



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Fit and Proper Guidelines



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1. Introduction

- 1.1 In most financial markets throughout the world, intermediaries providing securities, futures and foreign exchange services are required to be authorised by a regulatory authority. This requirement arises from the need for market participants generally, and investors in particular, to have confidence that the people and organisations with whom they deal are competent, honest, financially sound, and will treat them fairly.
- 1.2 Persons applying for licences and registrations under the Securities and Futures Ordinance, Cap. 571 (SFO) must satisfy and continue to satisfy after the grant of such licences and registrations the Securities and Futures Commission (SFC) that they are fit and proper persons to be so licensed or registered.
- 1.3 In simple terms, a fit and proper person means one who is financially sound, competent, honest, reputable and reliable.
- 1.4 The Fit and Proper Guidelines are made under section 399 of the SFO to replace the Fit and Proper Criteria issued in December 2000. They outline a number of matters that the SFC will normally consider in determining whether a person is fit and proper. The matters set out in these Guidelines are not exhaustive. These Guidelines do not have the force of law and should not be interpreted in a way that would override the provisions of any applicable laws, codes or other regulatory requirements.
- 1.5 These Guidelines should be read in conjunction with the Guidelines on Competence and the Guidelines on Continuous Professional Training, which set out the initial and continuous competence requirements expected of a person.

2. Who needs to comply with the Fit and Proper Guidelines

2.1 The Fit and Proper Guidelines apply to a number of persons including the following:

- (a) an individual who applies for licence or is licensed under Part V of the SFO;
- (b) a licensed representative who applies for approval or is approved as a responsible officer under Part V of the SFO;
- (c) a corporation which applies for licence or is licensed under Part V of the SFO;
- (d) an authorized financial institution which applies for registration or is registered under Part V of the SFO;
- (e) an individual whose name is to be or is entered in the register maintained by the Hong Kong Monetary Authority (HKMA) under section 20 of the Banking Ordinance (relevant individual); and
- (f) an individual who applies to be or has been given consent to act as an executive officer of a registered institution under section 71C of the Banking Ordinance.

3. Determination of “fit and proper”

- 3.1 Section 129(1) of the SFO sets out a number of matters that the SFC or the HKMA (as the case may be) shall have regard to in assessing a person’s fitness and properness, which include his:
- (a) financial status or solvency;
 - (b) educational or other qualifications or experience having regard to the nature of the functions to be performed;
 - (c) ability to carry on the regulated activity competently, honestly and fairly; and
 - (d) reputation, character, reliability and financial integrity.
- 3.2 The above matters must be considered in respect of the person (if an individual), the corporation and any of its officers (if a corporation) or the institution, its directors, chief executive, managers and executive officers (if an authorized financial institution).
- 3.3 In addition, section 129(2) of the SFO empowers the SFC or the HKMA (as the case may be) to take into consideration any of the following matters in considering whether a person is fit and proper:
- (a) decisions made by such relevant authorities as stated in section 129(2)(a) or any other authority or regulatory organisation, whether in Hong Kong or elsewhere, in respect of that person;
 - (b) in the case of a corporation, any information relating to:
 - (i) any other corporation within the group of companies; or
 - (ii) any substantial shareholder or officer of the corporation or of any of its group companies;
 - (c) in the case of a corporation licensed under section 116 or 117 of the SFO or registered under section 119 of the SFO or an application for such licence or registration:
 - (i) any information relating to any other person who will be acting for or on its behalf in relation to the regulated activity; and
 - (ii) whether the person has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements under any of the relevant provisions;
 - (d) in the case of a corporation licensed under section 116 or 117 of the SFO or an application for the licence, any information relating to any person who is or to be employed by, or associated with, the person for the purposes of the regulated activity; and
 - (e) the state of affairs of any other business which the person carries on or proposes to carry on.

- 3.4 The SFC is obliged to refuse an application to be licensed if the applicant fails to satisfy the SFC that he is a fit and proper person to be licensed. The onus is on the applicant to make out a case that he is fit and proper to be licensed for the regulated activity. In relation to an application to be registered under section 119 of the SFO by an authorized financial institution, the SFC is obliged to have regard to the advice given to it by the HKMA as to whether it has been satisfied that the applicant is a fit and proper person and the SFC may rely on such advice wholly or partly.
- 3.5 Paragraphs 4 to 7 below set out matters, whether taken place in Hong Kong or elsewhere, that are likely to give rise to concerns about the fitness and properness of a person. Where “recency” of a matter of concern is mentioned in the paragraphs, it is normally taken to mean within the last five years for all persons.
- 3.6 Notwithstanding that a person fails to comply with all individual elements set out in these Guidelines, the SFC may nonetheless be satisfied that the person is fit and proper. The SFC will look to the substance of the requirements and the materiality of any failure to meet them. Persons who are unsure whether they meet the substance of any criteria or believe that failure to meet any requirements may not be material to their own case are encouraged to discuss their concerns with the SFC’s Licensing staff before submitting an application.
- 3.7 Persons applying for licence or approval to engage in regulated activities may be asked to attend interviews with SFC’s Licensing staff as appropriate.

4. Financial status or solvency

4.1 The SFC is not likely to be satisfied that a person is a fit and proper person if that person:

4.1.1 In the case of an individual

- (a) is an undischarged bankrupt, is currently subject to bankruptcy proceedings or is a bankrupt who has recently been discharged;

Note: In considering whether to license a bankrupt who has been discharged, the SFC would have regard to the circumstances of the discharge and the recency of the discharge.

- (b) is subject to receivership or other similar proceedings;
- (c) has failed to meet any judgment debt.

Note: The SFC would have regard to the circumstances of the failure to meet a judgment debt and the recency of the failure.

4.1.2 In the case of a corporation or an authorized financial institution

- (a) is subject to receivership, administration, liquidation or other similar proceedings;
- (b) has failed to meet any judgment debt;

Note: These are requirements aimed at identifying corporations or institutions of dubious financial status or solvency. As with the same requirements in respect of individuals, the SFC would have regard to the circumstances of the failure to meet a judgment debt and the recency of the act.

- (c) is unable to meet any financial or capital requirements applicable to it.

5. Educational or other qualifications or experience

5.1 In considering the educational or other qualifications or experience, the SFC will take into account the nature of the functions which the person will perform. A person is unlikely to meet the fit and proper requirement if that person:

5.1.1 In the case of an individual

- (a) applying for licence as a representative or whose name is to be entered in the register maintained by the HKMA, is under 18 years of age;
- (b) has failed to demonstrate that he is competent to perform the regulated activities efficiently and effectively.

Note:

- (i) *The general expectations are set out in the Guidelines on Competence.*
- (ii) *Competence is assessed with reference to the person's academic and industry qualifications together with relevant experience. Persons should be equipped with the skills, knowledge and professionalism necessary to perform their duties. The level of knowledge expected varies according to the level of responsibility and the type of regulated activity to be carried out. Persons are generally expected to be able to display an understanding of:*
 - *the general structure of the regulatory framework that applies to their proposed activities;*
 - *the particular legislative provisions, codes, guidelines and exchange rules that apply to the functions that they would perform;*
 - *the fiduciary obligations owed to clients and the general obligations owed to their principals or employers; and*
 - *the financial products they deal in or advise upon and the market in which the service is provided.*

6. Ability to carry on the regulated activity competently, honestly and fairly

6.1 A person has to demonstrate the ability to carry on the regulated activity competently, honestly and fairly; and in compliance with all relevant laws, codes and guidelines promulgated by the SFC and other regulators (where applicable). The SFC is not likely to be satisfied that a person is a fit and proper person if that person:

6.1.1 In the case of an individual

- (a) has ever been a patient as defined in section 2 of the Mental Health Ordinance to the extent that in the opinion of the SFC, after having taken into account such relevant factors including that of the person's past training, experience and qualifications, that person would be unable to carry out the inherent requirements of the regulated activity;
- (b) has evidenced incompetence, negligence or mismanagement, which may be indicated by the person having been disciplined by a professional, trade or regulatory body; or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement.

Note: Competence and efficiency are key elements to being fit and proper. However, the weight given to events of the types listed above in considering whether a person is fit and proper will depend on a number of factors, such as the time since the event, the seriousness of the event, and the responsibility to be undertaken. As well, the source and quality of evidence will be taken into account.

6.1.2 In the case of a corporation or an authorized financial institution

- (a) has non-executive directors, key personnel (such as manager, officer, director, chief executive), substantial shareholders or other controllers who fail to meet the Fit and Proper Guidelines other than that on competence to perform regulated activities (unless such requirements are otherwise applicable);

Note: The SFC believes that all persons involved in the management or control of licensed corporations and registered institutions must be honest and fair.

- (b) has failed to demonstrate that it is competent to perform the regulated activities efficiently and effectively.

Note: The general expectations are set out in the Guidelines on Competence. The competence of a person is generally assessed with reference to its organisational structure and personnel. References should be made to paragraph 3 of the Guidelines on Competence. The SFC is unlikely to be satisfied that the person is competent if:

- (i) *its organisational structure and personnel are unable to comply with the relevant legislative or regulatory requirements; or*
- (ii) *it lacks the infrastructure and internal control systems to manage risk effectively, avoid conflict of interest and provide proper audit trail.*

7. Reputation, character, reliability and financial integrity

7.1 The SFC is not likely to be satisfied that a person is fit and proper if that person:

7.1.1 In the case of an individual

- (a) was found to be of poor reputation, character or reliability, lacking in financial integrity, or dishonest. The weight given to events of the types listed below will depend on a number of factors, such as the time since the event, the seriousness of the event, and the level of responsibilities to be undertaken. Instances which, if remained unexplained, might result in the person being regarded as having failed to meet this test are where the person has been:
- (i) found by a court or other competent authority for fraud, dishonesty or misfeasance;
 - (ii) convicted of a criminal offence or is the subject of unresolved criminal charges which are of direct relevance to fitness and properness;
 - (iii) censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
 - (iv) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law;
 - (v) disqualified by a court of competent jurisdiction from being a director;
 - (vi) found culpable of market misconduct by the Market Misconduct Tribunal, or failed to abide by any codes and guidelines promulgated by the SFC, other regulators or any relevant exchanges in Hong Kong or overseas (if applicable);
 - (vii) a director, substantial shareholder, or involved in the management, of a corporation or business that:
 - was wound up (otherwise than by a solvent members' voluntary dissolution) or was otherwise insolvent or had a receiver or administrator appointed, however described;
 - was found guilty of fraud;
 - has not met all obligations to clients, compensation funds established for the protection of investors, or inter member guarantee funds;
 - has been found to have committed the acts described in (i), (ii), (iii), (iv) or (vi) above.

Note: The extent of the person's involvement in the relevant events, and the person's behaviour at that time, will have a substantial impact on the weight that the SFC attaches to the events in considering the person's fitness and properness.

- (b) has been a party to a scheme of arrangement or entered into any form of compromise with a creditor involving a considerable amount.

Note: Where the amount involved is in excess of HK\$100,000 or equivalent, the SFC would have regard to the recency of, and the circumstances leading to, the event.

7.1.2 In the case of a corporation or an authorized financial institution

- (a) was found to be of poor reputation or reliability, or lacking in financial integrity. Similar considerations will be given to the events described in 7.1.1(a) (i), (ii), (iii), (iv), (vi) and (vii) and 7.1.1(b) above;
- (b) has been served with a winding up petition.

8. Continuing requirements

- 8.1 A person licensed or registered under the SFO, or a relevant individual or an executive officer of a registered institution must continue to be fit and proper.
- 8.2 The SFO empowers the SFC to take disciplinary actions, pursuant to section 194 or section 196 of the SFO, against a regulated person¹ of a licensed person or registered institution respectively if:
- (a) the person is, or was at any time, guilty of misconduct; or
 - (b) the SFC is of the opinion that the person is not a fit and proper person to be or to remain the same type of regulated person.
- 8.3 A range of sanctions is available to the SFC under the SFO. These include:
- revocation or suspension of the licence or registration of all or part of the regulated activities (only applicable to licensed persons and registered institutions);
 - revocation or suspension of approval granted as a responsible officer (only applicable to individuals);
 - public or private reprimand;
 - prohibition from applying for a licence or registration;
 - prohibition from applying for approval as a responsible officer of a licensed corporation or to be given consent to act or continue to act as an executive officer of a registered institution (only applicable to individuals);
 - prohibition from having his name entered in the register maintained by the HKMA under section 20 of the Banking Ordinance (only applicable to individuals); and
 - ordering the payment of a pecuniary penalty.

¹ Regulated person is defined:
in section 194(7) in respect of licensed persons as any one of the following:

- a licensed person;
- a responsible officer of a licensed corporation; or
- a person involved in the management of the business of a licensed corporation.

in section 196(7) in respect of registered institutions as any one of the following:

- a registered institution;
- an executive officer of a registered institution;
- a person involved in the management of the business constituting any regulated activity for which a registered institution is or was registered; or
- an individual whose name is or was entered in the register maintained by the HKMA under section 20 of the Banking Ordinance as that of a person engaged by a registered institution in respect of a regulated activity.