

# HKTA Session

Family Office Licence Issues in Hong Kong

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# Overview

- 7,300 single-family offices worldwide
- 1,300 located in Asia Pacific, and
- since 2017 Asia has recorded a 44% increase in family offices.
- A family office is typically a private company that operates an investment or wealth management business for one or more families.
- They can provides a range of services including investment advice, tax and estate planning, risk management, trusteeship/foundations, insurance and help with philanthropic activities.

## TYPES OF FO's

- **Single Family Office**

- single family office :the assets, investments and long-term interests of members of a single family. Managed & often structured through a corporate vehicle owned or controlled by the family.

- **Multi Family Office**

A multi-family office by definition serves more than one high net worth family and are typically established and run as commercial ventures.

- **Third party providers**

Specific companies such as licensed asset managers and private banks offering FO services (not the focus of this seminar)

## Possible licensing

Areas of possible licence requirements :

- Activities falling under Securities and Futures Ordinance (HKSFC RA # licence)
- Trust and/or Corporate Services activities (TCSP licence)

## 3 factor test for licensing under Securities Future Ordinance

**ALL 3 factors must be met in order to give rise to a licensing obligation:**

- (i) the **services provided** by the family office must constitute one or more of the **regulated activities** as defined under the SFO;
  - (ii) the family office is **carrying on business** in the provision of such services;
  - (iii) the business is **carried on in Hong Kong**.
- If services provided by a family office do not constitute any regulated activity or they fall within any of the **available carve-outs in the SFO**, the family office is **not** required to be licensed under the SFO.

## Carrying on a business

- What amounts to “carrying on a business” ?

Determined by reference to :

- whether the activity involves a degree of continuity,
- whether the activity is capable of making a profit or
- is carried out for the purpose of making a profit.

## Available carve outs

- Single FO's undertaking Regulated Activities may rely on carve-outs
- An **intra-group carve-out applies** where such services are provided **solely to its “related entities”**:
  - its wholly owned subsidiaries,
  - its holding company which holds all of its issued shares, or
  - other wholly owned subsidiaries of that holding company.

\*Schedule 5 to the SFO sets out available carve-outs under the definitions of the various types of regulated activities

## SFO Versus MFO

- Most Single FO's are not carrying on a business in Hong Kong and providing services only to related entities >>> no licensing
- Multi FO's are typically established commercial ventures for multiple families and licensing will depend on whether the services are considered to be "regulated activities"
- Usual licences required by MFO's
  - Type 1- dealing in securities
  - Type 2- dealing in futures contracts
  - Type 4 - advising on securities
  - Type 5 - advising on futures contracts
  - Type 9 - asset management
- If a multi-family office provides services to clients who are **not related entities**, it cannot make use of the intra-group carve-out >>> licence required



## MFO Regulated Activities examples

- Where a multi-family office is granted full discretionary investment authority, its asset management activity would generally be similar to that of a licensed asset management company >>>>likely need to be licensed for Type 9 RA
- If it has not been delegated full discretionary investment authority and only provides securities investment advice and executes securities transactions, it may still need to be licensed for other types of RA's eg Type 1 RA (dealing in securities) and Type 4 RA (advising on securities).
- Where the assets include futures contracts, it may also need to be licensed for Type 2 RA (dealing in futures contracts) and Type 5 RA (advising on futures contracts).
- Provide other services such as acquiring financial assets following instructions made by the family, may fall within the definition of any of the other types of regulated activities such as Type 1 RA (dealing in securities).

## SFC licence

- A genuine Single FO arrangement established to serve the investment needs of members of a single family and
  - not being run as a business (i.e. only reimbursement of operating expenses from the family )
  - No objective of making a profit>> should not generally be considered as 'carrying on a business' from a licensing perspective.
- The sharing of office premises and administrative infrastructure by two or more single family offices (e.g. to reduce operating overheads) would not automatically trigger a licensing obligation for the Single FO as it would depend on the three factors set out earlier.
- If two or more single family offices make arrangements to share human resources involved in investment-related matters, research or the investment process, this could be regarded as a multi-family office structure and, where the provision of such services is carried on as a business >>> there is a risk of triggering a licensing obligation.

## Other Licenses

- If the Multi FO is providing trustee or corporate services **as a business** (then it is likely to need a Trust or Corporate Service Providers licence (“TCSP” ) from Companies Registrar (some exemptions -accountants, lawyers single family arrangements).
  - >>Under the AMLO : an offence if the person carries on a trust or company service business in Hong Kong without a licence. (fine of HK\$100,000 / imprisonment for 6 months)
  - >>Any person who wishes to carry on a trust or company service business in Hong Kong has to apply for a TCSP licence and comply with the relevant requirements of the AMLO
  - >>Fit & Proper test
  - >>Licence before commencing business
  - >> Renewed every 3 years

## Useful Links

- SFC circular on FO's

<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=20EC1>

- TCSP Licence

[https://www.tcsp.cr.gov.hk/tcspls/portal/guide/59/eng/TCSP\\_G1-e.pdf](https://www.tcsp.cr.gov.hk/tcspls/portal/guide/59/eng/TCSP_G1-e.pdf)