

## FREQUENTLY-ASKED QUESTIONS ON SINGLE LICENSING REGIME (IN REFERENCE TO THE LICENSING HANDBOOK)

### In Relation to Chapter 2

- 1. What is the difference between the single licensing framework, as provided for by the *Capital Markets Services Act 2007* (CMSA) and the licensing framework that was provided for under the repealed *Securities Industry Act 1983* (SIA) and the *Futures Industry Act 1993* (FIA)?**

The CMSA introduces a new licensing framework for capital market intermediaries. This new licensing framework is premised on the concept of a single licence. Under this framework, a capital market intermediary will only need to hold one licence to carry on any one or more regulated activities. For example, a capital market intermediary who wishes to carry on the regulated activity of dealing in securities and trading in futures contracts will now only be required to hold one licence. This, however, was not the case under the licensing framework as provided for by the repealed SIA and FIA. This is because under the repealed SIA and FIA, a capital market intermediary was required to hold two separate licences in order to deal in securities and also trade in futures contracts. The single licensing regime introduced by the CMSA will result in less paper work and administrative burden on capital market intermediaries.

- 2. What is a “regulated activity” for the purposes of the CMSA?**

A regulated activity is an activity that requires a licence under the CMSA. The following activities are regulated activities:

- Dealing in securities;
- Trading in futures contracts;
- Fund management;
- Advising on corporate finance;
- Investment advice; or
- Financial planning.

Schedule 2 of the CMSA provides for this list and defines each of these regulated activities.

**3. How do I know whether the activities I am currently undertaking require a licence from the SC?**

If you carry on a **business** in any one or more of the six regulated activities discussed above or you wish to carry on any of the regulated activities on behalf of your licensed principal, you will be required to hold a licence under the CMSA. The licence held by the licensed principal is called a "Capital Markets Services Licence" (CMSL) while the licence held by the individual concerned is called a "Capital Markets Services Representative's Licence" (CMSRL).

**4. The licence tenure of capital market intermediaries is typically for one year. I understand that the SC may extend the tenure to 36 months for qualified CMSL holders and to 24 months for qualified CMSRL holders. What are the criteria that SC applies in granting a longer tenure of licence?**

The SC would consider several factors in granting a longer tenure of licence. The primary basis for the granting of a longer tenure is the level of intermediary meeting good standards of corporate governance and market conduct. Consistent with the SC's regulatory approach, the SC would apply a principal based approach in assessing the applications. The criteria used will include breaches of rules and regulations, adverse records, compliance with licensing requirements and relevant laws and regulations, overall business practices and adoption of best practices in corporate governance, the compliance culture, and regulatory issues concerning the licensee.

**5. My company would like to market unit trust schemes. What type of regulated activity should my company apply to be licensed for?**

Your company can apply for a CMSL to carry on the regulated activity of dealing in securities. However, since your company's dealing activities would be limited to dealing in unit trust products, the licence that will be issued to you will state that you can only deal in unit trust products.

**6. I am a CMSL holder who is licensed to carry on the business of fund management. If, in addition to my fund management activity, I am also interested to distribute and sell unit trust products, do I need to apply to carry on the regulated activity of dealing in securities?**

Yes. The distribution and selling of the unit trust products triggers a different regulated activity which is "dealing in securities". Therefore, in your circumstances, you will need to hold a CMSL for the regulated activities of fund management and dealing in securities restricted to unit trusts products.

- 7. My company wants to distribute and sell unit trust products. I want to employ five employees to distribute and sell unit trust products. Must these employees hold a CMSRL for dealing in securities restricted to unit trust products?**

Your company would have to obtain a restricted CMSL for dealing in securities restricted to unit trust products. However, your employees do not need to hold a CMSRL for dealing in securities restricted to unit trust products. They must, however, be registered with the Federation of Malaysian Unit Trust Managers (FMUTM).

- 8. I am a registered person dealing in unit trust attached to a UTMC. Can I be attached to another principal which is a CMSL holder?**

No. As a registered person dealing in unit trust, you can only be attached to one principal, whether the principal is a UTMC or a CMSL holder.

- 9. I am a corporate finance personnel currently employed by a CMSL holder who carries on the regulated activities of dealing in securities and advising on corporate finance. Part of my work involves assisting my principal in its underwriting arrangements. What type of regulated activity must I be licensed for?**

If you are a corporate finance personnel who is also involved in assisting your principal in its underwriting arrangements, you will need to apply for a CMSRL for two regulated activities – advising on corporate finance and dealing in securities. In this instance, your dealing capability will be restricted to the underwriting arrangements which you had provided corporate finance advice on. You will not be required to sit for any licensing examination for carrying on the regulated activity of dealing in securities.

- 10. My company is a CMSL holder that is licensed to carry on the regulated activity of dealing in securities. My company has some individuals who have been certified by Persatuan Pasaran Kewangan Malaysia (PPKM). If the scope of their dealing activities is limited to fixed income securities, do they need a CMSRL to carry on the regulated activity of dealing in securities?**

Yes, individuals who carry on dealing in fixed income securities are required to hold a CMSRL for the regulated activity of dealing in securities. If the individual has not passed Modules 6 and 7 of the SC licensing examination but have been certified by PPKM, the individual will be granted a CMSRL for dealing in securities restricted to dealing in unlisted debt securities.

**11. In which situations can a person's involvement in a regulated activity be exempted from the licensing requirement?**

A person who is specified under Schedule 3 of the CMSA is exempted from the licensing requirement under the limited circumstances set out in the schedule. For example, an accountant who is a member of the Institute established under the *Accountants Act 1967* can be involved in the regulated activities of advising on corporate finance or financial planning provided his involvement in any of these two regulated activities is solely incidental to his practice as an accountant.

**12. I am a practising accountant. I have been approached by a client who is interested to know about his tax effect on certain investments. During my consultation, I have asked my client to dispose certain portfolio of securities for tax purposes. Will this sort of advice be considered as incidental to my practice?**

If your advice on securities is provided as part of your review of the taxation consequences of your client, you can rely on paragraph 3 of Schedule 3 of the CMSA, and under such circumstances, you do not need a licence.

However, where you provide specific recommendation to buy and sell securities which is not part of your accounting services, you are in fact providing investment advice which would require you to hold a licence to carry on the regulated activity of investment advice. You should, therefore, seek legal advice as to whether you are required to hold a licence under the CMSA under such circumstances.

**13. I am a registered valuer and in undertaking property consultancy for REITs, I advise my clients on whether an intended property acquisition will be yield accretive or yield dilutive. Do I need a licence under the CMSA?**

You would not need a licence provided that your advice is solely incidental to your practice as a valuer.

**14. I work in a consultancy firm and one of the firm's activities focuses on advising public-listed companies on corporate finance. Does this activity require licensing?**

Any person who wishes to carry on the business of advising on corporate finance requires a licence under the CMSA.

- 15. As the regulated activity of fund management under the CMSA now encompasses both securities and futures fund management, does this mean that if my company is currently a holder of a fund management licence issued under the SIA, can I also carry on futures fund management when the CMSA comes into effect?**

Once the CMSA comes into effect, your company shall be deemed to be holding a CMSL to carry on the business of fund management for securities only (see section 384 of the CMSA). Your company cannot, therefore, conduct a business in fund management for futures contracts unless you have been specifically approved by us.

- 16. As a potential investor, how will I know that I am dealing with a licensed person?**

The SC maintains a register of licensed persons. The public can access the list of licensed persons through the SC's website.

### **In Relation to Chapter 3**

- 17. Can financial institutions engage in regulated activities?**

Yes, they may do so as they are specified in Schedule 4 provided their activities are limited to those set out under column 2 of that schedule.

- 18. What is the status of a merchant bank?**

- If it **is** a holder of a CMSL carrying on the regulated activity of dealing in securities, it is not a registered person under Schedule 4 of the CMSA; and
- If it is **not** a holder of a CMSL carrying on the regulated activity of dealing in securities, it is a registered person under Schedule 4 of the CMSA.

### **In Relation to Chapter 4**

- 19. Must a CMSL applicant be a company?**

Yes, a CMSL applicant must be a company except in the case where the regulated activity being applied for is financial planning.

An applicant who wishes to carry on the regulated activity of financial planning only may choose either to incorporate a company in Malaysia or may do so under a sole proprietorship or a partnership set-up. However, if the CMSL applicant decides to opt for a partnership set-up, the individual partner will hold a CMSL

and he will not be entitled to have any licensed representative to act on his behalf.

- 20. My company is licensed as a CMSL holder to carry on the regulated activity of fund management and currently, has one director licensed for fund management. If my company decides to apply to add on a second regulated activity, for instance, investment advice to the CMSL, how many directors are required to be licensed?**

As a CMSL holder, you are required to have at least one licensed director, i.e. a director who holds a CMSRL for fund management. If you decide to expand your business to include a new regulated activity, you need to only appoint a head of a regulated activity (*by whatever title, description or position called*) for the second regulated activity. In your case, you will need to appoint a head for the regulated activity of investment advice. However, should your company decide to have more than one licensed director, you can also appoint a director to head the regulated activity of investment advice.

- 21. My company wishes to apply for a CMSL to carry on fund management. How many licensed representatives do my company need to have at the point of submitting an application for licence to the SC?**

To ensure business continuity, a CMSL applicant is required to have at least two licensed representatives, i.e. two CMSRL holders, for every regulated activity that you wish to carry on. The requirement of two licensed representatives is inclusive of the licensed director or head of regulated activity. Thus, in your case, this requirement will be met by you having one licensed director and one other representative for fund management.

- 22. My company is currently licensed as a fund manager under the SIA. Currently, my company has only one licensed representative who is our licensed director. Is there a grace period given for my company to fulfil this new requirement?**

Yes, all existing licence holders are given two years to comply with the requirement of having at least two licensed representatives. You are highly encouraged to comply with this requirement earlier to ensure continuity to your business.

- 23. My company is currently a CMSL holder. Do we need to obtain the SC's prior approval for appointments of directors and chief executive officers under the CMSA?**

No. You do not need the SC's prior approval for the appointment of your directors and chief executive officers. However, such appointments are to be notified to us within **two** working days of the appointment or prior to any public announcement, whichever is earlier. As a CMSL holder, you must conduct the necessary due diligence before nominating a candidate to assume the position to ensure that the candidate is fit and proper and suitably qualified (please see section 64 and 65 for the fit and proper criteria). In the event we later find any of your directors or chief executive officer to be unfit, we may direct the person's removal from office.

- 24. My company is currently a CMSL holder for the regulated activity of dealing in securities as a participating organisation of Bursa Securities. Does my company need to obtain SC's prior approval for appointments of heads of regulated activity, heads of operations and compliance officer?**

Yes, the SC's prior approval will be required for appointments of heads of regulated activity, heads of operations and compliance officer.

- 25. My company is currently a CMSL holder for the regulated activity of trading in futures contracts as a trading participant of Bursa Derivatives. Does my company need to obtain the SC's prior approval for appointments of heads of regulated activity, compliance officer and nomination of a local participant?**

Yes, the SC's prior approval will be required for appointments of heads of regulated activity, compliance officer and nomination of a local participant.

- 26. The *Licensing Handbook* has introduced the concept of head of regulated activity, head of operations and head of compliance. How does this affect me if I am currently an executive director of operations with a stockbroking company?**

Your position as an executive director of operations remains and we will consider your company as having met the requirement for head of operations. This would similarly apply to those persons holding the position of executive director of dealing or executive director of compliance in your company.

- 27. Can a licensed director and head for the regulated activity of dealing in securities who is under the employment of a stockbroking entity be appointed as a licensed director and head for another regulated activity of another entity (related company) within the same group?**

No. The general rule that a licensed representative can only be attached to one principal is still applicable under the CMSA. The exception to this rule is the dual licence arrangements which are approved by the SC to facilitate licensed representatives carrying on dealing in securities with a stockbroking entity to also carry on trading in futures contracts through a futures broking entity within the same group. The reasons for this is to ensure that the licensed director and the head of regulated activity take on supervisory roles within the company for the type of regulated activity which they are licensed for, therefore, such persons should take on these roles on a full time basis.

- 28. My company wishes to apply for a CMSL to carry on fund management. The *Licensing Handbook* requires the licensed director to have a minimum of 10 years' relevant experience in the licensed regulated activity. What is meant by relevant experience and must the experience be continuous in nature?**

We look at "relevant experience" in very broad terms. For example, in assessing whether a person has relevant experience in fund management, we will consider any previous experience the person may have in dealing in securities and investment advice as "relevant".

The director's experience in relation to operations, middle office functions, etc. of a particular regulated activity may also be considered. The person's experience must be continuous, unless the company is able to show that despite the experience not being continuous, the person is highly competent to take on the function he is designated for.

- 29. I am currently a licensed director with a CMSL holder which carries on the regulated activity of trading in futures contracts. Altogether, I have 15 years of working experience with only eight years' relevant experience in trading in futures contracts. How would I be affected by this new requirement of licensed directors to have a minimum of 10 years' relevant experience?**

Since your appointment which was approved by the SC, took place before the requirement was introduced, you will be absorbed into the new regime. The new requirement will apply to the appointment of all new candidates.



30. **The *Licensing Handbook* requires heads of regulated activity to have a minimum of eight years' relevant experience in the licensed regulated activity. Do the answers in 26 and 27 above similarly apply to heads of regulated activity?**

Yes, the answers to 26 and 27 above similarly apply to heads of regulated activity.

31. **Is there any experience requirement applicable for a CMSRL applicant?**

Provided that you have the required educational and professional background, for example, a degree or professional qualification from an institution recognised by the government of Malaysia as set out in the *Licensing Handbook*, you do not need to have any experience to apply for a CMSRL. If your academic or professional qualification is lacking, we will consider your working experience and previous track records. The only exception to this is for the regulated activity of fund management where you will still need to have at least two years of relevant experience in fund management activity, in addition to a relevant degree or professional qualification.

32. **I am applying to join the debt origination team at an investment bank. I understand that I would need to apply for a CMSRL. What is the type of regulated activity that I should apply for and are there any licensing examination applicable?**

You will have to apply for a CMSRL to carry on advising on corporate finance for which you will need to pass Modules 12 and 15 of the SC Licensing Examination.

#### **In Relation to Chapter 5**

33. **The *Licensing Handbook* provides that an applicant who wishes to apply for a CMSL to carry on financial planning under a sole proprietorship set up must have a net total personal asset (net worth) of at least RM50,000 or its equivalent in foreign currencies. How is this calculated?**

Generally, your net worth is derived from deducting total liabilities from total assets. Examples of an individual's assets would be your property (land, building and house) and other assets, such as cash and the market value of all your investments (including shares and unit trusts). However, your savings in the Employees Provident Fund will not be included as assets. An individual's liabilities include your loans, including housing and other personal loan.

## In Relation to Chapter 6

### 34. How long does it take for the SC to approve applications?

The Licensing Department's clients' charter is in accordance with ISO 9001:2000 and the charter in respect of the processing time is as follows:

- Six weeks for new CMSL applications which are complete upon submission and meet the SC's fit and proper criteria;
- Three weeks for renewal of CMSL application which are complete upon submission and meet the SC's fit and proper criteria; and
- Two weeks for all new and renewal of CMSRL applications which are complete upon submission and meet the SC's fit and proper criteria.

### 35. How long is the validity of my licence?

A CMSL and a CMSRL issued by the SC is valid for a period of 12 months. However, as announced by the Finance Minister during the 2008 Budget, as an incentive to those with high standards of corporate governance and market conduct, we may extend the licence tenure to 36 months for qualified CMSL holders and to 24 months for qualified CMSRL holders.

### 36. I am currently holding a dealer's representative's licence that is issued under the SIA. I also want to carry on financial planning and I have obtained the required licensing examination but my principal is not licensed to carry on financial planning. Can I vary my licence to add on the regulated activity of financial planning?

No. As a licensed representative, you can only carry on those regulated activities that your principal is licensed to carry on. Since your principal is not licensed to carry on the regulated activity of financial planning, you cannot vary your licence to add on the said activity.

### 37. I am a holder of a CMSRL that currently allows me to carry on the regulated activity of dealing in securities and financial planning. I, however, do not want to continue to do financial planning. What should I do?

You must apply to vary your CMSRL to remove the regulated activity of financial planning from your licence. You are required to refer to the *Licensing Handbook* for further information in respect of the process involved for varying your licence.

- 38. Recently, I have submitted the renewal application for my company's CMSL. However, afterwards, I realised that certain information provided in the application form were incorrect. Can I withdraw the application?**

Yes, you may withdraw the application if the status of your application is still "In Process". You may do so by using the "Withdraw" button appearing at the bottom of ELA's submissions page. Note, however, that the system would have deducted the application fees if your withdrawal takes place after your application has been reviewed by the Licensing Department.

#### **In Relation to Chapter 7**

- 39. Upon receiving the CMSL, I find that the licence no longer contains the various conditions and restrictions as was the case with the old licences issued under the SIA. Where can I find these conditions and restrictions?**

The standard conditions and restrictions applicable to a CMSL and CMSRL holder are now set out in Chapter 7 of the *Licensing Handbook*. As a result of this, the licence that you will receive under the CMSA will no longer contain the applicable conditions and restrictions. Instead, the licence will state the regulated activities that you are licensed to carry on as a CMSL or CMSRL holder.

However, should there be any special condition or restriction that may be applicable to a particular licence holder, such condition and restriction will be stated on your licence upon us granting you a new licence or in the ELA notification upon us renewing your licence.

#### **In Relation to Chapter 9**

- 40. I understand that if I am currently employed as a corporate finance executive or as a research analyst with either a stockbroking company or with an investment bank before the date the CMSA takes effect, I will hold a CMSRL for the regulated activity of advising on corporate finance or investment advice, as the case may be, on the date the CMSA takes effect. Does this mean that I do not need to make an application for a CMSRL? Do I also need to sit for any licensing examinations in such circumstances?**

Yes, you do not need to apply for a CMSRL once the CMSA takes effect, because you are deemed to hold a CMSRL, provided you have been registered as a corporate finance executive or a research analyst under the *Guidelines For Dealers and Dealer's Representatives Under the Securities Industry Act 1983* prior to the coming into effect of the CMSA. However, your CMSRL is only effective for a period of one year as from the date the CMSA takes effect. At the

point of renewal of your licence, you are required to submit all necessary documents to support your application. As you are deemed to hold a CMSRL, you are not required to sit for any licensing examination.

- 41. What if I am employed as a corporate finance executive or as a research analyst with either a stockbroking company or with an investment bank after the date the CMSA takes effect. Would I need to pass the licensing examination and also make a formal application for a CMSRL before I can carry on the regulated activity of advising on corporate finance or investment advice, as the case may be?**

Yes, you need to pass Modules 12 and 15 of the licensing examinations and would have to make a formal application for a CMSRL before you commence to carry on any of the regulated activity.

#### **Disclaimer**

The FAQs are meant to provide guidance to industry on the Securities Commission's (SC) policy and administration of the *Capital Markets and Services Act 2007*, regulations and the *Licensing Handbook*. They do not constitute legal advice. The SC expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws, rules or regulations of Malaysia. These FAQs are not to be considered as part of the *Licensing Handbook*.