

Chapter 2

The Regulatory Environment for Financial Planners

Chapter Objectives

Students must be able to:

- Understand the Source of Regulation
- Identify the Appropriate Provisions in the Insurance Act 1996
- Identify the Appropriate Provisions in the Capital Market and Services Act 2007
- Explain the Difference Between a 'Principal's License' and a 'Representative's License'.
- Identify the Conditions Necessary to Become Licensed
- Explain CUTA

Chapter 2

The Regulatory Environment for Financial Planners

Introduction

Financial planning is a regulated activity. Both the Securities Commission and Bank Negara have introduced legislation to supervise the financial planning industry. The Securities Commission introduced amendments to the Securities Industry Act 1983 and Bank Negara introduced amendments to the Insurance Act 1996.

The Insurance Act 1996 was amended in 2005 to include a new category and definition: **financial advisory business**

1. **“Financial Advisory Business”** means any or all of the following services:
 - (a) Analyzing the financial planning needs of a person relating to insurance products;
 - (b) recommending the appropriate insurance products;
 - (c) sourcing insurance products from a licensed insurer;
 - (d) arranging of contracts in respect of insurance products; or
 - (e) other financial services as prescribed by the Bank; (i.e. Bank Negara)

2. The Act also provides for a **“financial adviser’s representative”** which means an individual by whatever name described, in the direct employment of or acting for or by arrangement with a financial adviser, who performs for the financial adviser any of the functions of a financial adviser.....

3. The Act also makes it an **offence** for any person to hold himself out to be a financial adviser unless he is licensed.

4. Only a **company** can be an applicant for a license to carry on financial advisory business. BNM will prescribe a minimum **paid-up capital** for each license.

5. The Act allows **advocates and solicitors** as well as **accountants** in practice to undertake financial advisory business, if it is incidental to the business of their profession. It also specifically excludes insurance agents and takaful operator's agents from this requirement.

Securities Commission

In 2003, the **Securities Commission** introduced a new definition to its category of Investment Advisers into the Securities Industry Act 1983. This Act introduced the new category called, **Investment Adviser (financial planning)** and the name Financial Planner is synonymous with this new category. In fact the Act forbade anyone to call themselves financial planners without the requisite license. The function of a financial planner envisaged in the Act is... **someone who carries on a business of analyzing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto.**

'Securities' has been defined in the Securities Commission Act 1993 as,

- (a) debentures, stocks or bonds issued or proposed to be issued by any government;
- (b) shares in or debentures of, a body corporate or an unincorporated body; or
- (c) unit trusts or prescribed investments, and includes any right, option or interest in respect thereof.

The definition is quite explicit. Anyone interested in writing plans as a business will need this license. Most financial services and financial product advisers fall into this wide definition. It is all encompassing and no specific financial need or advice has been excluded although a special reference has been made to investment planning.

However, there are the basic standard exclusions which states that some persons are not subject to this requirement; notably banks, insurance companies, accountants, advocates and solicitors. The rationale is easy. These other persons are regulated by their own professional charter and other regulatory authorities. Especially included in this exempt group are persons registered with a body approved by the Commission (FMUTM) who act as an investment adviser only in relation to its arranging or offering for the sale or purchase of any interest in a unit trust scheme. Thus unit trust agents have been exempted from being an investment adviser, but they cannot call themselves financial planners.

What conclusions can we draw from these amendments?

Financial planners who want to provide comprehensive financial planning which include insurance and investment advice must have two licenses. Obviously this means duplication in so many areas. Both authorities have distinct requirements. It will increase the cost of doing business for financial advisers. However, the price may be worth it when the public earnestly seek out only licensed financial advisers and planners for their needs. Both Regulators have stated categorically that they

will work together and keep the licensing requirements similar so that planners can qualify for both easily.

So where does this leave the public?

The public have to decide who they want to see, the financial planner or the financial adviser. However, if a person has both licenses the issue does not arise. In fact it is inconceivable that you can practice financial planning without the two licenses.

Capital Market and Services Act 2007

Recently Securities Commission has also streamlined the various Acts under its jurisdiction into a single licensing regime called Capital Market and Services Act 2007 (CMSA).

What are the Main Policy Thrusts of the CMSA?

It introduces a single licensing regime for securities and futures intermediaries

It increases efficiency of fund raising process

It enhances investor protection in the primary and secondary market

It promotes Malaysia as a competitive global Islamic financial hub

It encourages the use of technology in the capital market

It promotes self-regulation

Single Licensing Framework

Who can carry on regulated activities under the new regulatory framework?

Licensed persons: Existing capital market intermediaries & new entrants

Registered persons - Existing exempt dealers (Schedule 4)

Specified persons - Persons who do not require a license (Schedule 3)

What is the single licensing regime (SLR) under CMSA?

Key features of SLR

- Issuance of a single licence for carrying on regulated activities
- Both the principal and representatives will be licensed

➤ CMSL

Capital market services license is granted to corporate and even individuals in the case of financial planning. They will act as principals carrying on the activity that they are licensed in. There are six categories of licenses. Financial planning is the sixth category.

➤ CMSRL

Capital market services representative's license is given to those especially individuals who work with the CMSL principal. Representatives are also required to have the relevant qualifications and be registered with the Securities Commission.

- Current policies & range of activities still applies

One CMS Licence is given for:

- Dealing in securities**
Restricted dealing
- Trading in futures contracts**
- Fund management**
(*securities & futures contracts*)
- Advising corporate finance**
Dealing in respect of underwriting
- Investment advice**
(*securities & futures contracts*)
- Financial planning**

Other Requirements

Besides the licensing by Securities Commission and Bank Negara, there are other important pre-requisites to become a financial planner.

Academic qualification

Both regulators have accepted the RFP, CFP and ChFC as the recognized professional qualifications to qualify a person to be licensed.

Professional Association

Each licensee must belong to a professional association. The professional associations will act as a self-regulating organization to supervise the work and ethics of its members. The three associations are the Malaysian Financial Planning Council, the Financial Planning Association of Malaysia and the Malaysian Association of Chartered Financial Consultants.

Continuing Professional Education [CPE Points]

To renew your license each year 20 CPE points must be gathered. The points are obtained from attending seminars, conferences and courses approved by the regulators, from participation in committees of the three professional associations, and from the writing of finance related articles in professional magazines and journals.

Capital adequacy

In order to practice as a corporate entity in financial planning or financial advisory business there is a need to be capitalized properly. Each corporate adviser must have a minimum capital of RM 100,000 in the case of Bank Negara license and RM 50,000 in the case of the CMSL license relating to financial planning. The capital must not be impaired by any losses.

The Regulation of Financial Planners

It is unfortunate that such heavy licensing regime has appeared even before there is clear sign that the public has adopted financial planning in their lives. There are tens of thousands of agents in insurance and unit trusts and it is not clear if all of them would convert into becoming financial planners. There is also heavy reliance on tied agency system by the financial institutions involved in insurance and unit trusts. But the education process has begun in a big way and the Malaysian Financial Planning Council is promoting financial planning education across the length and breadth of the country. The first thing is to acquire the education and become a member of the relevant association. If you are studying for the Registered Financial Planner (RFP) qualification you need to be registered with the Malaysian Financial Planning Council. After qualifying you would need to adhere to its code of conduct and ethics as the association has a professional duty of care to the public at large giving the Malaysian public the confidence that their members have integrity, honesty, transparency and accountability. This self-regulation besides the licensing requirements will further promote the credibility of the financial planning industry.

Financial Planning Corporation or Representative License

Today with the licensing regime financial planners have to decide whether to become full fledged financial planning corporations or financial planning representatives working with a financial planning corporation. Both the legislations, the CMSA 2007 and the Insurance Act (as amended 2005); do not spell out the concept of broker-dealer. However, it is apparent that to become a financial planning corporation you would need to be better capitalized, have proper supporting systems, administrative staff and a panel of experts to support the representatives. Being a financial planning corporation

will become another type of business that supports a body of representatives as it is inconceivable that every agent who intends to become a financial planner would want to get involved in all the trappings of a financial planning corporation. It would become more of a broker-dealer business having to sign dealership agreements with numerous vendors and product manufacturers. It is not possible for all the vendors or manufacturers to sign agency contracts with each agent aspiring to be a financial planner. There will be a natural selection of financial planners who will want to be full fledged financial planning corporation and those who would want to be strictly financial planning representatives, choosing to leave the financing and administrative chores to somebody else. Being a representative will allow the planner to focus on writing plans and interact with clients. Dealing with manufacturers and conducting training and research will be more suited for broker-dealer types of operation. However, the regulations right now will allow smaller financial planning corporations to exist as the capital requirements are still within reach of many financial planners. But these smaller corporations will have to limit their tie-ups to a few product manufacturers.

Corporate Unit Trust Advisers [CUTA]

A new development that has evolved in the unit trust industry is the creation of a new distributing agency called the Corporate Unit Trust Adviser [CUTA]. Financial Planners who want to handle more than one unit trust company will now need to register with the Federation of Unit Trust Managers (FMUTM) as a CUTA. This license is only given to corporate advisers who have the requisite financial advisers or planners license.

- **This step is considered a giant leap forward for unit trust management companies as previously they relied on a, tied-to-one company, agency system. Now it is possible for an agent to form a financial planning or advisory company with a minimum paid-up capital of RM 100,000 and become a CUTA. This will allow him to represent more than one unit trust company.**

Advice Separate from Handling Products

It can be observed that advice is separated from the handling of products. In the handling of products and the dealership with companies there is extra care and supervision by the respective manufacturers' associations, like LIAM and FMUTM. These associations still believe in the tied agency system but in the interest of independent financial planning they have allowed the serious financial planning community this opportunity of more than one representation with product manufacturers.

This augurs well for the future whereby financial planners will be the most sought after product intermediaries. Independence will be demanded by the buying public and so manufacturers will want the financial planning community to handle their products. Exactly when this development will fully take place is yet to be seen but many already see it coming.

Self Assessment

1. Which of the following statement(s) is/are true?
 - I Insurance agents require to be licensed as a financial adviser
 - II Financial adviser status is required for those interested in the six-step financial planning process
 - A. I only
 - B. II only
 - C. Neither
 - D. Both

2. All the following statements are true except,
 - A. All those analyzing the financial planning needs of another person need to be licensed.
 - B. Those licensed need to belong to a financial planning association.
 - C. The capitalization required to be a licensed financial planner is RM 1,000,000
 - D. The CMSA 2007 applies to Fund Managers

3. The CMSA 2007 has exempted the following persons from the licensing requirement except
 - A. Accountants
 - B. Trustees
 - C. Advocates and Solicitors
 - D. Wealth Managers

4. CUTA refers to which of the following
- A. A distribution license which is issued by the Federation of Malaysian Unit Trust Managers
 - B. Corporate Universal Trust Association
 - C. Corporate Unit Trust Agency
 - D. A tied unit trust agency
5. Which of the following statement(s) is/are true?
- I CPD points needed to renew the license with Bank Negara is 40 points.
 - II The CPD points needed to renew the license with the Securities Commission is 35 points.
- A. I only
 - B. II only
 - C. Neither
 - D. Both
6. Which of the following statement(s) is/are true?
- I A CMSL license is required if you want to become a 'principal'.
 - II A CMSRL license is required if you want to be independent from your principal.
- A. I only
 - B. II only
 - C. Neither
 - D. Both
7. The CMSA 2007 superseded which Act
- A. Insurance Tax Act 1996
 - B. The Trustees Act 1949
 - C. Securities Commission Act 1993
 - D. Securities Industry Act 1983

8. Which of the following statement(s) is/are true?
- I Insurance agents who want to sell unit trusts must be licensed with the Securities Commission and Bank Negara.
 - II Insurance agents who want to sell unit trusts must register as a PDUT with the FMUTM.
- A. I only
B. II only
C. Neither
D. Both
9. Which of the following statement(s) is/are true?
- I Tied Agents usually follow a single solution approach
 - II Financial Planners and Financial Advisers usually provide comprehensive advice.
- A. I only
B. II only
C. Neither
D. Both
10. Which of the following statements is not true?
- A. Financial Planners must be qualified with one of the following designations, RFP, CFP, and ChFC
 - B. Financial Advisers are responsible for the investment recommendations offered to the client.
 - C. Wealth management and financial consultancy will still need licensing
 - D. An individual can obtain a financial planning license.

Answers: 1- B, 2- C, 3- D, 4- A, 5- C, 6- A, 7- D, 8- B, 9- A, 10- B