

Topic: **Financial Intermediaries and Covid-19**

Firm: **Robertsons Solicitors**

As financial intermediaries licensed by the Securities and Futures Commission (SFC), licensed corporations are required to comply with various regulatory requirements.

Two of such requirements have been impacted by the recent COVID-19 pandemic:

- (1) Where a licensed corporation has triggered its business continuity plan; and
- (2) Where licensed representatives of the licensed corporation are asked to work from home (WFH) or work overseas.

The SFC has recently issued an FAQ to address these (and other) questions.

Where a licensed corporation has triggered its business continuity plan

The SFC says that a licensed corporation is required to maintain a business continuity plan for emergency situations, such as where the office premises become damaged or unavailable for use, or where senior management becomes incapacitated or otherwise unavailable to perform their duties.

If the business continuity plan is triggered, say if the office is closed for quarantine purposes against COVID-19, that is a matter which is notifiable to the SFC under the Securities and Futures (Licensing and Registration) (Information) Rules.

In the FAQ, the SFC set out the following non-exhaustive examples whether the licensed corporation is expected to notify the SFC:

- Confirmation of staff infection which may have an impact on the licensed corporation's operations;

- Closing of office premises as a result of staff infection or government lockdown, including overseas office premises, if the closure has implications for the licensed corporation's operations or the carrying on of its regulated activities (for example, temporary closing of overseas office premises which handles back and middle office functions);
- Changes to the licensed corporation's organisational resources (eg, split team arrangements, staff relocation to overseas offices); or
- The triggering of the licensed corporation's business continuity plan.

Where licensed representatives of the licensed corporation are asked to work from home (WFH) or work overseas.

A licensed corporation is by law required to seek the SFC's prior approval for using any premises for the keeping of records or documents relating to the carrying on of the regulated activities for which it is licensed.

In other words, all work premises of a licensed corporation is required to be vetted in advance by the SFC.

This requirement becomes an issue when licensed representatives are either:

- (a) Asked to work from home;
- (b) Sent to work at an overseas office; or
- (c) Prevented from returning to Hong Kong due to quarantine or travel restrictions and are therefore forced to work from overseas

About Author



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Chris is the Managing Partner of Robertsons. He heads up Robertsons' Private Equity and Commercial Department and has been with the firm since he came to Hong Kong more than twenty five years ago.

His practice includes mergers and acquisitions, joint ventures, private equity, funds and corporate restructuring.

He also handles a wide range of securities and compliance work, particularly for SFC registered intermediaries and is developing a fast expanding practice revolving around the fintech industry where he has been advising

clients on legal and regulatory issues relating to a variety of fintech products and offerings.

Chris also has considerable experience advising the financial services sector on service conditions and benefits for senior management as well as the enforceability of post termination covenants.

He is a frequent speaker on issues of Hong Kong Corporate Law as well as Directors' Rights, Duties and Responsibilities and sits on the Law Society of Hong Kong's Working Party on Incorporation of Solicitors Practices.

In the FAQ, the SFC accepts that these situations are acceptable as temporary arrangements, but also treats them as situations where business contingency plan is triggered and are therefore notifiable to the SFC as abovementioned.

The SFC also sets out the following matters which the licensed corporation is still required to observe:

- Where a licensed representative is working overseas, both the licensed corporation and the licensed representative are required to comply with the relevant legal and regulatory requirements in that jurisdiction;
- The licensed corporation should ensure that the licensed representative are able to remote access its trading and other systems,

and that all activities are captured in the records generated by such systems;

- Where certain records and documents are brought outside of the approved premises on a temporary basis, they should be sent back to the approved premises as soon as practicable; and
- The licensed corporation remains at all times responsible for the oversight of the conduct of all its licensed representatives.

The FAQ and another Circular from the SFC in relation to extended deadlines as a result of the COVID-19 pandemic can be found at the following links:

The FAQ – <https://www.sfc.hk/web/EN/faqs/intermediaries/licensing/licensing-related-matters-in-light-of-covid-19-pandemic.html#1>

The Circular – <https://www.sfc.hk/edistribution/Web/gateway/EN/circular/intermediaries/supervision/doc?refNo=20EC26>

Robertsons is constantly monitoring the development of the pandemic and its implications and effects. If you have any questions, such as how the pandemic may affect your business from a legal perspective,

please do not hesitate to contact our Chris Lambert or Charles Mok:

Chris Lambert - <http://www.robertsonshk.com/en/people/chris-lambert>

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Charles Mok is a partner in the Private Equity & Commercial Department. He was previously a trainee with the firm. Charles has acted on several high profile mergers and acquisitions and joint ventures in Hong Kong and the PRC as well as a wide range of corporate and commercial transactions.

In addition, he also has an active practice advising on licensing and compliance matters with the Securities and Futures Commission as part of the Licensing & Compliance team

of the Regulatory Department, servicing a wide range of clients from boutique firms, funds, and financial institutions. He frequently advises on applications for all types of intermediary licences under the Securities and Futures Ordinance as well as on sales and purchases of licensed corporations (including the consequential change of substantial shareholders applications). He has also represented clients on applications for membership of the Hong Kong Stock and Futures Exchanges.

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