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Conducting business outside Hong Kong

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Q1 : Would licences be granted to a Platform Operator and its staff if their Relevant Activities are conducted outside Hong Kong?

A: Part V of the SFO and Part 5B of the AMLO impose an obligation to be licensed upon Platform Operators which in Hong Kong carry on business in a regulated activity (as defined in section 1 of Part 1 of Schedule 1 and Part 2 of Schedule 5 of the SFO) and providing a VA service (as defined under section 53ZR and Schedule 3B to the AMLO), and upon individuals who in Hong Kong perform any regulated function (as defined in section 113(1) of the SFO and section 53ZRB(1) of the AMLO) in relation to a regulated activity and the provision of a VA service carried on as a business (see section 114(1) to (4) of the SFO and section 53ZRB(2) of the AMLO).

A licence which is issued by the SFC under Part V of the SFO and/or Part 5B of the AMLO only permits the holder to carry on business in Relevant Activities, or to perform a regulated function in relation to the Relevant Activities carried on as a business, in Hong Kong. The SFO and the AMLO neither impose upon corporations and individuals an obligation to be licensed in relation to activities which are conducted by them outside Hong Kong, nor confers upon them, after they have been licensed, the ability to conduct business outside Hong Kong. It follows that when a Platform Operator or individual conducts activities in a jurisdiction outside Hong Kong, it is necessary for such Platform Operator or individual to ensure that the relevant legal and regulatory requirements of that other jurisdiction are fully complied with.

Q2 : Would an individual be granted a licence if he or she carries on business activities outside Hong Kong but his or her activities are conducted for or on behalf of a Platform Operator which is licensed by the SFC?

A: The SFC does not license individuals who carry on business activities in another jurisdiction even though those activities might be conducted for or on behalf of, or in conjunction with, a Platform Operator based in Hong Kong that is licensed under the SFO and/or the AMLO. Accordingly, by way of example, individuals who are based in another jurisdiction for the purpose of performing the function of recruiting new clients from that other jurisdiction for a Platform Operator that is licensed in Hong Kong, are not required to be licensed under the SFO and/or the AMLO. Furthermore, the SFC does not have the power to license such individuals.

As a consequence, the SFC declines applications from such individuals to be licensed under the SFO and/or the AMLO unless they satisfy the SFC that they will in Hong Kong also genuinely

not in Hong Kong genuinely perform a regulated function, the SFC is likely to revoke their licences on the ground that in Hong Kong they do not conduct the business activities for which they were licensed under the SFO and/or the AMLO (see section 195(1)(c) of the SFO and section 53ZSQ(2)(c) of the AMLO).

Q3: What are the SFC's concerns if some individuals who have been licensed by the SFC only conduct business activities outside Hong Kong?

A: It is of concern to the SFC if some individuals who have been licensed under the SFO and/or the AMLO only conduct business activities outside Hong Kong and, in doing so, promote themselves as persons who are licensed by the SFC.

The fact that an individual has a licence issued by the SFC gives rise to an inference that the individual is actively regulated by the SFC. However, as the SFC may only exercise its powers within Hong Kong, its ability to effectively supervise such individuals and to investigate their conduct is, at best, very restricted. Accordingly, persons in other jurisdictions with whom these licensed individuals deal, are likely to be misled as to the effectiveness the SFC's regulatory oversight of them.

Accordingly, the SFC wishes to remind individuals who are contemplating to seek a licence from the SFC and the Platform Operators they are intending to be accredited to, not to mislead the SFC as to the precise nature of the individuals' intended business activities when they apply for their licences, as providing false or misleading information to the SFC in support of a licence application is a criminal offence contrary to section 383 of the SFO and section 53ZTO of the AMLO. Such conduct is viewed seriously by the SFC and is likely to call into question the fitness and properness of the individual and the corporation to be, or to remain, licensed.

Moreover, Platform Operators which are licensed by the SFC, and which have employees or agents conducting business activities on their behalf in other jurisdictions (irrespective of whether such persons are licensed under the SFO and/or the AMLO), are likely to be regarded by the SFC as responsible for their conduct. If these persons are not licensed under the laws of such other jurisdictions when they should be, or they otherwise conduct themselves in an improper manner, this is likely to be of considerable concern to the SFC. In such a situation, the SFC might well consider malpractices of these persons as calling into question the fitness and properness of the relevant Platform Operators to be, or to remain, licensed in Hong Kong.

The contents of this FAQ are intended to provide guidance of a general nature and should not be taken as constituting legal advice. If corporations or individuals are in any doubt concerning the licensing obligations that arise under the SFO and the AMLO in their particular circumstances, they should seek legal advice.

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