
Sponsor Regime

Who will be regarded as eligible to act as sponsors or compliance advisers under the new regime?

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5.1 Only Type 6 intermediaries¹ that (1) can meet the eligibility criteria set out in the Sponsor Guidelines² and (2) remain fit and proper as licensees or registered persons will be eligible to act as sponsors under the new regime. The intermediary and its Management³ will be responsible for ensuring that the firm satisfies all specific and on-going eligibility criteria of the Sponsor Guidelines. Details of the Sponsor Guidelines can be downloaded from the SFC website (<http://www.sfc.hk>) under “Licensing Related Matters” of the Intermediaries, Licensing and Investment Products section.

What will be classified as sponsor work?

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5.2 Intermediaries will be regarded as carrying out sponsor work if they take up an appointment as a sponsor pursuant to the requirements of the Main Board or GEM Board of the SEHK⁴. Intermediaries appointed as listing agents in relation to IPOs⁵ on SEHK will also be regarded as carrying out sponsor work.

¹ “Intermediaries” means licensed corporations or registered institutions under the Securities and Futures Ordinance (“SFO”).

² “Sponsor Guidelines” refers to the Guidelines for Sponsors and Compliance Advisers.

³ “Management” includes the firm’s Board of Directors, Managing Director, Chief Executive Officer, Responsible Officer/Executive Officer or other senior management personnel.

⁴ “SEHK” means the Stock Exchange of Hong Kong Limited.

⁵ “IPO” means initial public offering.

New corporate applicants for Type 6 regulated activity that INTEND to act as sponsors after 1 January 2007

Can a newly set up firm with no IPO track record apply to act as a sponsor under the new regime?

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- 5.3 New corporate applicants should follow the procedures for applying for a licence. In addition, in order to be eligible to act as a sponsor, the applicant will be required to demonstrate that it can meet the eligibility criteria pursuant to the Sponsor Guidelines. In considering the license/registration application of the applicant, the SFC will take into account the eligibility of the firm to act as a sponsor based on the criteria set out in the Sponsor Guidelines, and also consider more generally the firm's fitness and properness as a corporate finance advisory firm under the Fit and Proper Guidelines.

Intermediaries licensed/registered for Type 6 regulated activity that DO NOT INTEND to act as sponsors after 1 January 2007

What should intermediaries who are currently licensed/registered to carry on Type 6 regulated activities but do not intend to act as a sponsor under the new regime do?

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- 5.4 Intermediaries should indicate to the SFC their intention not to act as a sponsor under the new regime on or before 6 October 2006. They will then be imposed with a licensing condition which restricts them from carrying out work as a sponsor on 1 January 2007.

Intermediaries licensed/registered for Type 6 regulated activity that INTEND to act as sponsors after 1 January 2007

Can intermediaries that are currently licensed/registered for Type 6 regulated activity and are not subject to any licensing condition conduct sponsor work under the new regime?

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- 5.5. On the effective date of the new regime, intermediaries who take up appointment as sponsors should meet the eligibility criteria set out in the Sponsor Guidelines. To assist the industry to prepare for the new regime, the SFC has published the sponsor submission forms on its website.

The SFC will inform intermediaries whether their applications are successful or otherwise as soon as practicable. If a licensing condition is imposed on their licence/registration restricting them from carrying out sponsor work, they must stop all relevant work immediately. Therefore, intermediaries should take a prudent approach when considering new sponsor mandates in the interim period.

Can intermediaries that are currently licensed/registered for Type 6 regulated activity and are subject to a licensing condition restricting them from providing advice in respect of the Listing Rules act as a sponsor under the new regime?

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5.6 No. Intermediaries licensed/registered for Type 6 regulated activity who have a licensing condition restricting them from providing advice concerning compliance with the Listing Rules⁶ of SEHK or other similar condition are not allowed to carry out sponsor work.

To whom shall registered institutions lodge their submission to act as sponsors under the new regime?

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5.7 Registered institutions should lodge their submission to the SFC and a copy of the submission should also be sent to the Hong Kong Monetary Authority (“HKMA”) at the same time.

General

Can temporary licensed corporations or temporary licensed corporation applicants apply to become sponsors?

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5.8 No. Temporary licensed corporations or temporary licensed corporation applicants will not be considered eligible to act as sponsors.

⁶ “Listing Rules” means the Listing Rules for the Main Board and the Growth Enterprise Market (“GEM”) Board of SEHK.

When carrying out sponsor work, who should sign off on behalf of the sponsor, the various forms relating to a listing application and the sponsor's declaration submitted to the Listing Division of SEHK?

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5.9 Sponsors should refer to the specific requirements of the Listing Rules. Regardless of who signs off the relevant forms on behalf of the sponsor, the Management of the sponsor is ultimately responsible for the work carried out by the sponsor, and for the supervision of the sponsor work. Such responsibilities cannot be delegated.

If a firm submits the sponsor submission forms before the effective date of the new regime, how much time will the SFC take to process the application and revert to the applicant? Can the SFC recommend when firms should start submitting their applications?

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5.10 Upon receipt of the relevant submission, the SFC will assess the case in accordance with the eligibility criteria set out in the Sponsor Guidelines and may request further information in the course of processing the submission. Intermediaries are encouraged to submit the sponsor submission forms to the SFC as soon as practicable should they wish to act or continue to act as sponsors when the new regime becomes effective on 1 January 2007.

Normally, the time taken to process the application depends on the quality and completeness of the information submitted.

What should intermediaries do if there is any change in the information contained in the submissions made to the SFC?

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5.11 If there is any change in the information provided to the SFC, intermediaries should notify the SFC immediately of such change.

Should intermediaries currently licensed/registered for Type 6 regulated activity undertake mandates to act as sponsors or compliance advisers prior to being notified by the SFC whether they are eligible to act as sponsors under the new regime?

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5.12 The firm should consider carefully beforehand whether or not it will meet all the requisite requirements as a sponsor under the new regime pursuant to the Sponsor Guidelines before continuing its existing sponsor work or accepting new mandates during the interim period. If a firm conducts sponsor work prior to receiving the relevant notification from the SFC without having regard to its eligibility, the firm's ability to control business risk and in general, its overall fitness and properness as an intermediary licensed/registered for Type 6 regulated activity may be called into question.

What about intermediaries currently licensed/registered for Type 6 regulated activity who have not taken on any IPO work in Hong Kong in the 5 years prior to 1 January 2007? Does the SFC recommend that they should not accept any sponsor work until they have received the notification from the SFC that it will not impose a restriction on their licence?

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5.13 Intermediaries should submit the sponsor submission forms to the SFC as early as possible to demonstrate that they are able to meet all the eligibility criteria to act as sponsors under the Sponsor Guidelines.

For intermediaries that have not undertaken any IPO work in Hong Kong in the last 5 years, it is questionable whether they could meet the eligibility criteria set out in the Sponsor Guidelines. Undertaking sponsor mandates prior to the date of receiving the relevant notification from the SFC may raise the issue of their ability to control business risk and in general, their overall fitness and properness as intermediaries licensed for Type 6 regulated activity.

Would acting as sponsors for an IPO that went through the listing committee hearing but subsequently failed to list on the Main Board or GEM Board of the SEHK be considered as relevant IPO experience?

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5.14 No. The IPO would have to be completed.

What is the difference between the term “principal” in the Licensing Information Booklet and the term “Principal” as stipulated in the Sponsor Guidelines?

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5.15 The term “principal” mentioned in the Licensing Information Booklet and various licensing application forms refers to the corporation to which an individual licensed or registered with the SFC is accredited. The term “Principal” as stipulated in the Sponsor Guidelines means a responsible officer or an executive officer appointed by the sponsor firm to be in charge of the supervision of the transaction team.

There may be times when the sponsor does not have any sponsor mandates. Does it mean the sponsor is still required to maintain 2 Principals during that period?

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5.16 Yes. In order to maintain their eligibility as sponsors, intermediaries that are qualified to act as sponsors should have at least two Principals at all times in order to remain eligible to act as sponsors.

Will either the SFC or the HKMA oversee the Principal’s application process for registered institutions?

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5.17 In the case of registered institutions, the HKMA will oversee the application process of the executive officers nominated to act as Principals of a sponsor.

Paragraph 1.3.1 of the Sponsor Guidelines states that there should be sufficient Principals engaged in a full time capacity to discharge the sponsor’s role in supervising the transaction teams. Does “full time” here mean the Principal must be engaged full time on sponsor-related work, or does it simply mean that the Principal has to be a full-time employee of the firm?

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5.18 The Principal should be a full time employee of the firm and engaged in sponsor-related work on a full time basis. In addition, the Principal, who is also a responsible officer/executive officer of the sponsor under the SFO⁷, should be available at all times to supervise the regulated activity.

⁷ “SFO” means Securities and Futures Ordinance

If there are co-sponsors on a particular deal, does the team require separate oversight by Principals from each firm?

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5.19 Additional sponsors appointed to advise a listing applicant will not diminish in any way the obligations and responsibilities of each sponsor as required by all relevant rules, regulations, codes and guidelines.

Must the 5 years' experience required in paragraph 1.4.1(2) of the Sponsor Guidelines be a continuous 5-year period?

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5.20 Yes.

In order to be eligible to act as a Principal, should the appointee have played a senior role within a transaction team with responsibility for supervising other team members? What if there is more than one person who has played a substantial role in advising a listing applicant on any one deal?

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5.21 The term "substantial role" should be interpreted according to its ordinary meaning. A person who has played less than a leading supervisory role in an IPO transaction is generally not considered to have played a substantial role. The sponsor should not attribute the experience of all the appointees of the firm to the same transaction when trying to meet the eligibility requirements as Principals under the Sponsor Guidelines.

An appointed Principal is required to have played a substantial role in advising a listing applicant as a sponsor in at least 2 completed IPOs on the Main Board or the GEM Board of SEHK. In what circumstances will the SFC allow any waivers in case the Principal has taken a short career break?

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5.22 In exceptional circumstances, the SFC may allow dispensation from certain requirements regarding the eligibility of Principals provided that such dispensation will not prejudice the overall protection of investors' interest. The SFC will consider, among others, the firm's business nature and model, supporting expertise and resources, compliance track record and systems, and the comparability of the overseas experience acquired by the Principals. Please see paragraph 1.4.1(2) of the Sponsor Guidelines.

International firms may transfer a senior member of their US or UK sponsor team, who has extensive experience participating in and overseeing sponsor work in international markets, to Hong Kong to lead the sponsor activities. Often it will not be possible for this person to have a significant period of overlap with the Principal they are replacing, and so the incoming person may not have the opportunity to gain the requisite experience of playing a substantial role in advising 2 Main Board or GEM IPOs prior to their appointment as a Principal. Will the SFC exercise its discretion to grant a dispensation from compliance with paragraph 1.4 of the Sponsor Guidelines?

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5.23 Apart from seeking to be the Principal of the firm, the nominated individual transferred from an overseas office is required by the SFC to be licensed/registered to carry out Type 6 regulated activity in Hong Kong. The SFC may, in exceptional circumstances, consider exercising its discretion to allow dispensation from certain requirements for the eligibility of Principals provided that such dispensation is not prejudicial to the overall interests of the investing public.

In general, it is expected that the relevant overseas experience should, at the minimum, be acquired in markets that have at least comparable or higher regulatory and enforcement standards on listing matters than Hong Kong.

Can itinerant professionals be appointed as Principals? Will a responsible officer/executive officer be regarded as qualified to act as a Principal if there are conditions imposed on his/her licence/registration?

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5.24 Itinerant professionals would not be regarded as eligible to act as Principals. The nominated Principal should be a responsible officer/executive officer of the intermediary concerned who is supervising the regulated activity at all times and free from licensing conditions.

How should the sponsor notify the SFC/HKMA of changes in Principal appointment?

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5.25 Sponsors are required to notify the SFC in writing in respect of any addition or cessation of its Principals within 7 business days after such changes. Together with the notification, they must also complete and submit Supplement 10(s) on the eligibility of the newly appointed Principal. In the case of registered institutions, a copy of the notification and Supplement 10(s) should also be sent to the HKMA.

If a firm acts as a compliance adviser and wants to continue to carry on such work (but not sponsor work) beyond 1 January 2007, must it notify the SFC according to paragraph 55 of the Conclusion Paper to the Regulation of Sponsors and Compliance Advisers issued in April 2006?

If the firm subsequently decides that it wishes to act as a sponsor, does it then have to notify the SFC again in writing (even though it is already "qualified" to do so)?

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5.26 A firm must be eligible under its licence or registration to act as a sponsor in order to act as a compliance adviser. The firm is required to follow the same procedures as intermediaries that wish to act as sponsors and submit the relevant sponsor submission forms to the SFC to demonstrate that it can meet the eligibility criteria under the Sponsor Guidelines accordingly. Registered institutions should also submit a copy of the submission forms to the HKMA.

The sponsor submission forms can be downloaded from the SFC website. Intermediary is encouraged to make its submission as soon as practicable.

Once an intermediary is qualified to act as a sponsor, it does not need to notify the SFC again should it wish to carry out sponsor work.

Can sponsors continue to act as sponsors or compliance advisers if one or more of their Principals approved by the Commission ceases to act as a Principal leaving the firm with only one Principal?

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5.27 If intermediaries that are permitted to act as sponsors cease to have at least 2 qualified Principals that fulfil the eligibility criteria for Principals under paragraph 1.3 and/or paragraph 1.4 of the Sponsor Guidelines, they will not meet the eligibility criteria to act as a sponsor under the Sponsor Guidelines. Therefore, if one of their Principals approved by the Commission ceases to act as a Principal leaving the firm with only one Principal, the SFC may, after considering the facts and circumstances of the case, impose a licensing condition on the firm restricting it from carrying out sponsor and/or compliance work.

Intermediaries that are permitted to act as sponsors are reminded that they should not accept new sponsor or compliance adviser work once they no longer meet the eligibility criteria to act as a sponsor under the Sponsor Guidelines. The undertaking of any new sponsor or compliance adviser work by such an intermediary, when not eligible to do so, may raise concerns as to its ability to control business risk and its overall fitness and properness to remain licensed/ registered for Type 6 regulated activity.

As set out in FAQ 5.16 published on 5 September 2006, in order to maintain their eligibility to act as sponsors, intermediaries that are qualified to so act should have at least two Principals at all times in order to remain eligible to act as a sponsor.

Does an individual who has ceased to act as a Principal after having previously been approved as a Principal, have to demonstrate that he has completed at least 2 IPOs on the Main Board or the GEM Board of the SEHK in the five years immediately preceding a further application that is made by him to once again be approved as a Principal?

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5.28 An individual who has ceased to act as a Principal after having previously been approved as a Principal, will not be required to demonstrate that he has completed at least 2 IPOs on the Main Board or the GEM Board of the SEHK in the five years immediately preceding a further application that is made by him to once again be approved as a Principal, provided such application is made within 3 years after he ceased to act as a Principal.

However, where such application is not made within that 3 year period, he will be required to demonstrate that he satisfies all of the criteria for eligibility to be approved as a Principal stipulated in Paragraph 1.4 of the Sponsor Guidelines. This will be so irrespective of whether he has remained a responsible officer and/or a representative licensed for Type 6 regulated activity during the period after he ceased to act as a Principal.