

Updating Your Study Manual

Instructions for Inserting Version 1.3, 2003

The followings serve as the instructions for updating **Topic 1: Regulatory Overview of the Hong Kong Financial Industry** of Study Manual 1 for the Licensing Examination for Securities and Futures Intermediaries. Please be reminded that only the updated sections are provided for downloading. You may replace the relevant sections with this updated version for the study manual you possess.

Instructions:

1. Download and print out the following pages.
 2. **Remove** the original front page and **Insert** the updated front page.
 3. **Remove** pages 1-13 to 1-16 and **Insert** new pages 1-13 to 1-16.
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STUDY MANUAL FOR

PAPER 1

FUNDAMENTALS OF

SECURITIES AND FUTURES REGULATION

of

The Licensing Examination
for Securities and Futures Intermediaries

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- Trustee Ordinance;
 - Registered Trustees Incorporation Ordinance; and
 - Money Lenders Ordinance.
- 2.23 The Company Registry maintains and makes available for public inspection the financial and other returns, charges registered by companies, and so on. It will follow up defaults in making the prescribed returns of the entities covered by these Ordinances and may strike off companies for failure to make returns and for not carrying on business.
- 2.24 The Registrar does not directly regulate companies, limited partnerships, trustees or moneylenders; such functions are assumed by different bodies. As a member of the Standing Committee on Company Law Reform, the Registrar of Companies takes an active interest in corporate governance issues and may make recommendations.
- 2.25 There are no direct links between the SFC and the Company Registry in regulatory areas.

Revision questions:

- Question 4: What are the obligations of the SFC to the Financial Secretary?
- Question 5: How do the HKMA and the SFC share responsibility for the registration of the securities trading activities of banks?
-

3 The Securities and Futures Commission

Regulatory functions and structure

(See Figure 3)

- 3.1 The Securities and Futures Commission ('SFC') was created by law under the old Securities and Futures Commission Ordinance ('SFCO') (now subsumed in the new Securities and Futures Ordinance). It is independent, meaning that it is not part of the Government machinery of the Civil Service or the new ministerial system. Nevertheless, it reports to and is accountable to the Government as described above in section 2.

Objectives of the SFC

3.2 The ***objectives*** of the SFC in relation to the securities and futures industry are stated in section 4, SFO as being to:

- maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the industry;
- promote understanding by the public of the operation and functioning of the industry;
- provide protection to the investing public;
- minimize crime and misconduct in the industry;
- reduce systemic risks in the industry; and
- assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the industry.

Functions and powers of the SFC

3.3 The ***functions and powers*** of the SFC are wide and are stated in section 5, SFO under 18 headings. The principal functions are to:

- take such steps as it considers appropriate to meet the first objective in paragraph 3.2 above;
- supervise, monitor and regulate:
 - recognised exchange companies, clearing houses, exchange controllers and investor compensation companies; and
 - the activities of registered institutions (principally banks) which the SFC is required to regulate;
- promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on regulated activities;
- maintain and promote confidence in the industry;
- cooperate with and provide assistance to other regulators;
- provide investor protection to the degree appropriate to the class of investor;
- promote, encourage and enforce internal control and risk management systems by persons carrying out regulated activities,

including registered institutions as regards any regulated activities they conduct; and

- suppress illegal, dishonourable and improper practices in the industry.

- 3.4 **Other functions** include several requiring the SFC to promote investor education, investor understanding of investment products, and persuading investors to make informed decisions and invest in a supervised environment.
- 3.5 The reliance that may be placed by the SFC on the supervision of AFIs by the HKMA has been mentioned in paragraphs 2.8 to 2.10 above.
- 3.6 The SFC has **general duties** to help maintain Hong Kong’s position as an international financial centre, to facilitate innovation in financial products, to avoid restrictions on competition, to act in a transparent manner and to use its resources efficiently, as stated in section 6, SFO.
- 3.7 In addition, the SFO provides that certain functions of the SFC **may not be delegated** by it to others. They are 90 in number and they are detailed in Schedule 2, Part 2 of the SFO. They include powers to make subsidiary legislation, to establish committees under section 8, SFO, to suspend exchange companies, to appoint external investigators, to intervene in the business operations of licensed corporations and so on.

The Board, committees, tribunals and panels

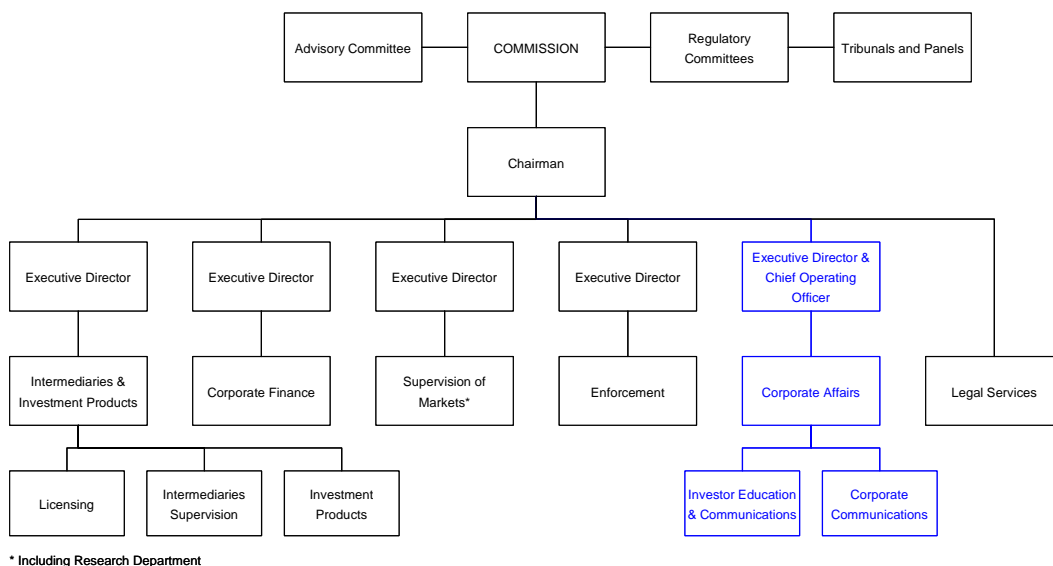


Figure 3: SFC Organization Chart

The Board of the SFC

- 3.8 The ***Board of the SFC*** comprises the Chairman, who is also an executive director, supported at present by **five** executive directors and **seven** independent non-executive directors. The original plan of the Davison Committee was to have a balance between the executives and non-executives. The non-executives are prominent persons from industry, the legal and accountancy professions, and other leaders in industry. Under the SFO, there will be no fewer than eight members, with the majority being non-executive directors.
- 3.9 Each of the **five** executive directors other than the Chairman supervise an operational **division**. The divisions are Corporate Finance, Intermediaries and Investment Products, Supervision of Markets, Enforcement **and Corporate Affairs**. They are supported by legal and other services and various committees responsible for different aspects of the SFC's internal corporate governance, such as an audit committee, all of which have independent members to provide advice.

The Advisory Committee

- 3.10 The ***Advisory Committee*** was established under the old SFCO and now derives its parentage from section 7, SFO. It is responsible for advising the SFC on policy matters regarding its regulatory objectives and functions. It has no executive powers and does not 'police' the SFC in any way. It has the SFC Chairman as its chairman, not more than two other executive directors appointed by the Chairman, and between eight and 12 other members appointed by the HKSAR Chief Executive in consultation with the SFC Chairman.

Committees, tribunals and panels

- 3.11 The SFC has established several regulatory committees to which it has delegated some of its functions:
- The ***Takeovers and Mergers Panel*** administers the Code on Takeovers and Mergers.
 - The ***Takeovers Appeal Committee*** hears appeals against the disciplinary rulings of the Takeovers and Mergers Panel at the request of an aggrieved party for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive.
 - The ***Committee on Unit Trusts*** approves prospectuses of unit trusts, mutual fund corporations and other collective investment schemes ('CIS'), imposes conditions on such approvals, and authorizes unit