

Definition of “professional investor”, Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) (the “SFO”)

Part 1 – SFO

Under Section 1 of Part 1 of Schedule 1 to the SFO, “professional investor” means—

- (a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under Section 95(2) of the SFO;
- (b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
- (c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (d) any insurer authorized under the Insurance Ordinance (Cap 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
- (e) any scheme which -
 - (i) is a collective investment scheme authorized under Section 104 of the SFO; or
 - (ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place, or any person by whom any such scheme is operated;
- (f) any registered scheme as defined in Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485. sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in Section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;
- (g) any scheme which
 - (i) is a registered scheme as defined in Section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or
 - (ii) is an offshore scheme as defined in Section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place, or any person who, in relation to any such scheme, is an administrator as defined in Section 2(1) of that Ordinance;
- (h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;
- (i) except for the purposes of Schedule 5 to the SFO, any corporation which is
 - (i) a wholly owned subsidiary of-
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or

- (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (ii) a holding company which holds all the issued share capital of-
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
 - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or
- (iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or
- (j) any person of a class which is prescribed by rules made under Section 397 of the SFO for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of the SFO, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of the SFO.

Securities and Futures (Professional Investor) Rules (Cap. 571D)

Under **Section 3** of the Securities and Futures (Professional Investor) Rules, for the purposes of paragraph (j) of the definition of “professional investor” in Section 1 of Part 1 of Schedule 1 to the SFO, the following persons are prescribed as within the meaning of that definition for the purposes of any provision of the SFO other than Schedule 5 to the SFO:

- (a) a trust corporation specified in Section 4;
- (b) an individual specified in Section 5(1);
- (c) a corporation (other than a trust corporation referred to in paragraph (a)) specified in Section 6;
- (d) a partnership specified in Section 7.

Section 4 Trust corporations

A trust corporation specified for the purposes of Section 3(a) is a trust corporation having been entrusted under one or more trusts of which it acts as a trustee with total assets of not less than \$40 million at the relevant date or as ascertained in accordance with Section 8.

Section 5 Individuals

1. An individual specified for the purposes of Section 3(b) is an individual having a portfolio of not less than \$8 million at the relevant date or as ascertained in accordance with Section 8, when any one or more of the following are taken into account—
 - (a) a portfolio on the individual’s own account;
 - (b) a portfolio on a joint account with the individual’s associate;
 - (c) the individual’s share of a portfolio on a joint account with one or more persons other than the individual’s associate;
 - (d) a portfolio of a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by the individual.

2. For the purposes of subsection (1)(c), an individual's share of a portfolio on a joint account with one or more persons other than the individual's associate is—
- (a) the individual's share of the portfolio as specified in a written agreement among the account holders; or
 - (b) in the absence of an agreement referred to in paragraph (a), an equal share of the portfolio.

Section 6 Corporations

A corporation specified for the purposes of Section 3(c) is—

- (a) a corporation having—
 - (i) a portfolio of not less than \$8 million; or
 - (ii) total assets of not less than \$40 million, at the relevant date or as ascertained in accordance with Section 8;
- (b) a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by any one or more of the following persons—
 - (i) a trust corporation specified in Section 4;
 - (ii) an individual specified in Section 5(1);
 - (iii) a corporation specified in this paragraph or paragraph (a);
 - (iv) a partnership specified in Section 7;
 - (v) a professional investor within the meaning of paragraph (a), (d), (e), (f), (g) or (h) of the definition of "professional investor" in Section 1 of Part 1 of Schedule 1 to the SFO; or
- (c) a corporation which, at the relevant date, wholly owns a corporation referred to in paragraph (a).

Section 7 Partnerships

A partnership specified for the purposes of Section 3(d) is a partnership having—

- (a) a portfolio of not less than \$8 million; or
- (b) total assets of not less than \$40 million, at the relevant date or as ascertained in accordance with Section 8.

Section 8 Ascertaining total assets or portfolio

For the purposes of Section 4, 5(1), 6(a) or 7, the total assets entrusted to a trust corporation, the portfolio of an individual, or the portfolio or total assets of a corporation or partnership, are to be ascertained by referring to any one or more of the following—

- (a) for a trust corporation, corporation or partnership, the most recent audited financial statement prepared within 16 months before the relevant date in respect of the trust corporation (or a trust of which it acts as a trustee), corporation or partnership;
- (b) for a trust corporation, individual, corporation or partnership, any one or more of the following documents issued or submitted within 12 months before the relevant date—

- (i) a statement of account or a certificate issued by a custodian;
- (ii) a certificate issued by an auditor or a certified public accountant;
- (iii) a public filing submitted by or on behalf of the trust corporation (whether on its own behalf or in respect of a trust of which it acts as a trustee), individual, corporation or partnership.

In the Securities and Futures (Professional Investor) Rules, unless the context otherwise requires-
associate, in relation to an individual, means the spouse or any child of the individual;

custodian means-

- (a) a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract; or
- (b) any of the following persons whose business includes acting as a custodian of securities or other property for another person, whether on trust or by contract -
 - (i) an authorized financial institution;
 - (ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
 - (iii) a licensed corporation;
 - (iv) a person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

portfolio means a portfolio comprising any of the following-

- (a) securities;
- (b) a certificate of deposit issued by-
 - (i) an authorized financial institution; or
 - (ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership;

public filing means a document that, pursuant to the legal or regulatory requirements in Hong Kong or in a place outside Hong Kong, has been submitted to a person or body that is under a duty to publish the document to, or otherwise make the document available for inspection by, members of the public in Hong Kong or in a place outside Hong Kong, by or on behalf of—

- (a) a trust corporation (whether on its own behalf or in respect of a trust of which it acts as a trustee);
- (b) an individual;
- (c) a corporation (other than a trust corporation referred to in paragraph (a)); or
- (d) a partnership;

relevant date-

- (a) in the case of an advertisement, invitation or document described in Section 103(3)(k) of the SFO, means the date on which the advertisement, invitation or document is issued, or possessed for the purposes of issue;
- (b) in the case of a call described in Section 174(2)(a) of the SFO means the date on which the call is made;
- (c) in the case of an offer described in Section 175(5)(d) of the SFO, means the date on which the offer is made; or
- (d) in any other case which, by virtue of any rules made under the SFO, requires compliance with an obligation, means the date by or on which the obligation is required to be complied with;

trust corporation means-

- (a) any trust company registered under Part 8 of the Trustee Ordinance (Cap. 29); or
- (b) any other corporation which-
 - (i) carries on a business which is of a nature similar to that of a trust company referred to in paragraph (a); and
 - (ii) is regulated under the law of any place outside Hong Kong.