

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Commission Ordinance
(Chapter 24)

SECURITIES AND FUTURES COMMISSION (FEES)(AMENDMENT) RULES 1999

INTRODUCTION

At the meeting of the Executive Council on 1 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Securities and Futures Commission (Fees) (Amendment) Rules 1999, at Annex A, should be made under section 54 of the Securities and Futures Commission Ordinance.

BACKGROUND AND ARGUMENT

General Background

2. The Securities and Futures Commission (SFC) was established in 1989 with a view to developing and regulating the securities and futures markets in Hong Kong. The SFC is funded by levies on securities transactions under the Stock Exchange Company and Futures Exchange Company, government appropriation, and service charges. Due to buoyant market activities, the SFC has not requested government funding since 1993-94.

3. The level of fees and charges for SFC services are set out in the Securities and Futures Commission (Fees) Rules (Cap. 24 sub.leg.). Section 54 of the Securities and Futures Commission Ordinance (Cap. 24) and section 11 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1) provide that the Chief Executive in Council may, after consultation with the SFC, make rules providing for the payment to the SFC of fees or other charges in relation to services provided by the SFC.

4. In January 1989, the then Governor in Council noted that wherever possible, fees and charges for the SFC should be brought up to a level where

they recovered the full cost of services. This has generally been achieved in respect of services relating to intermediaries.

Present Position

General Requirements

5. It is envisaged that products underlying the Mandatory Provident Fund (MPF) schemes will be structured either as securities or insurance products (which may also be invested in securities). Hence, sales agents of MPF schemes may have to advise employers or employees on securities. As the law presently stands, these intermediaries are required to be registered with the SFC if they carry on business as investment advisers or investment representatives.

MPF Intermediaries from Insurance Industry

6. There are about 300 000 employers, 300 000 self-employed persons and 3 million workers in Hong Kong, and the window for marketing of MPF schemes is about 10 months only (starting from the beginning of year 2000 when approval for individual MPF schemes will be granted by MPF Schemes Authority and ending at December 2000 when employers/employees are expected to start contributions). It is envisaged that insurance intermediaries would constitute the majority of personnel participating in the promotion of MPF schemes.

7. After the initial marketing period for MPF products, it is expected that the number of insurance agents that wish to maintain an investment representative licence will be substantially reduced.

8. Pursuant to the Securities and Futures Commission Ordinance, corporations and their directors applying for registration as *investment advisers* and their employees applying for registration as *investment representatives* are required to demonstrate that they are fit and proper to be registered.

9. The SFC anticipates that the resources to be spent in processing applications from the insurance sector as *investment advisers* to advise on MPF schemes only would be similar to that for processing other applications advising on a full-range of securities products. The only difference is that the investment advisers from the insurance sector are members of the self-

regulatory bodies (SROs) established under the Insurance Authority⁽¹⁾. While such persons have been licensed or approved under the Insurance Companies Ordinance (Cap. 41), the SFC still has to conduct independent verifications and assessment on their fitness and properness in order to discharge its statutory functions and that such persons play an important role in the supervision of their employees or agents in advising on securities or securities-linked MPF products. Consequently, the fee levied for such persons undertaking investment advising on MPF products (in addition to advising on insurance plans) should be the same as that required of other *investment advisers*. Currently, this is \$4,900 per applicant.

10. On the other hand, the cost for the SFC to process applications for *investment representatives* from insurance agents can be lower because –

- (a) people are only allowed to participate in the insurance industry after the insurance industry SROs are satisfied that they are fit and proper person and that they have the ability to perform their functions efficiently, honestly and fairly. The SFC requires the same attributes for applications for investment representatives. The only additional task that the SFC has to do will be to conduct independent checks on the information provided by SROs' registrants who had not previously been subject to such checks; and
- (b) the MPF Schemes Authority requires all MPF intermediaries to pass a recognised examination aimed at testing the competence of candidates to promote MPF schemes. The examination organised by the Vocational Training Council and the Hong Kong Securities Institute, which are overseen by a Committee with members from SFC, Hong Kong Monetary Authority and MPF Schemes Authority and led by the Commissioner of Insurance, will be recognised. The SFC is satisfied that such examination is capable of testing the competence of MPF intermediaries for their purpose.

(1) Examples of the self-regulatory bodies for the Insurance sector are the Hong Kong Confederation of Insurance Brokers, the Professional Insurance Brokers Association Limited and the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers.

The Proposal

11. The insurance industry has expressed its concern regarding the cost of registering their representatives with the SFC and felt that the current application fee for representatives (\$1,850) would deter agents from acting as MPF intermediaries. If a substantial number of agents decide not to register and participate in the marketing due to the cost factor, this may act against a successful launching of the MPF Scheme. The general sentiment of the industry is that a lesser application fee for this type of restricted applicants is warranted given the limited business activities that could be conducted by them and the limited duration of the proposed registration, the bulk of which is expected to occur before December 2000 (and thereafter such a demand should drop substantially).

12. The uniformity of this type of applicants and their massive number (estimated to be 25 000 to 30 000) and to some extent the availability of some information concerning these applicants from the SROs permit the SFC to achieve a lower unit cost of processing. On the assumption that 20 000 insurance agents will apply for registration and because the MPF Schemes Authority has agreed to partly subsidize the SFC's costs associated with the new licence category, the SFC should be able to achieve a full cost recovery if a licence fee of \$400 per application is charged.

THE REGULATION

13. We propose to introduce a new category of investment representatives for advising on securities relating to MPF matters only. It is proposed that a new category be added as paragraph (e) of item 1 of Schedule 1 to the Securities and Futures Commission (fees) Rules (Cap.24 sub.leg.). The proposed changes are shown at Annex B. It is proposed that the new fee come into effect on 3 August 1999.

PUBLIC CONSULTATION

14. The SFC has held discussions with the various interested parties such as the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association Limited concerning the registration requirements and is well aware of their concerns in obtaining registrations with the SFC. This proposed fee structure meets their need and has received unequivocal support from these interested parties.

BASIC LAWS IMPLICATIONS

15. The Department of Justice advises that the proposed Rules are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the proposed Rules have no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

17. The proposal has no financial and staffing implications for the Government. SFC will require some additional staff and resources to process a large number of applications for registration in the short run but will fully recover these costs from MPFA's subsidy and the proposed new fees.

ECONOMIC IMPLICATIONS

18. The licence fee on MPF intermediaries, though unlikely to represent any significant part of their operating costs, may at least in part be expected to be passed on to MPF scheme contributors. A lower licence fee should hence be beneficial to such contributors.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be -

Publication in the Gazette	4 June 1999
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Table at Legislative Council for negative vetting	9 June 1999
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PUBLICITY

20. A press release will be issued on 2 June 1999, the day on which the Rules are published in the Gazette. The SFC will publicize the proposal to

registrants, investors and other interested parties. A spokesman will be available for answering media enquiries.

ENQUIRIES

21. Enquiries on this Brief may be directed to Ms Wendy Cheung, Principal Assistant Secretary for Financial Services, at 2528 9016.

Financial Services Bureau
File Reference : G6/9/22C(99)

**EXTRACT OF
SECURITIES AND FUTURES COMMISSION (FEES) RULES**

<i>Item</i>	<i>Description</i>	<i>Existing Fees \$</i>	<i>Proposed Fees \$</i>
SCHEDULE 1 APPLICATION FEES, ANNUAL FEES, ETC.			
Registration and registered persons			
1.	Fee payable on application under the Securities Ordinance (Cap.333) for registration as –		
	(a) a dealer (including a dealing partnership)	4,900	No change
	(b) a dealer’s representative	1,850	No change
	(c) an investment adviser (including an investment adviser’s partnership)	4,900	No change
	(d) an investment representative (other than one referred to in paragraph (e))	1,850	No change
	(e) an investment representative (for advising on securities incidental to the marketing of mandatory provident fund schemes only)	Nil	400

SECURITIES AND FUTURES COMMISSION (FEES) (AMENDMENT) RULES 1999

(Made by the Chief Executive in Council under section 54
of the Securities and Futures Commission Ordinance
(Cap. 24) after consultation with the
Securities and Futures Commission)

1. Commencement

These Rules shall come into operation on 3 August 1999.

2. Application fees, annual fees, etc.

Schedule 1 to the Securities and Futures Commission (Fees) Rules (Cap. 24 sub. leg.)
is amended in item 1 -

- (a) in paragraph (d) by adding "(other than one referred to in paragraph (e))" after "an investment representative";
- (b) by adding -
 - "(e) an investment representative 400".
(for advising on securities
incidental to the marketing of
mandatory provident fund
schemes only)

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

These Rules introduce a new category of fees payable under the Securities Ordinance (Cap. 333) for registration by an individual as an investment representative for the purposes of advising on securities incidental to the marketing of mandatory provident fund schemes only. They reflect a reduction from the level of fees payable generally by an investment representative.