC requests identity information** of ultimate clients, it will consider the requirements to have been complied with if the information is provided **within 2 business days** of the request
- Before accepting an **order from a third party** in respect of a client account, reasonable steps should be taken to establish the true and full identity of the third party
- For **CISs and discretionary accounts**, it will be sufficient for the licensed or registered person to identify the fund or the account and its manager without a need to know the ultimate beneficiaries

Suitability and Mis-selling

- **Recommendations** made to clients should be **suitable**, given their circumstances
- When a client **without knowledge of derivatives** wishes to invest in a derivative product, the risks should be explained
- In May 2007, the SFC reiterated that mis-selling of products should not be engaged in, and that the primary obligation relating to **suitability** rests with the licensed/registered person, not the client
- From SFC "mystery shopper programmes" carried out in 2011 and 2014, **mis-selling continues to be an issue** as regards:
 - Poor knowledge and understanding of products
 - Inadequate explanation of features of high-yield bonds and derivative products
 - Improper assessment of clients' knowledge of derivatives
 - Insufficient product information

Online Platforms

- With the development of online distribution and advisory platforms, the SFC has issued Guidelines on Online Distribution and Advisory Platforms (**ODAP Guidelines**) – operational from 6 April 2019.
- The ODAP Guidelines comprise of **5 main parts**:
 - **Core principles** covering platform design, information for clients, risk management, governance, review and monitoring and record keeping
 - **General requirements** applying to conduct requirements, offer of investments and materials posted on platform
 - Requirements regarding “**robo-advice**” – advice using algorithms
 - Triggering of **suitability requirement** and how it is properly discharged
 - Requirements regarding complex products – products unlikely to be understood by retail investors

Client Agreements (“Client Contracts” in SFO)

- A written client agreement should be entered into with a client before providing services to the client.
- The agreement should be in Chinese or English, at the option of the client
- Attention to relevant risks should be drawn to the client
- If a face-to-face meeting with the client does not take place, there should be satisfactory certification of the signing of the client agreement by another licensed or registered person, a Justice of the Peace or a professional person (Hong Kong Post provides electronic certification)
- The licensed/registered person may verify the identity of an individual client by the following procedures:
 - Obtain a copy of client identity document
 - Obtain a copy of a signed client agreement
 - Obtain a cheque for not less than HK\$10,000 and bank the cheque
 - Ensure signatures on cheque and client agreement are the same
- All client agreements should contain:
 - Full names and addresses of client (verified by reliable proof) and licensed/registered person
 - Undertakings by parties to notify material changes of information to each other
 - Full description of services to be provided and charges to be paid by the client, with details of special services
 - Appropriate risk disclosure statements
 - Client agreements should not remove, exclude or restrict the legal rights of a client or the legal obligations of the licensed/registered person

- Code of Conduct also requires licensed/registered persons to:
 - Include in each client agreement a clause: *“If we [the intermediary] solicit the sale of or recommend any financial product to you [the client], the financial product must be reasonably suitable for you having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause”* and
 - Preclude incorporation of any clause, provision or term in the client agreement or any other document signed or statement made by the client at the request of the licensed or registered person which:
 - is inconsistent with its obligation under the Code of Conduct; and
 - misdescribes the actual services to be provided to the client

Discretionary Accounts

- A discretionary account is a client account on which the client has authorised the licensed or registered person to effect transactions without the client’s prior approval
- The discretion may be absolute or subject to conditions
- The Code of Conduct imposes the following on the establishment and operation of discretionary accounts:
 - The client’s authority should be in writing
 - The person authorized to operate the account should be identified
 - The terms of the authority should be explained to the client
 - The authority should be confirmed annually
 - The account should be designated as a discretionary account and be approved by senior management
 - Disclosure must be made to the client of any benefits to be received, including any monetary benefits under a remuneration arrangement, at the account opening stage or prior to entering into a discretionary client agreement
 - Internal control systems should ensure that the operation of the account is properly supervised

5.1.5 General Principle 5 – Information for Clients

- The SFC expects a licensed or registered person to provide information to its clients in order to maintain transparency, as well as to let them know about their transactions. Information to be provided includes:
 - Information about its business, including contact details, services provided, and identity/status of employees with whom the client will have contact
 - In the case of a financial services group, clear information about the particular company the client is dealing with
 - Upon client request, **audited financial statements** and information on corporate actions
- A licensed/registered person must disclose to its clients any **benefits it directly or indirectly receives from a product issuer** for distributing an investment product
- The following **sales-related information** needs to be disclosed to a client (other than a PI), prior to or at the point of sale:
 - Capacity in which licensed/registered person is acting
 - Any affiliation with the product issuer
 - Monetary and non-monetary benefits
 - Disclosure should be made in writing. If not, verbal disclosure should be swiftly followed by written disclosure
- Other information to be provided includes:
 - Prompt confirmation of all transactions
 - Trade confirmations for option contracts
 - Information on corporate activities of securities held (dividends, bonus issues etc)

Withdrawal from Business

- Licensed/registered persons ceasing to carry out a regulated activity should promptly notify clients

5.1.6 General Principle 6 – Conflicts of Interest

- A licensed/registered person should try to avoid conflicts of interest between:
 - One client and another client
 - A client and a licensed/registered person

Actual or Potential Conflicts

- Where conflicts cannot be avoided, disclosure of the conflict should be made to the client, and all reasonable steps should be taken to ensure fair treatment of the client

Handling Client Orders

- Client orders should be handled **fairly and in the order** in which they are received
- Client orders should have **priority** over orders for the account of the licensed/registered person, or for the account of any employee or agent of the licensed/registered person
- Where there are aggregated orders for several clients, and the intermediary itself, priority must be given to client orders if all orders cannot be filled
- The unfair preference of any one client should be avoided
- When handling client orders, a licensed/registered person will acquire non-public information. This information should not be used to deal:
 - Ahead of transactions pending for other clients (front running)
 - When the release of the information will affect the price

Rebates, Soft Dollars and Connected Transactions

- A licensed/registered person, applying **investment discretion** on behalf of a client, may arrange to receive money (**rebates**) or goods/services (**soft dollars**) from a broker in consideration for directing client transactions to a broker
- The SFC wishes to reduce the conflicts that may arise from these financial arrangements
- **Requirements** in relation to the receipt of soft dollars are:
 - The goods/services must be of **demonstrable benefit** to the client
 - Transaction execution must be consistent with best execution standards
 - Brokerage rates not in excess of customary full-service brokerage rates
 - The client has consented in writing to the receipt of the goods/services
 - Disclosure is made to the client of the licensed/registered person's practices relating to receiving such goods/services, including their description

- Goods and services **permitted** by SFC:
 - Research and advisory services
 - Portfolio analysis/valuations/performance measurement
 - Market analysis
 - Data and quotation services
 - Computer hardware and software incidental to above goods/services
 - Clearing and custodial services
 - Investment-related publications
- Goods and services **not permitted** by SFC:
 - Travel
 - Accommodation
 - Entertainment
 - General administrative goods/services
 - General office equipment/premises
 - Membership fees
 - Employee salaries
 - Direct cash payments
- Requirements in relation to receipt of money or **cash rebates**:
 - The licensed/registered person must describe its practices regarding rebates and the client must consent in writing
 - Brokerage rates are not in excess of customary full-service rates
 - Rebates and their approximate values are disclosed to the client (at least twice annually or in each contract note)
- If a client exercises a right under a **cooling-off mechanism** incorporated in an investment product, the client's instruction should be executed promptly and the client should receive a full refund including any sales commission

5.1.7 General Principle 7 – Compliance

- Licensed/registered persons should comply with all regulatory requirements including:
 - Primary and subsidiary legislation
 - Rules, regulations and codes administered/issued by the SFC
 - Rules of exchanges and clearing houses, if participants
 - Requirements of other relevant regulatory authorities
- Specific provisions of the code cover the following 5 areas:

Employee Dealings

- The licensed/registered person must have a written policy specifying whether or not employees can deal or trade for their own accounts and if they can, the policy must specify the following:
 - the conditions on which employees may deal or trade;
 - that employees should generally be required to deal through their principal or its affiliates;
 - duplicate trade confirmations should be provided to senior management if employees are permitted to deal through another dealer;
 - that employees should identify all related accounts (including amounts of their minor children and those in which the employees hold beneficial interests) and report them to senior management;
 - any such transactions should be separately identified in the intermediary's records and actively monitored by senior management (to ensure transactions are not prejudicial to client interests); and
 - no intermediary should knowingly have another intermediary's employee as a client without the written consent of the employee's principal

Complaints

- Complaints should be handled in a timely and appropriate manner, investigated and responded to promptly
- If unable to investigate, licensed/registered person should advise client of further steps available

Expert Witness

- A licensed or registered person, as a firm, should not prohibit its employees from performing expert witness services for the SFC or HKMA

Responsibility for Acts of Employees

- A licensed corporation or registered institution should be responsible for the acts/omissions of its employees and agents

Notifications to the SFC

- A licensed/registered person is required to make reports to the SFC immediately on discovering:
 - Material breaches or suspected material breaches of any law, rules, regulation, codes and guidelines administered or issued by the SFC or exchanges/clearing houses
 - Insolvency situations affecting it, substantial shareholders or directors
 - Disciplinary actions taken against it
 - Material problems with business systems/equipment
 - Any suspected material breach of SFO market misconduct provisions

5.1.8 General Principle 8 – Client Assets

- A licensed/registered person should ensure:
 - Client assets are promptly and properly accounted for
 - Client assets are adequately safeguarded
- This applies to all assets held, whether listed or not and in Hong Kong or overseas
- Subsidiary legislation has applied the principle through the **Client Securities Rules** and the **Client Money Rules**

5.1.9 General Principle 9 – Responsibility of Senior Management

- Senior management ***should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures of the firm***
- Senior management are expected to **properly manage the risks** associated with the business by understanding:
 - The nature of the business
 - Its internal control systems and procedures
 - Its risk management policies
 - The extent of their authority and responsibilities

- Senior management should have **access to all information** about the business on a timely basis and necessary advice on their own responsibilities
- The SFC regards the following persons as being senior management:
 - All directors, including shadow directors
 - Responsible officers
 - Any of the eight managers-in-charge (MIC), which are
 - 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
- Once a person is identified as an MIC, any changes to the person's appointment must be notified to the SFC as for licensed staff, and the firm will need to update and advise the SFC of any new organisational chart
- The SFC can determine whether or not an MIC is fit and proper, considering past conduct, when appropriate
- All senior management are expected to be aware of their regulatory responsibilities, including General Principle 9, Code of Conduct, ICGs and GAML

5.2 Conduct Requirements of Electronic Trading

- Para 18/Schedule 7 of the Code of Conduct sets out the conduct requirements of electronic trading. **Electronic trading** refers to the trading of securities and futures contracts electronically and includes internet trading, direct market access and algorithmic trading

Responsibility for Orders

- A licensed or registered person is responsible for:
 - Settlement and financial obligations of orders made electronically
 - Supervise orders in compliance with regulatory requirements

Management and Supervision

- Design and operation of an electronic trading system should be effectively managed and adequately supervised, including:
 - Written internal policies and procedures
 - At least one responsible officer or executive officer responsible for overall management and supervision
 - Adequate qualified staff, technology and financial resources

Adequacy of System

- The following controls should be adopted to ensure the reliability, security and capacity of the system:
 - Ability to immediately **prevent the system from generating and sending orders** to the market and cancel any unexecuted orders
 - System should be **tested before deployment** and regularly reviewed
 - Any material **service interruption should be promptly reported** to the SFC
 - **Security controls** should ensure that: reliable authentication or validation techniques are used restricting access as appropriate; confidential information is protected; and security breaches are prevented and detected
- Monitoring of system capacity usage and recording of spare capacity planned
- Stress testing of system capacity and documentation of findings
- Ability to handle client orders beyond system capacity

Record Keeping

- Records should be kept covering:
 - Design and development of electronic trading system
 - Comprehensive documentation of risk management controls of the system (should be kept for 2 years after ceasing to use the system)
 - Audit logs of system delays/failures (to be kept for 2 years)
- Recommendations made should be suitable for the client in light of client's financial situation, investment objectives and experience

5.3 Professional Investors

- Professional Investors (PIs) do not need the same degree of protection that the ordinary retail investor might require
- SFC recognizes three categories of PI:
 - **Institutional PIs:** Defined in the SFO and tend to deal as principals
 - **Corporate PIs:** Prescribed in the Securities and Futures (Professional Investor) Rules that are corporates, trusts or partnerships
 - **Individual PIs:** Prescribed in the Securities and Futures (Professional Investor) Rules who are individuals

5.3.1 Institutional Professional Investors

- Exchange companies
- Intermediaries and similar overseas providers, including their wholly owned subsidiaries, holding companies and wholly owned subsidiaries of the holding companies
- AFI's and similar overseas institutions
- Insurers regulated under the Insurance Companies Ordinance and their overseas equivalents
- CISs authorized in Hong Kong and their overseas counterparts
- Registered schemes as defined in the MPFO and ORSO schemes, and their approved trustees, service providers, investment managers, their administrators and overseas counterparts
- Governments, central banks and multilateral agencies

5.3.2 Corporate Professional Investors

- trustee companies responsible for total assets of not less than HK\$40m;
- corporations or partnerships having either a portfolio of not less than HK\$8m, or total assets of not less than HK\$40m; and
- corporations that act solely as investment holding companies and are wholly owned by persons who belong to any of the above two categories
- holding companies of the above two categories

5.3.3 Individual Professional Investors

- high net worth individuals having a portfolio of not less than HK\$8m; [includes spouses/children where portfolios are held jointly]
- the portfolio is held by a corporation which is wholly owned by the individual

5.3.4 Waivers Applicable to Professional Investors

- **Non-applicable SFO provisions:**
 - Unsolicited call provisions (ie PIs can be cold-called)
 - Requirements for offers by intermediaries

Above exemptions **apply to Institutional PIs, Corporate PIs and Individual PIs**

- **Non-applicable Code of Conduct requirements:**
 - a) **Information for clients:**
 - (i) The need to provide information about the licensed/registered person and its employees
 - (ii) The need to make prompt confirmation of transactions to clients
 - (iii) The need to disclose transaction related information
 - (iv) The need to provide documentation on the Nasdaq-Amex Pilot Programme
 - (v) The need to ensure the suitability of a complex product transaction; to provide sufficient information about a complex product; and to provide warning statement

All above exemptions **apply to Institutional PIs and Corporate PIs**
Exemptions (a) (i), (ii) and (iv) apply to Individual PIs

- b) **Information about clients**
 - (i) The need to establish the client's financial situation, investment experience and investment objectives (except advice on corporate finance)
 - (ii) The need to ensure the suitability of a recommendation or positive invitation
 - (iii) The need to assess the client's knowledge of derivatives

All above exemptions **apply to Institutional PIs and Corporate PIs**

- c) **Client agreement: the need to enter into a written client agreement and provide risk disclosure statements**

The above exemption **applies to Institutional PIs and Corporate PIs**

d) Discretionary accounts

- (i) The need to obtain the client's prior authority in writing before effecting transactions
- (ii) The need to explain the written authority and confirm it annually (authority should still be obtained)
- (iii) The need to disclose benefits receivable for effecting transactions for a client under a discretionary account

All above exemptions **apply to Institutional PIs and Corporate PIs**

Institutional PIs

- Licensed and registered persons are automatically exempted from the above listed requirements

Corporate PIs and Individual PIs

- To apply the exemptions, the licensed or registered person must:
 - write to the client explaining the consequences/risks of being treated as a PI, the information that he will not receive and that he has the right to withdraw from being treated as a PI
 - obtain a written and signed declaration from the person that he has been provided with the above explanations and that he wished to be treated as a PI
 - carry out confirmation exercise annually
- When the above is complied with the licensed/registered person is exempt from complying with **(a) (i), (ii) and (iv)**

Corporate PIs only

- **If** the licensed/registered person is satisfied that the corporate PI:
 - Has an appropriate corporate structure
 - Has appropriate investment processes and controls
 - Has investment decision makers with sufficient investment background and experience
 - Is aware of the risks involved in terms of the person(s) making the investment decisions

THEN the Corporate PI is exempt from all Code of Conduct requirements listed above

- Separate assessments should be made in respect of different product types or markets
- If there has been no investment activity in a particular product or market for more than 2 years, an additional assessment should be made

5.4 Risk Disclosure Statements

- A client agreement should contain appropriate risk disclosure statements covering:
 - Risks of securities trading
 - Risk of trading futures and options
 - Risk of trading GEM stocks
 - Risk of client assets received/held outside Hong Kong
 - Risk of providing an authority to re-pledge clients' securities collateral
 - Risk of providing an authority to hold mail or to direct mail to third parties

5.5 Conduct Requirements in Relation to Over-The-Counter Derivative (OTCD) Transactions

- The Code of Conduct addresses conduct requirements intended to mitigate risk where the business of a licensed corporation, or various persons connected to it, involves **OTCD transactions**. The requirements fall into two main parts that deal with:
 - **mitigating risk** in OTCD transactions that are not centrally cleared (NCC); and
 - **managing risk** in relation to group affiliates and other connected persons

Mitigating risk in OTCD transactions that are not centrally cleared

- Licensed corporations subject to risk mitigation requirements will be:
 - a contracting counterparty to a NCC OTCD transaction; and
 - licensed for Type 9 regulated activity (asset management), managing a portfolio of non-centrally cleared OTCDs ("NCC OTCDs")
- Risk mitigation requirements **do not apply to registered institutions**
- The specific requirements revolve around **four key areas**: documentation, valuation, portfolio matters and handling of disputes

Group affiliates and other connected persons

Risk management

- Licensed corporations should apply the same risk management standards to all such parties, subject to any legal or regulatory requirement or exemption that might be applicable

Dealings

- Licensed persons that solicit, recommend, or arrange for OTCD transactions between a group affiliate and a client (other than a client that is a group affiliate) should always act in the best interests of the client

Disclosures when dealing with unlicensed persons

- Although a group affiliate may frequently be subject to regulatory oversight in Hong Kong or another jurisdiction, this is not always be the case
- In some cases, a licensed corporation may solicit, recommend or arrange for a client (other than a client that is a group affiliate) to enter into an OTCD transaction with a group affiliate that is not a person licensed by the SFC
- In such cases, additional risk disclosures should be included in the written client agreement that bring to the attention of the client that the group affiliate is not licensed by the SFC, and that the regulatory oversight protection afforded to the client might not be the same as if the group affiliate were licensed and regulated by the SFC

6. MANAGEMENT, SUPERVISION AND INTERNAL CONTROL GUIDELINES (ICG)

- Full title: **Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission**
- The ICG identifies eight key areas of business controls:
 - Management and supervision
 - Segregation of duties and functions
 - Personnel and training
 - Information management
 - Compliance
 - Audit
 - Operational controls
 - Risk management
- SFC recognizes that **small entities** may not have a complicated system of functional segregation or any compliance/internal audit departments
- **Internal controls** refer to the entire system of policies, procedures, checks, controls and division of responsibilities which a licensed/registered person has installed to the run the business
- A licensed/registered person should use internal controls to provide itself with reasonable assurance that it is able to:
 - Operate its business in an orderly and efficient manner
 - Safeguard the assets of its clients and its own
 - Maintain proper records, and reliable financial and other information that it produces
 - Comply with all applicable laws and regulatory requirements
- The ICG apply to all licensed corporations and registered institutions, including fund managers
- A failure to comply with the ICG is **not a legal offence**. However, breaches will be taken into account:
 - By the SFC when considering whether an intermediary or its representative is fit and proper to remain licensed or registered
 - By the courts when hearing legal proceedings under the SFO

6.1 Management and Supervision

6.1.1 Objective

- Management should establish and operate an effective management and operational structure which ensures that the business is conducted in a sound, efficient and effective manner. Senior management of an intermediary includes its board, chief executive officers, managing director and other senior management

6.1.2 Control Guidelines

- Management are responsible for:
 - Development, implementation and ongoing **effectiveness of the Internal Controls**
 - Establishing **regular communication of control information** to various levels of management, including risks, detected weaknesses, non-compliance with laws and regulations, and any deviations from business principles
 - Identifying **clear reporting lines** with reporting responsibilities
 - Detailed **definitions of authorities** for key positions
 - Assignment of management and supervisory functions to **suitably qualified and experienced persons**
 - Ensuring that the functions of the **intermediary** (fund management, distribution, administration, operations, compliance, audit,) should also only be performed by qualified and experienced people with ongoing training

6.2 Segregation of Duties and Functions

6.2.1 Objective

- Incompatible duties and functions should be segregated, particularly those which, when performed by the same person, may provide opportunities for abuse or result in the overlooking of errors, thereby exposing the intermediary and its clients to risks

6.2.2 Control Guidelines

- Line operations staff should not conduct the following duties:
 - Policy making
 - Supervision/advisory
 - Compliance
 - Internal audit
- Sales/dealing/accounting/settlement functions should be segregated from each other
- Research functions should be segregated from sales and dealing
- Where practical, research and corporate finance functions should be segregated
- Where possible, compliance and internal audit should be separate/independent from the operational functions, reporting directly to Management

6.3 Personnel and Training

6.3.1 Objective

- Recruitment and training policies and procedures should be established and implemented to ensure compliance with the intermediary's operational and internal control policies and procedures, and all applicable legal and regulatory requirements

6.3.2 Control Guidelines

- There should be procedures to employ fit and proper persons and to have them licensed/registered where necessary
- Provision of comprehensive and up-to-date information to staff covering policies and procedures
- Provision of adequate training for specific duties and to meet CPT requirements

6.4 Information Management

6.4.1 Objective

- Policies and procedures should be established to ensure the integrity, security, availability, reliability and completeness of all information and documentation relating to the business, in whatever form it is stored

6.4.2 Control Guidelines

- Features of good information management are:
 - Information (physical or electronic) should be managed by qualified and experienced staff
 - The systems should be adequate and operated in a secure and controlled environment
 - Reporting requirements should be clearly defined to ensure that that internal and external reports are produced in time and contain the necessary information
 - Systems specifications are sufficiently documented and regularly reviewed for adequacy and effectiveness
 - Adequate and effective data security policies
 - Effective record retention policies which ensure that all legal and regulatory requirements are complied with

6.5 Compliance

6.5.1 Objective

- Policies and procedures shall be established to ensure that the intermediary and its staff comply with all applicable laws and regulations and with the intermediary's own internal policies and procedures

6.5.2 Control Guidelines

Management should:

- Establish and maintain an effective compliance function, independent of all operational and business functions
- Ensure compliance staff have the necessary skills, qualifications and experience
- Establish and enforce policies and procedures to provide compliance staff with full access to all necessary records and documentation
- Assist compliance staff to establish effective compliance procedures
- Establish proper complaint handling procedures (in writing)
- Establish prompt reporting to Management by compliance staff of material breaches of:
 - Legal and regulatory requirements
 - The intermediary's own policies and procedures
- Promptly report cases of material non-compliance with legal and regulatory requirements by the intermediary and its staff to the appropriate regulators

6.6 Audit

6.6.1 Objective

- To establish and operate an audit policy and review function which independently examines, evaluates and reports on the adequacy, effectiveness and efficiency of the intermediary's management, Internal Controls and operations. The review functions can be performed by internal staff or external consultants, such as firms of accountants who may be asked to carry out ad-hoc or regular reviews

6.6.2 Control Guidelines

- Management should establish internal audit as an independent function free of operating responsibilities, reporting directly to management
- The persons performing the internal audit function should have the necessary technical competence and experience
- Clearly defined terms of reference should set out the scope, objective, approach and reporting requirements
- Responsibilities and working relationship between internal and external auditors may be defined with the agreement of the external auditor
- Management should ensure adequate planning, control and recording

6.7 Operational Controls

6.7.1 Objective

- To have effective policies, procedures and controls over day-to-day business operations which ensure:
 - Communications between the intermediary and its clients are in line with the Code of Conduct
 - The integrity of the intermediary's dealing practices and the fair, honest and professional treatment of clients
 - The safeguarding of client/intermediary assets
 - Reliable and accurate records/information are kept
 - Compliance with relevant legal and regulatory requirements
 - The integrity of the intermediary's dealing practices and the fair, honest and professional treatment of clients

6.7.2 Control Guidelines

- Management is required to establish policies and procedures to:
 - Obtain and confirm the true identity of every client, the beneficial owner of each client account and the persons authorized to give instructions for its operation
 - Obtain information regarding the client's financial position, experience and objectives
 - Establish precise terms and conditions for operating discretionary accounts, which should be communicated to the client
 - Ensure that any investment advice given for remuneration is supported by a contractual advisory agreement, and investment recommendations are made after thorough analysis, are suitable for the client, and are properly documented
 - Minimize the potential for conflicts of interest
 - Ensure that whenever the intermediary or its staff have a material interest in a transaction with a client, the fact is disclosed to the client prior to executing the transaction
 - Ensure that client orders are handled in a fair manner
 - Ensure that complete audit trails are created with records and times of orders received from clients or orders generated internally
 - Ensure that there is fair and timely allocation of client orders
 - Prevent the intermediary or staff from taking advantage of price-sensitive information or from participating in insider dealing
 - Prevent or detect errors, omissions, fraud and other unauthorized or improper activities
 - Protect the assets of clients and the intermediary from theft, fraud and other acts of misappropriation
 - Ensure that regular reconciliations of the intermediary's records with external records and reports are carried out

6.8 Risk Management

6.8.1 Objective

- To establish and maintain effective policies and procedures to:
 - Ensure the proper management of risks
 - Identify and quantify risks
 - Provide timely/adequate information to enable Management to take action to contain and manage risks

6.8.2 Control Guidelines

- The control guidelines provide for the establishment of:
 - a risk management function with suitably qualified and experienced professionals;
 - procedures to limit the exposure of the intermediary to risk of suffering loss to acceptable levels;
 - trading and position limits for proprietary trading and their monitoring at the end of the trading day;
 - comprehensive risk-focused reviews at suitable intervals or whenever there are significant changes in the business, operations or staff;
 - regular reporting of exposures and significant variances to management; and
 - risk policy defined by management including risk measurement and reporting methodologies

7. PERSONAL DATA (PRIVACY) ORDINANCE

- The PDPO protects the privacy of individuals in relation to personal data
- The Privacy Commissioner for Personal Data is an independent public officer appointed to enforce and promote compliance with the PDPO
- Data users must comply with six data protection principles

7.1 Data Protection Principles

Principle 1 - Purpose and manner of collection of personal data (Lawful Purpose)

- Data shall only be collected for a lawful and relevant purpose
- The purpose of collecting the data should be disclosed

Principle 2 - Accuracy and duration of retention of personal data

- Personal data should be accurate, up to date and kept no longer than necessary and should be rectified if incorrect

Principle 3 - Use of personal data

- Without the consent of the subject, the data should not be used for any purpose other than for which it was collected

Principle 4 - Security of personal data

- All measures should be taken to ensure that personal data are protected against unauthorized access, processing, erasure, etc

Principle 5 - Information to be generally available

- A data user's policies and practices relating to the data should be available

Principle 6 - Access to personal data

- A data subject should be able to get access (at a reasonable fee) to the data held and request corrections to it

8. PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Money Laundering

Activities and processes by which property obtained as a result of illegal activities is altered so that it is given the appearance of coming from a legitimate source

- Six pieces of legislation and one SFC Guideline:
 - Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (**AMLO**)
 - Drug Trafficking (Recovery of Proceeds) Ordinance (**DTRPO**)
 - Organised and Serious Crimes Ordinance (**OSCO**)
 - United Nations (Anti-terrorism Measures) Ordinance (**UNATMO**)
 - United Nations Sanctions Ordinance (**UNSO**)
 - Weapons of Mass Destruction (Control of Provision of Services) Ordinance
 - Guideline on Anti-Money Laundering and counter-Terrorist Financing (**GAML**)

8.1 Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

- **Objective is to enhance Hong Kong AML regime** for the financial sector, including banking, securities, insurance and remittance and money changing.
- **Since March 2018, AMLO has been extended** to cover non-financial businesses including solicitors, accountants, real estate agents trust and company service providers. Primary concerns are:
 - customer due diligence (CDD) requirements
 - record-keeping requirements
 - powers of relevant authorities (SFC & HKMA) to investigate and supervise LCs and RIs for AMLO compliance and then to discipline, if appropriate
 - establishment of a disciplinary review panel
- A breach of the AMLO is a criminal offence
- Employees/managers of LCs/RIs who knowingly cause/permit the corporate entity to breach the AMLO, are committing a criminal offence – maximum penalty is HK\$1m and 2 years in prison
- If fraud is involved, the maximum penalty will be a fine of HK\$1m and 7 years in prison
- A breach of the AMLO by a LC/RI can lead to regulatory discipline
- AMLO empowers certain bodies as a “relevant authority” with various powers, including investigation and prosecution. The relevant authorities are:
 - Licensed corporations: **SFC**
 - Authorised institutions: **HKMA**
 - Insurance companies: **Insurance Authority**

8.2 Drug Trafficking (Recovery of Proceeds) Ordinance

- It is an offence to deal with property known to, or believed to, represent the proceeds of drug trafficking
- Any person who knows or suspects that property relates to drug trafficking, should report it to a police officer, a customs and excise officer, or the Joint Financial Intelligence Unit (JFIU) – **failure to disclose is an offence**
- It is an offence to disclose to another person that a disclosure has been made, as above
- A person making a disclosure is excused from any resulting contract breach or professional obligation

8.3 Organised and Serious Crimes Ordinance

- Provisions are similar to DTRPO
- Police are given powers to obtain a court order to compel a person to provide information or material relating to the investigation
- Requirements to disclose and to submit to searches override any duties of secrecy and confidentiality

8.4 United Nations (Anti-terrorism Measures) Ordinance

- It is a criminal offence to provide/collect property or financial services to/from terrorists or their associates
- Terrorist property can be frozen/forfeited
- It is an offence not to report knowledge or suspicions of terrorist property to an authorized officer

8.5 SFC Regulations – Guideline on Anti-Money Laundering and Counter-Terrorist Financing (GAML)

- As empowered by the AMLO, the SFC has issued guidance on implementing policies, procedures and controls to comply with the AMLO
- The GAML describes 3 common stages identified by the SFC in the process of money laundering:
 1. **Placement:** physical disposal of cash derived from illegal activities
 2. **Layering:** separation of the illicit proceeds from the source by creating a number of financial transactions (layers) – the most likely point at which a licensed corporation could become involved in a money laundering scheme
 3. **Integration:** creating an impression of legitimacy by bringing the proceeds back into the general financial system (without being connected with the illegal activity)

- The **GAML requires** licensed corporations to:
 - **Issue policies** and procedures to staff reflecting GAML provisions
 - Ensure that **staff understand** the GAML
 - **Regularly review** anti-money laundering policies and procedures through the compliance and audit functions
 - **Appoint** a money laundering reporting officer as a central reference point

8.5.1 GAML Detailed Guidelines

Client Identification

- Client risk should be considered when carrying out CDD, taking the following into account:
 - Services that provide more anonymity
 - Non face-to-face account opening
 - Background/profile (eg politically exposed persons)
 - Unduly complex ownership structure
 - Nature of business – sensitive or high-risk activities
 - Nationality/place of incorporation
 - Means/types of payments
 - Countries with critical deficiencies in their anti-money laundering systems

Ongoing Monitoring

- Client activities should be subject to ongoing monitoring to detect unusual or suspicious activities
- Activities of higher risk clients should be subject to more frequent and more intensive monitoring

Record-keeping and Retention

- There should be a satisfactory audit trail
- **Customer documents** and information should be kept throughout the business relationship and for a period of **five years** after the end of the business relationship
- **Transaction documents** and information should be kept for **five years** irrespective of whether the business relationship ends during the period

Recognition and Reporting of Suspicious Transactions

- Senior management and the money laundering reporting officer should be able to detect unusual or suspicious activities promptly
- Suspicious transactions will be unusual in relation to the client's business/financial circumstances

Examples of Suspicious Transactions

- GAML provides a list of situations that might give rise to suspicions of money laundering activity:

Customer-related

- Requests for investment management services where source of funds are unclear or not in line with customer's financial background
- Opening of multiple accounts with same beneficial owners

Trading-related

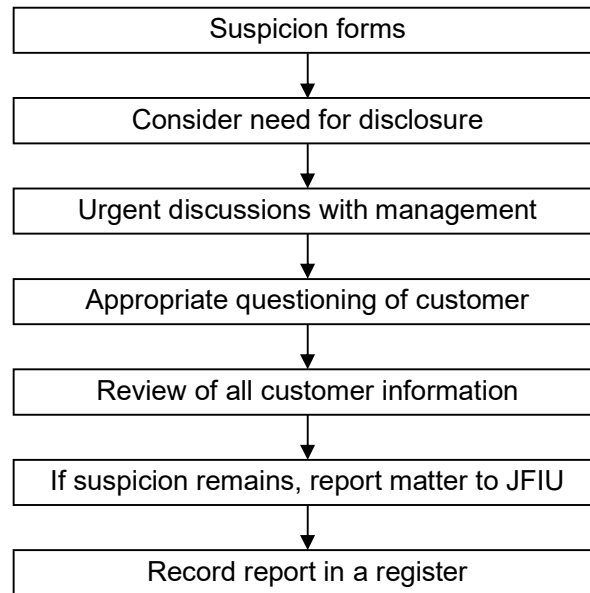
- Buying/selling activities with no obvious purpose
- Frequent small cash transactions followed by one sale transaction to a third party

Settlement/custody/transfers-related

- Large or unusual settlements in cash
- Idle client funds held by licensed corporation
- Frequent fund transfers/cheque payments to/from unverified third parties

- **Involving employees**

- Changes in lifestyle: high spending or not taking holidays
- Unusual or unexpected increase in an employee's sales performance
- Forwarding addresses used for clients such as staff or persons connected to staff

Procedures for Disclosure (as suggested by JFIU)**Education and Training**

- Licensed corporations are required to regularly give staff information and training to keep them aware of:
 - Their obligations and potential liabilities
 - Policies and procedures relating to money laundering, including identification and reporting of suspicious transactions
 - New and emerging ways of money laundering

9. DISCIPLINE

- SFC can:
 - Suspend or revoke a license if person ceases to be fit and proper
 - Publically or privately reprimand a person if guilty of misconduct
 - Impose a fine
- Persons can include Managers-in-Charge as well as licensed persons

9.1 SFC Disciplinary Fining Guidelines

- SFC Disciplinary Fining Guidelines sets out approach to fines
- The more serious the misconduct is, the larger the fine will be
- The more serious cases will be where misconduct:
 - Was intentional or reckless
 - Damages the integrity of the market
 - Causes losses or costs to others
 - Provides a benefit to the intermediary or others
- SFC will also consider whether:
 - A breach of fiduciary duty was involved
 - There was serious or systemic weakness in the management and internal control systems
 - The intermediary reported the misconduct and co-operates with the SFC
 - The intermediary has taken remedial steps (such as compensation to clients, disciplining staff, preventing recurrences)
 - The intermediary or staff have previous disciplinary records
 - Any other punishment will be taken by other authorities
 - Any civil actions

9.2 Guidance Note: Co-operation with the SFC

- The SFC will reduce the type of sanction (from revocation of a license to suspension) or monetarily by up to 30% if the intermediary co-operates with the disciplinary proceedings
- Ways of cooperating with the SFC include:
 - Voluntarily and promptly reporting any breaches or failings to the SFC
 - Providing true/complete information regarding breaches/failings
 - Bringing the disciplinary case to an early conclusion by accepting liability
 - Taking steps to contain breaches and making prompt client compensation

9.3 Public Register

- A public register is maintained with all details of intermediary and disciplinary action taken

10. CORPORATE GOVERNANCE AND REGULATORY SUPERVISION BY SFC

10.1 Corporate Governance

- Corporate governance is concerned with the **system by which companies are directed and controlled** to ensure the proper relationship between a company's management, its board and its shareholders
- The Organisation for Economic Co-operation and Development (**OECD**) has issued a **set of core principles** for corporate governance practices to include:
 - Fairness
 - Transparency
 - Accountability
 - Responsibility
- An objective of good corporate governance is to avoid management taking improper advantage of its position to the detriment of the company's interests
- Corporate governance can be improved through:
 - Installing appropriate **checks and balances**, such as separating the functions of **Chairman and CEO**, appointment of **non-executive directors**, establishment of **independent audit committees** and setting up of **remuneration and benefit committees**
 - Increasing transparency and disclosures to shareholders / stakeholders /public
 - Adopting international accounting/auditing standards
 - Installing strong protective structures for minority shareholders, creditors and other lenders
 - Identifying and penalizing corporate wrongdoing
- Corporate governance deficiencies can lead to insider dealing, fraud and connected transactions which are undervalued

10.2 Regulatory Supervision by SFC

- SFC supervises industry by:
 - **Licensing:** Only fit and proper persons licensed
 - **Supervision and monitoring:** ongoing compliance with applicable laws and regulatory codes
 - **Marketing of Investment Products:** Authorising CISs and structured products
 - **Discipline:** Breaches of laws or regulations are suitably dealt with
- SFC conducts regular inspections of licensed corporations
- SFC will share information with overseas regulators

10.3 Compliance: Industry Practice

- Asset managers may use a compliance manual and have a compliance officer to check adherence to manual
- An operations manual may be used to address specific requirements for particular systems

11. REGULATION OF AND SUPERVISION BY THE MPFA AND IA

11.1 MPFA

11.1.1 Trustees

- Under MPFA, all MPF schemes must be operated by a **trustee** approved by the MPFA in one of the following categories:
 - **Corporate Trustee incorporated in Hong Kong** with:
 - Paid up share capital and net assets of at least HK\$150 million
 - At least five directors who are suitable (sufficient skills, knowledge, expertise, good reputation and character)
 - Ability to carry on business and have proper internal controls
 - Sufficient presence and control in Hong Kong (chief executive officer must reside in Hong Kong and day to day business and records must be in Hong Kong)
 - **Corporate Trustee incorporated outside Hong Kong:**
 - Must meet same requirements above
 - Be incorporated/registered in a jurisdiction with laws comparable to Hong Kong
 - Be supervised by an offshore authority acceptable to the MPFA
 - Designate one of its controllers as its Hong Kong CEO
 - **Individual Trustee:** Only for employer-sponsored schemes with individual resident in Hong Kong, of good reputation and character and providing a performance guarantee for 10% NAV of scheme up to HK\$10 million

Penalties and Sanctions Imposed by the MPFA on Trustees

- For serious infringements, the MPFA may require a special audit of the trustee. In addition, it may:
 - Suspend trustee during investigation and appoint a temporary trustee
 - Revoke trustee approval/terminate its administration/prosecute
 - Violations may be criminal with maximum penalties of HK\$200,000 and two years imprisonment

11.1.2 Custodians

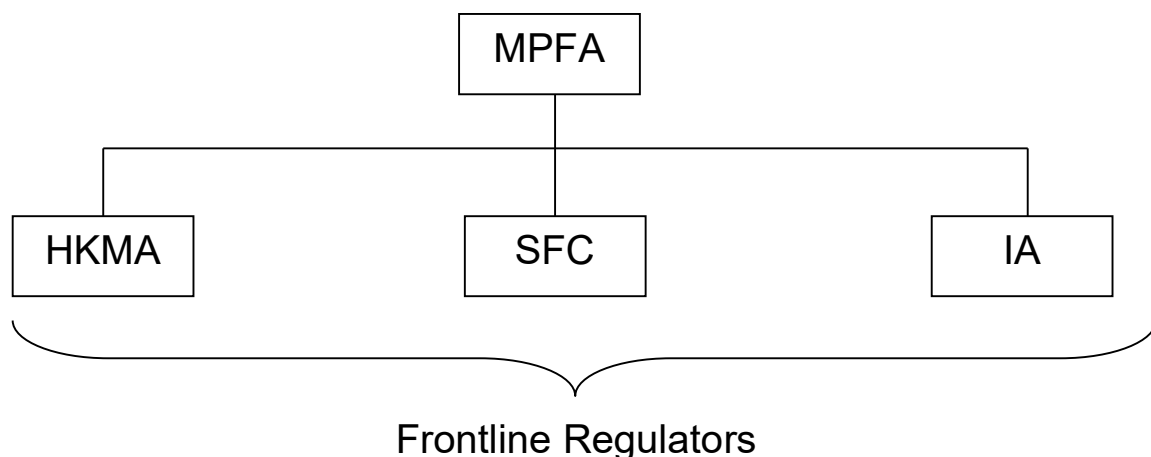
- An MPF Scheme trustee must appoint a custodian
- If eligible, a scheme trustee may also act as the custodian
- Only authorized financial institutions and registered trust companies are eligible to act as custodians, as long as they have sufficient presence and control in Hong Kong

11.1.3 MPF Intermediaries

- Persons who sell, market or give advice on MPF schemes must register with the MPFA
- There are two categories of MPF intermediary that must register with the MPFA:
 - **Principal Intermediary**
 - Primary requirement is “principal intermediary” registration
 - Must either be licensed with the IA or be SFC Type1 or 4 licensed
 - Must apply for approval of either a subsidiary intermediary or an individual who will carry out MPFSO regulated activities
 - Must apply for approval of an individual to act as a responsible officer
 - **Subsidiary Intermediary**
 - Companies or individuals attached to a principal intermediary for the purpose of carrying out regulated activities will need to be registered as a “subsidiary intermediary”
 - Must have been registered as a subsidiary intermediary within the last three years or passed a qualifying exam

11.2 Frontline Regulators

- Following the registration of any intermediary, the MPFA will assign the HKMA, SFC or IA as the frontline regulator for the purposes of the MPFSO



11.3 Conduct of MPF Intermediaries

- As well as the conduct rules of the respective frontline regulators, registered intermediaries must comply with statutory performance requirements, as outlined in the MPFA Conduct Guidelines
- The main performance requirements are as follows:

Honesty and fairness

- Should provide accurate representations and information to clients which are not misleading (about general matters or other MPF Intermediaries)
- Should not pay or offer rebates, commissions or other incentives unless specified in the offering document
- Treat all information provided by client as confidential
- Act in the best interests of the client

Diligence

- Should ensure quick execution, suitability of recommendations and advise within limits of knowledge and authority

Competence

- Advise only on matters where it is competent to do so

Information about clients

- All reasonable steps to identify the true identity of the client should be made when selling MPF schemes to employers, self-employed or preserved account holders
- The client's interests, financial situation, risk preference, investment knowledge and experience should be considered when advising on constituent funds
- Any recommendations made should be suitable for the client, given all the information about the client

Information for clients

- Provide information to enable clients to make informed decisions
- Provide information about other monetary and non-monetary benefits
- Do not induce a client to make a scheme selection based primarily on past performance
- Provide information on fees and charges

Conflicts of Interest

- Must use best endeavours to avoid any conflict of interest and, in the event of a conflict occurring, disclose it to the client and ensure client receives fair treatment

Client Assets

- Ensure client assets are promptly and properly accounted and kept in segregated accounts

Records

- Keep records to enable frontline regulator to establish if they are compliant with statutory obligations

Compliance

- Only sell or advise on MPF schemes and constituent funds that are registered with or approved by MPFA
- Should not engage in prohibited business practices

Responsible Officers

- Ensure responsible officers are given sufficient authority and have sufficient resources to carry out statutory responsibilities

11.4 Code of Conduct for Licensed Insurance Agents

- Issued by the IA and is applicable to:
 - Licensed individual insurance agents
 - Licensed insurance agencies
 - Licensed technical representatives engaged by licensed insurance agencies
- Agents arrange insurance policies offered by insurance companies
- The Code establishes minimum standards of conduct and practices expected of licensed insurance agents
- The Agents' Code establishes eight general principles:
 1. Honesty and integrity
 2. Acting fairly and in the client's best interests
 3. Exercising care, skill and diligence
 4. Competence to advise
 5. Disclosure of information
 6. Suitability of advice
 7. Conflicts of interest
 8. Client assets
- Although the Code does not have the force of law, breaches of the Code may affect an agent's ability to remain licensed

11.5 Code of Conduct for Licensed Insurance Brokers

- Issued by the IA and applicable to two kinds of insurance brokers:
 - Licensed insurance brokers (advise clients on insurance policies)
 - Licensed technical representatives engaged by such brokers
- Establishes minimum standards of conduct and practices expected of licensed insurance brokers
- Establishes same eight general principles as above
- Licensed insurance brokers are expected to undertake due diligence on insurance products and insurers before making any recommendations to clients