

FINANCIAL ADVISERS ACT
(CHAPTER 110, SECTION 105)
FINANCIAL ADVISERS (TRANSITIONAL AND SAVINGS PROVISIONS) REGULATIONS

[8th August 2002]

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Citation

1. These Regulations may be cited as the Financial Advisers (Transitional and Savings Provisions) Regulations.

Definitions

2. In these Regulations, unless the context otherwise requires —

"FTA" means the repealed Futures Trading Act (Cap. 116, 1996 Ed.) in force immediately before 1st October 2002*;

"IIA" means the repealed Insurance Intermediaries Act (Cap. 142A, 2000 Ed.) in force immediately before 1st October 2002;

"SIA" means the repealed Securities Industry Act (Cap. 289, 1986 Ed.) in force immediately before 1st October 2002.

Persons registered under IIA

3. Subject to regulation 5, from 1st October 2002 —

(a) any person (not being a person referred to in paragraph (e)) who, immediately before that date, is registered as a direct life insurance broker under Part III of the IIA shall be deemed to hold a financial adviser's licence (referred to in this regulation as a deemed licence) under the Act to provide financial advisory services in respect of life policies —

(i) until 31st December 2002; or

(ii) where an application for the renewal of the deemed licence is made by that person on or before 31st December 2002, until the date on which the

deemed licence is renewed under the Act or the application is refused or withdrawn,

whichever is the later;

(b) paragraph (a) shall not apply to a person referred to in paragraph (f) unless the Authority has notified that person in writing under paragraph (f) that paragraph (a) shall apply to him;

(c) in relation to an application for the renewal of a deemed licence referred to in paragraph (a) (ii) —

(i) section 8 (1) (other than paragraph (b)) and (2) of the Act shall apply; and

(ii) section 8 (3) to (7) of the Act shall not apply;

(d) where an application for the renewal of a deemed licence is made on any day between 1st December 2002 and 31st December 2002 (both dates inclusive), the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof from 1st December 2002 until the application is made, subject to a maximum of \$3,000;

(e) any individual who, immediately before 1st October 2002, is a broking staff carrying on direct life insurance broking activities on behalf of a person referred to in paragraph (a) shall be deemed to hold a representative's licence (referred to in this regulation as a deemed representative's licence) under the Act to provide financial advisory services in respect of life policies —

(i) for a period of 3 months from 1st October 2002; or

(ii) where an application for a representative's licence under the Act is made by the individual within 3 months from that day, until the date on which the licence is granted to that individual or the application is refused or withdrawn,

whichever is the later;

(f) any person who, immediately before 1st October 2002, is registered as a direct life insurance broker and as one or more of the following under Part III of the IIA shall, unless the Authority has notified that person in writing by 1st October 2002 that paragraph (a) shall apply to him, be deemed to be an insurance broker registered under section 35X (2) of the Insurance Act (Cap. 142).

(i) a direct general insurance broker;

(ii) a general reinsurance broker;

(iii) a life reinsurance broker;

(g) any condition to which the registration of a direct life insurance broker referred to in paragraph (a) is subject immediately before 1st October 2002 shall, to the extent that it is consistent with the provisions of the Act, be deemed to be a condition to which the deemed licence is subject;

(h) the Authority may at any time —

(i) by notice in writing to any person referred to in paragraph (a), specify any additional condition or restriction to which the deemed licence is subject; or

(ii) by notice in writing to any person referred to in paragraph (e), specify any condition or restriction to which the deemed representative's licence is subject; and

(i) any condition to which the registration of a person deemed to be an insurance broker under paragraph (f) is subject immediately before 1st October 2002 shall, to the extent that it is consistent with the provisions of the Insurance Act (Cap. 142), be deemed to be a condition of the corresponding registration of the person as an insurance broker.

Licensees under FTA and SIA

4. Subject to regulation 5, from 1st October 2002—

(a) where the Authority has before that date so notified, in writing, any person who holds any of the following licences immediately before that date, that person shall be deemed to hold a financial adviser's licence or representative's licence (referred to in this regulation as a deemed licence) under the Act in respect of the activities authorised by the first-mentioned licence:

- (i) a futures trading adviser's licence granted under Part III of the FTA;
- (ii) a futures trading adviser's representative's licence granted under Part III of the FTA;
- (iii) a dealer's licence granted under Part IV of the SIA;
- (iv) a dealer's representative's licence granted under Part IV of the SIA;
- (v) an investment adviser's licence granted under Part IV of the SIA;
- (vi) an investment representative's licence granted under Part IV of the SIA;

(b) where a person holds a licence referred to in paragraph (a) (i), (iii) or (v) and carries on any direct life insurance broking activity immediately before 1st October 2002, that person shall be authorised to provide financial advisory services in respect of life policies under the corresponding deemed licence;

(c) any condition or restriction to which the licence referred to in paragraph (a) (i), (ii), (iii), (iv), (v) or (vi) is subject immediately before 1st October 2002 shall, to the extent that it is consistent with the provisions of the Act, be deemed to be a condition or restriction to which the corresponding deemed licence is subject;

(d) the Authority may, by notice in writing to any person referred to in paragraph (a), specify —

- (i) the date of expiry of the deemed licence of the person;
- (ii) notwithstanding paragraphs (a) and (b), the scope of the activities to which the deemed licence relates; and
- (iii) any additional condition or restriction to which the deemed licence is subject;

(e) upon the expiry of the deemed licence of any person referred to in paragraph (a)

- (i) in a case where the date of expiry of the deemed licence is in the same month as the month in which Part III of the FTA and Part IV of the SIA are repealed, the person shall be entitled to provide such financial advisory service

as authorised by the deemed licence if an application for the renewal of the deemed licence is made not later than 2 months after its date of expiry;

(ii) in a case where the date of expiry of the deemed licence is in the month following the month in which Part III of the FTA and Part IV of the SIA are repealed, the person shall be entitled to provide such financial advisory service as authorised by the deemed licence if an application for the renewal of the deemed licence is made not later than one month after its date of expiry; or

(iii) in any other case, the person shall be entitled to provide such financial advisory service as authorised by the deemed licence if an application for the renewal of the deemed licence is made on or before its date of expiry,

until the date on which the deemed licence is renewed under the Act or the application is refused or withdrawn, as the case may be;

(f) where no application for renewal of the deemed licence has been made in accordance with paragraph (e) (i) or (ii), a person referred to in paragraph (a) shall be entitled to provide such financial advisory service as authorised by the deemed licence —

(i) in a case where the date of expiry of the deemed licence is in the same month as the month in which Part III of the FTA and Part IV of the SIA are repealed, for a period of 2 months after its date of expiry; or

(ii) in a case where the date of expiry of the deemed licence is in the month following the month in which Part III of the FTA and Part IV of the SIA are repealed, for a period of one month after its date of expiry;

(g) in relation to an application for the renewal of a deemed licence of a financial adviser which is made in accordance with paragraph (e) —

(i) section 8 (1) (other than paragraph (b)) and (2) of the Act shall apply; and

(ii) section 8 (3) to (7) of the Act shall not apply;

(h) in relation to an application for the renewal of a deemed licence of a representative which is made in accordance with paragraph (e) —

(i) section 8 (1) (other than paragraph (b)) and (2) to (5) of the Act shall apply; and

(ii) section 8 (6) and (7) of the Act shall not apply;

(i) where an application referred to in paragraph (e) (iii) is made on any day during the period of one month immediately before the expiry of the deemed licence, the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof from the date such period commences until the application is made, subject to a maximum of \$3,000;

(j) any application made before 1st October 2002 for the renewal of a licence referred to in paragraph (a) (i), (ii), (iii), (iv), (v) or (vi) which corresponds to a deemed licence shall be deemed to be withdrawn, and the Authority shall refund any fee paid in respect of the application;

(k) for the purposes of paragraphs (e) and (f), and unless otherwise notified by the Authority under paragraph (d) —

(i) where a person holds a licence referred to in paragraph (a) (i), (ii), (iii), (iv), (v) or (vi) immediately before 1st October 2002, the date of expiry of the corresponding deemed licence shall be the date on which the first-mentioned licence would have expired but for the repeal of Part III of the FTA or Part IV of the SIA, as the case may be; or

(ii) where a person holds 2 or more of the licences referred to in paragraph (a) (i), (ii), (iii), (iv), (v) or (vi) immediately before 1st October 2002, the date of expiry of the last of such licences to expire shall be taken to be the date of expiry of all the corresponding deemed licences; and

(l) any individual who, immediately before 1st October 2002, is carrying on direct life insurance broking activities on behalf of a person who holds a licence referred to in paragraph (a) (i), (iii) or (v) shall, if the individual does not hold a representative's licence under the FTA or SIA immediately before that date, be deemed to hold a representative's licence under the Act to provide financial advisory services in respect of life policies —

(i) for a period of 3 months from that date; or

(ii) where an application for a representative's licence under the Act is made by the individual within 3 months from that date, until the date on which the licence is granted to that individual or the application is refused or withdrawn,

whichever is the later.

Persons registered under IIA and licensed under FTA or SIA

5. From 1st October 2002—

(a) where the Authority has by that date so notified, in writing, any person who is a direct life insurance broker registered under Part III of the IIA, and who holds one or more of the licences referred to in regulation 4 (a) (i), (iii) or (v), immediately before that date —

(i) that person shall be deemed to hold a financial adviser's licence (referred to in this regulation as a deemed licence) under the Act in respect of the activities authorised by such registration and licence immediately before that date;

(ii) any condition or restriction to which that person is subject by virtue of such registration and licence immediately before that date shall, to the extent that it is consistent with the provisions of the Act, be deemed to be a condition or restriction to which the deemed licence is subject;

(iii) unless otherwise notified in writing by the Authority, that person shall be entitled to carry on the activities authorised by such registration and licence immediately before that date until the date of expiry of the deemed licence;

(iv) for the purpose of sub-paragraph (iii), the date of expiry of the deemed licence shall, unless otherwise notified in writing by the Authority, be the date of expiry of the licence referred to in regulation 4 (a) (i), (iii) or (v) held by that person or, where that person holds more than one such licence, the date of expiry of the last of such licences to expire; and

(v) regulation 4 (d) to (j) shall, with the necessary modifications, apply to that person;

(b) any individual who, immediately before 1st October 2002, is a broking staff carrying on direct life insurance broking activities on behalf of a person referred to in

paragraph (a) shall, if the individual does not hold a representative's licence under the FTA or SIA immediately before that date, be deemed to hold a representative's licence under the Act to provide financial advisory services in respect of life policies —

- (i) for a period of 3 months from 1st October 2002; or
- (ii) where an application for a representative's licence under the Act is made by the individual within 3 months from 1st October 2002, until the date on which the licence is granted to that individual or the application is refused or withdrawn,

whichever is the later; and

(c) without prejudice to the application of regulation 4 to any representative of a person referred to in paragraph (a), such representative shall be entitled to continue with any direct life insurance broking activity as he may have carried on immediately before 1st October 2002 for as long as he is deemed to be licensed under the Act in respect of the activities authorised by his representative's licence under the FTA or SIA, as the case may be.

Fund Manager, etc.

6.—(1) Any person who, immediately before 1st October 2002, was a person exempted under regulation 22A (1) (a) of the revoked Futures Trading Regulations (Cap. 116, Rg 1, 1998 Ed.) or regulation 41 (1) (a) of the revoked Securities Industry Regulations (Cap. 289, Rg 1, 1995 Ed.) from the requirement to hold the applicable licence under the FTA or SIA, as the case may be, to carry on business in the activity referred to in that regulation shall be exempted from the requirement under the Act to hold a financial adviser's licence to carry on business in respect of such activity —

- (a) for a period of 6 months from 1st October 2002; or
- (b) if, before the expiry of the period of 6 months, he applies for a capital markets services licence for that activity or for activities which include that activity under the Securities and Futures Act (Cap. 289), until the date on which the licence is granted to him, or his application is refused or withdrawn,

whichever is the later.

(2) Any person who, immediately before 1st October 2002, was acting as a representative for a person referred to in paragraph (1) (referred to in this regulation as the principal) in respect of the activity referred to in regulation 22A (1) (a) of the revoked Futures Trading Regulations or regulation 41 (1) (a) of the revoked Securities Industry Regulations, as the case may be, shall be exempted from the requirement under the Act to hold a licence to act as a representative for that principal in respect of such activity —

- (a) for a period of 6 months from 1st October 2002; or
- (b) if, before the expiry of the period of 6 months, he applies for a representative's licence for that activity or for activities which include that activity under the Securities and Futures Act (Cap. 289), until the date on which the licence is granted to him, or his application is refused or withdrawn,

whichever is the later.

(3) The exemption of a person under paragraph (1) shall cease to apply under any of the circumstances specified in regulation 22A (2) and (4) of the Futures Trading Regulations (Cap. 116, Rg 1, 1998 Ed.) or regulation 41 (2) (a) and (4) of the revoked Securities Industry Regulations (Cap. 289, Rg 1, 1995 Ed.), as the case may be.

(4) The exemption of a person under paragraph (2) shall cease to apply if the exemption of his principal under paragraph (1) ceases to apply by virtue of the expiry of the period referred to in paragraph (1) (a) or (b), or by virtue of paragraph (3).

Pending applications for registration or licence

7.—(1) Subject to paragraph (9), a pending application for —

- (a) the registration of a person as a direct life insurance broker under the IIA;
- (b) the grant of a futures trading adviser's licence under the FTA in relation only to one or both of the activities specified in paragraphs (a) and (b) of the definition of "futures trading adviser" in section 2 (1) of the FTA; or
- (c) the grant of an investment adviser's licence under the SIA in relation only to one or both of the activities specified in paragraphs (a) and (b) of the definition of "investment adviser" in section 2 (1) of the SIA,

that is made before 1st October 2002—

- (i) shall be deemed to be an application for the grant of a financial adviser's licence under the Act; and
- (ii) shall be subject to the provisions of the Act, except for the requirement to pay an application fee under section 8 (1) (c) of the Act.

(2) Subject to paragraphs (3) and (10), a pending application for —

- (a) the grant of a futures trading adviser's representative's licence under the FTA to act on behalf of a person who holds a futures trading adviser's licence or has a pending application for a futures trading adviser's licence under the FTA to conduct only one or both of the activities specified in paragraphs (a) and (b) of the definition of "futures trading adviser" in section 2 (1) of the FTA; or
- (b) the grant of an investment representative's licence under the SIA to act on behalf of a person who holds an investment adviser's licence or has a pending application for an investment adviser's licence under the SIA to conduct only one or both of the activities specified in paragraphs (a) and (b) of the definition of "investment adviser" in section 2 (1) of the SIA,

that is made before 1st October 2002 —

- (i) shall be deemed to be an application for the grant of a representative's licence under the Act; and
- (ii) shall be subject to the provisions of the Act, except for the requirement to pay an application fee under section 8 (1) (c) of the Act.

(3) Paragraph (2) shall not apply to a pending application for the grant of a futures trading adviser's representative's licence under the FTA or an investment representative's licence under the SIA, as the case may be, where the applicant has submitted the application before 1st October 2002 —

- (a) to act as a representative for a person who holds a futures trading adviser's licence under the FTA or an investment adviser's licence under the SIA, as the case may be, and who is deemed under regulation 3 (1) of the Securities and Futures (Capital Markets Services Licence and Representative's Licence) (Transitional and Savings Provisions) Regulations (Rg 7), to hold a capital markets services licence under the Securities and Futures Act (Cap. 289); or

(b) to act as a representative for a person whose pending application for a futures trading adviser's licence under the FTA or an investment adviser's licence under the SIA, as the case may be, is deemed under regulation 4 (1) of the Securities and Futures (Capital Markets Services Licence and Representative's Licence) (Transitional and Savings Provisions) Regulations to be an application for the grant of a capital markets services licence under the Securities and Futures Act.

(4) Where the Authority has by 1st October 2002 so notified a person, in writing, the person's pending application for the grant of a dealer's licence under the SIA made before 1st October 2002 shall be deemed to be an application for the grant of a financial adviser's licence under the Act.

(5) Where the pending application referred to in paragraph (4) is made by a person who is, by virtue of regulation 3, 4 or 5, deemed to hold a financial adviser's licence under the Act, such application shall be deemed to be an application to vary the type of financial advisory service authorised to be provided by his deemed licence under section 16 (1) of the Act.

(6) Where the Authority has, by 1st October 2002 so notified a person, in writing, the person's pending application for the grant of a dealer's representative's licence under the SIA made before 1st October 2002 shall be deemed to be an application for the grant of a representative's licence under the Act.

(7) Where the pending application referred to in paragraph (6) is made by a person who is, by virtue of regulation 3, 4 or 5, deemed to hold a representative's licence under the Act, such application shall be deemed to be an application to vary the type of financial advisory service authorised to be provided by his deemed licence under section 16 (1) of the Act.

(8) Any pending application that is deemed to be an application under the Act by virtue of paragraph (4), (5), (6) or (7) shall be subject to the provisions of the Act, except for the requirement to pay an application fee under section 8 (1) (c) or 16 (2) of the Act, as the case may be.

(9) A pending application for —

(a) the grant of a futures trading adviser's licence under the FTA in relation only to one or both of the activities specified in paragraphs (a) and (b) of the definition of "futures trading adviser" in section 2 (1) of the FTA; or

(b) the grant of an investment adviser's licence under the SIA in relation only to one or both of the activities specified in paragraphs (a) and (b) of the definition of "investment adviser" in section 2 (1) of the SIA,

made before 1st October 2002 by any person deemed, by virtue of regulation 4 or 5, to hold a financial adviser's licence under the Act —

(i) shall be deemed to be an application to vary the type of financial advisory service authorised to be provided by his deemed licence under section 16 (1) of the Act; and

(ii) shall be subject to the provisions of the Act, except for the requirement to pay an application fee under section 16 (2) of the Act.

(10) A pending application for —

(a) the grant of a futures trading adviser's representative's licence under the FTA to act on behalf of a person who holds a futures trading adviser's licence or has a pending application for a futures trading adviser's licence under the FTA to conduct only one or both of the activities specified in paragraphs (a) and (b) of the definition of "futures trading adviser" in section 2 (1) of the FTA; or

(b) the grant of an investment representative's licence under the SIA to act on behalf of a person who holds an investment adviser's licence or has a pending application for an investment adviser's licence under the SIA to conduct only one or both of the activities specified in paragraphs (a) and (b) of the definition of "investment adviser" in section 2 (1) of the SIA,

made before 1st October 2002 by any person deemed, by virtue of regulation 4 or 5, to hold a representative's licence under the Act —

(i) shall be deemed to be an application to vary the type of financial advisory service authorised to be provided by his deemed licence under section 16 (1) of the Act; and

(ii) shall be subject to the provisions of the Act, except for the requirement to pay an application fee under section 16 (2) of the Act.

(11) Any pending application for registration as an insurance broker (other than as a direct life insurance broker) under the IIA made before 1st October 2002 —

(a) shall be deemed to be an application for registration as an insurance broker under the Insurance Act (Cap. 142); and

(b) shall be subject to the provisions of the Insurance Act (Cap. 142).

Refund of fees by Authority

8. The Authority may refund, in whole or in part —

(a) any fee paid to the Authority in respect of an application for the grant of a licence under the FTA or SIA referred to in regulation 7 (1), (2), (4), (6), (9) and (10); or

(b) any fee paid to the Authority under the FTA, IIA or SIA before 1st October 2002 that the Authority considers it necessary to refund.

Acts done by Authority under FTA, IIA or SIA

9.—(1) All acts done by the Authority under the FTA, IIA or SIA in relation to the persons referred to in regulations 3 (a) and (e), 4 (a) and (l) and 5 shall continue to remain valid and have effect as if done by the Authority under the Act, until such time as such acts are invalidated, revoked or otherwise determined by the Authority.

(2) All acts done by the Authority under the IIA in relation to insurance intermediaries (other than direct life insurance brokers) shall continue to remain valid and have effect as if done by the Authority under the Insurance Act.

(3) All orders issued under section 31 of the IIA, in so far as they could be issued under section 59 of the Act, shall be deemed to have been issued under section 59 of the Act and shall have effect accordingly.

Things commenced under FTA, IIA or SIA

10.—(1) Where anything has been commenced by or on behalf of the Authority under the FTA, IIA or SIA in relation to the persons referred to in regulations 3 (a) and (e), 4 (a) and (l) and 5, such thing may be carried on and completed by or under the authority of the Authority under the Act.

(2) Where anything has been commenced by or on behalf of the Authority under the IIA in relation to insurance intermediaries (other than direct life insurance brokers), such thing may be carried on and completed by or under the authority of the Authority under the Insurance Act (Cap. 142).

Saving of directions, notices, etc., under FTA, IIA and SIA

11.—(1) All directions, notices and circulars in relation to direct life insurance brokers issued under section 32 or 41 (2) of the IIA which are in force immediately before 1st October 2002 shall be deemed to have been issued under section 58 of the Act and shall have effect accordingly.

(2) All directions, notices and circulars in relation to insurance intermediaries (other than direct life insurance brokers) issued under section 32 or 41 (2) of the IIA which are in force immediately before 1st October 2002 shall be deemed to have been issued under section 41 or 64, respectively, of the Insurance Act and shall have effect accordingly.

(3) All notices issued under section 21A of the FTA and section 33A of the SIA which are in force immediately before 1st October 2002 shall be deemed to have been issued under section 58 of the Act and shall have effect accordingly.

[G.N. No. S 395/2002]