

G.N. 3778

SECURITIES AND FUTURES ORDINANCE (Chapter 571) (the ‘Ordinance’)

Pursuant to section 399 of the Ordinance, the Securities and Futures Commission publishes the following revised guidelines (the ‘Revised Guidelines’):—

Guidelines on Competence

Guidelines on Continuous Professional Training

Fit and Proper Guidelines

The Revised Guidelines shall become effective on 1 January 2022 and shall supersede all their previous versions.

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

Guidelines on Competence

January 2022

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1. Introduction

- 1.1 The Fit and Proper Guidelines set out the general expectations of the Securities and Futures Commission (SFC) of what is necessary to satisfy the licensing or registration requirements that a person is fit and proper. Among the requirements are paragraphs 5.1.1, 6.1.1 and 6.1.2 which state that individuals and corporations will generally not be considered fit and proper unless they can demonstrate that they have the ability to carry on the regulated activity (RA)¹ competently.
- 1.2 The competence requirements stem from the fitness and properness requirements. The objective is to ensure a person is equipped with the necessary technical skills and professional expertise to be “fit”, and is aware of the relevant ethical standards and regulatory knowledge to be “proper” in carrying on any RA.
- 1.3 The SFC’s Academic and Accreditation Advisory Committee (AAAC), which is comprised of representatives from the SFC, the industry and academic institutions, will consider and approve industry based qualifications and local regulatory framework papers for meeting the competence requirements. The AAAC will from time to time amend the list of approved qualifications and local regulatory framework papers that it has endorsed for meeting the competence requirements. The list will be updated on the SFC’s website as and when changes occur.
- 1.4 The Guidelines on Competence (Guidelines) are published under section 399 of the Securities and Futures Ordinance (Cap. 571) (SFO). They are an elaboration of the Fit and Proper Guidelines and set out the matters that the SFC will normally consider in assessing whether a person is competent to carry on any RA. The expectations set out in the Guidelines are not exhaustive.
- 1.5 The 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. Failure to follow the Guidelines may reflect adversely on the fitness and properness of a person to carry on any RA.
- 1.6 The Guidelines should be read in conjunction with the Fit and Proper Guidelines and the Guidelines on Continuous Professional Training (CPT).

¹ Any of the regulated activities specified in Part 1 of Schedule 5 to the Securities and Futures Ordinance. This includes:

Type 1: dealing in securities (RA 1)
Type 2: dealing in futures contracts (RA 2)
Type 3: leveraged foreign exchange trading (RA 3)
Type 4: advising on securities (RA 4)
Type 5: advising on futures contracts (RA 5)
Type 6: advising on corporate finance (RA 6)
Type 7: providing automated trading services (RA 7)
Type 8: securities margin financing (RA 8)
Type 9: asset management (RA 9)
Type 10: providing credit rating services (RA 10)
Type 11: dealing in OTC derivative products or advising on OTC derivative products (RA 11)
Type 12: providing client clearing services for OTC derivative transactions (RA 12)

For RA 11 and RA 12, effective upon the commencement of the new licensing regime for these RAs.

2. Application and interpretation

- 2.1 The Guidelines are applicable to the following persons carrying on any RA under Part V of the SFO:
- (a) a corporation which applies for a licence or is licensed as a licensed corporation (LC);
 - (b) an authorized financial institution which applies for a registration or is registered as a registered institution (RI);
 - (c) an individual who applies for a licence or is licensed as a representative (LR);
 - (d) an LR who applies for an approval or is approved as a responsible officer (RO);
 - (e) a relevant 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 (Rel); and
 - (f) a person who applies to the HKMA for consent or who has been given consent to act as an executive officer of an RI under section 71C of the Banking Ordinance (EO).
- 2.2 An EO and an Rel have to meet the same competence requirements as an RO and an LR respectively. It is the responsibility of an RI to ensure that an Rel meets the same competence requirements as those applicable to an LR before the submission of his or her name to the HKMA for the purpose of entering it in the register. The HKMA will also take the Guidelines into account when considering whether to grant consent to an individual to act as an EO.
- 2.3 For the purposes of the Guidelines, corporate licensees and applicants in paragraphs 2.1(a) and 2.1(b) above are named as "corporations"; while individual licensees and applicants in paragraphs 2.1(c) to 2.1(f) above are named as "individuals".
- 2.4 Throughout the Guidelines, unless otherwise stated, where references to "LC" are made, the term covers "RI"; similarly, where references to "RO" are made, the term covers "EO" of an RI and references to the term "LR" cover "Rel" of an RI.
- 2.5 For paragraphs 4.1 to 4.3 of the Guidelines, unless otherwise stated, regarding the SFC's requirements and procedures for an individual to demonstrate compliance with a certain requirement:
- (a) the HKMA will adopt the same requirements and procedures for an EO of an RI; and
 - (b) for Rels, the RI concerned has to ensure that such individuals comply with the corresponding requirements, and that sufficient records (with supporting documents, where applicable) of how these requirements are satisfied should be maintained and made available for inspection upon request from the HKMA.

- 2.6 For the avoidance of doubt, the exemptions in paragraph 4.4 of the Guidelines are available to all individuals (including existing ROs, EOs, LRs and Rels as well as individual applicants) where applicable. Regarding the SFC's requirements and procedures to seek an exemption or the provision of a confirmation or undertaking:
- (a) the HKMA will adopt the same requirements and procedures for an EO of an RI; and
 - (b) for Rels, the RI concerned has to ensure that such individuals comply with the corresponding requirements and that sufficient records (with supporting documents, where applicable) of how these requirements are satisfied should be maintained and made available for inspection upon request from the HKMA. While an RI does not have to provide a confirmation or undertaking to the HKMA in relation to an Rel seeking exemption from the initial competence requirement, it will be held responsible for ensuring that the actions covered under such confirmation or undertaking are taken in the required manner.
- 2.7 The key elements for the competence requirements of corporations and individuals set out in paragraphs 3 and 4 of the Guidelines are high-level. The SFC is cognisant of the fact that the application of these elements would be different, taking into account a corporation's business model, the complexity of its business lines and an individual's particular circumstances, amongst other factors. The SFC will administer the competence requirements in a pragmatic manner.

3. Requirements for corporations

3.1 General principles

- 3.1.1 In determining whether a corporation is competent to carry on any RA, the SFC will consider various key elements including its business, corporate governance, internal controls, operational review, risk management and compliance as well as the combined competence of its senior management and other staff members.
- 3.1.2 A corporation applying to carry on an RA should have a clear business model, detailing its *modus operandi* and target clientele. It should also have written policies and procedures to ensure continuous compliance with the relevant legal and regulatory requirements.
- 3.1.3 For corporations in which the scale of business operations and the number of staff are relatively small, the SFC will take into account that segregation of duties may not be possible in certain aspects. Under such circumstances, if the corporation can demonstrate competence in managing its risk exposures and exercising effective control over its operations, the SFC may accept alternative arrangements either at the company or the group level. Clear written operational and compliance procedures should be available.
- 3.1.4 The SFC highlights that corporations must remain competent and ensure that the individuals they engage remain competent including compliance with the CPT requirements. They must also keep the SFC informed of any material changes in their business plans, organisational structures and personnel.

3.2 Key elements

- 3.2.1 The following non-exhaustive examples illustrate key elements that the SFC will consider for assessing the competence of a corporation:

Business

- (a) Information about the proposed business lines
- (b) Information about its target clientele, products and services
- (c) Information about its remuneration model and basis of calculation
- (d) Description of its modes of operation such as the extent of system automation and outsourcing arrangements
- (e) Analysis of risks inherent to the key business lines, such as market risk, credit risk, liquidity risk and operational risk

Corporate governance

- (a) The presence of a shareholding structure clearly setting out its chain of ownership and voting power² such that all substantial shareholders³ and those who exercise ultimate control over the corporation can be properly identified
- (b) The presence of an organisational structure⁴ clearly setting out the management structure of the corporation, including the roles, responsibilities, accountability and reporting lines of its senior management personnel
- (c) Policies and procedures for establishing, documenting and maintaining an effective management and organisational structure
- (d) The board of directors and senior management, including committees of the board, are composed of individuals with an appropriate range of skills and experience to understand and run the corporation's proposed activities
- (e) The board of directors and senior management, including committees of the board, are organised in a way that enables the board to address and control the activities of the corporation
- (f) Systems and controls to supervise those who act under the authority delegated by the board of directors

Staff competencies

- (a) Policies and procedures to ensure that suitably qualified staff are in post including, but not limited to, all ROs, LR, Managers-In-Charge (MICs)⁵ and other supervisory staff
- (b) All supervisory staff for both front and back offices should have not less than three years of relevant experience and appropriate qualifications
- (c) Arrangements to ensure that operational and control policies and procedures are communicated to new recruits
- (d) Arrangements to ensure that updated operational and control manuals are distributed to staff and are accessible at all times

² For a corporation that has a complex ownership or control structure (eg, structures involving multiple layers, cross-holdings, trusts, nominee arrangements) without an obvious commercial purpose, the SFC may obtain further information to understand whether there is a legitimate reason for the particular structure.

³ As defined in Schedule 1 to the SFO.

⁴ See the "Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management" (16 December 2016).

⁵ MICs refer to individuals appointed by an LC to be principally responsible, either alone or with others, for managing any of the core functions of the LC as set out in the circular in footnote 4. Although the SFC does not seek to apply regulatory approval to an MIC who is not a licensed person or a licence applicant, an LC should ensure that any person it employs or appoints to conduct business is fit and proper and qualified to act in the capacity so employed or appointed (see also paragraph 4.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission).

- (e) Arrangements to ensure that any changes to operational and control policies and procedures are communicated to staff
- (f) Policies and procedures to ensure staff competencies including compliance with the CPT requirements

Internal controls

- (a) Adequate internal control systems set up in accordance with the relevant codes and guidelines
- (b) Arrangements to ensure that proper audit trails are maintained
- (c) Requirements for the proper documentation of all operational and control procedures⁶
- (d) Reporting systems ensuring that robust information is produced for risk management and decision-making purposes
- (e) Appropriate control procedures to ensure data integrity and that data flowing into the risk management system should be consistent with trade and financial information
- (f) Appointment of a qualified information technology manager who is appropriately experienced to maintain the integrity of the corporation's operating systems

Operational review⁷

- (a) The presence of a function for reviewing the adherence to, and the adequacy and effectiveness of, the corporation's internal control systems
- (b) Operational review personnel have appropriate qualifications and working experience to understand the corporation's activities and risk profile
- (c) Operational review personnel are independent of core business functions and report directly to an independent, high-level authority
- (d) Operational review function to perform periodic (at least annual) risk assessment and ascribe various levels of risk to an appropriate review cycle
- (e) All review findings and issues that are not resolved within established time frames must be reported to senior management

⁶ Proper documentation of all operational and control procedures is essential for providing staff with the necessary guidance in running the business in accordance with the corporation's business objectives, professional standards and regulatory requirements.

⁷ The review function may not necessarily be performed by internal auditors.

Risk management

- (a) Policies and procedures with reference to the proposed business lines including:
 - (i) the setting of proper exposure limits for each key business line
 - (ii) the way that risk exposure limits are set and communicated to the responsible persons
 - (iii) the way that risks are being measured and monitored
 - (iv) the procedures to deal with exceptions to risk limits
- (b) Anticipated risks and outgoings being supported by sufficient capital available to the corporation (typically this is demonstrated by a projection of excess liquid capital computed according to the Securities and Futures (Financial Resources) Rules (FRR), if applicable)
- (c) The timing of review of established policies (eg, subject to regular review, or with respect to changes in business and markets)
- (d) Appointment of an independent risk manager⁸ or an MIC of risk management function who has the appropriate qualifications and authority to oversee and monitor the risk exposures and systems of the corporation
- (e) Processes to ensure that the corporation regularly carries out stress testing using appropriate measures

Compliance

- (a) Policies and procedures to ensure its compliance with all applicable legal and regulatory requirements as well as with its own internal policies and procedures
- (b) Policies and procedures to ensure that information submitted to the SFC is complete and accurate
- (c) Policies and procedures to deal with non-compliance
- (d) Adequate internal control systems to ensure its compliance with the FRR, and for it to commence and maintain its business operations

⁸ The SFC will not insist that an independent risk manager be appointed if there is alternative arrangement in place which is sufficient to manage business risk exposures and exercise effective control over operations. This is irrespective of whether the alternative arrangement is undertaken in Hong Kong or elsewhere, at the company level or group level. In any case, there should be clear segregation of duties; the responsibilities of the risk manager should be clearly separated from that of front office personnel. Clearly, in most circumstances, more than one person will need to be appointed.

- (e) Policies and procedures on “Chinese Walls” including “Wall Crossing Procedure” and other control procedures to address conflicts of interest arising from carrying on multiple types of RAs concurrently (eg, advising on corporate finance, securities research and asset management activities) in the corporation or its group of companies
- (f) Adequate internal control systems to address other conflicts of interest such as employee dealing and client priority
- (g) Policies and procedures to ensure that the corporation’s business activities conducted in a jurisdiction outside Hong Kong, if any, fully comply with the relevant legal and regulatory requirements of that other jurisdiction, including activities performed by any individuals acting for and on behalf of it in such jurisdiction⁹
- (h) Policies and procedures to ensure any branch office in Hong Kong or elsewhere has appropriate risk management and control strategy to comply with the relevant legal and regulatory requirements as well as internal policies and procedures

3.3 Further guidance

3.3.1 Corporations that intend to carry on the following activities are required to meet additional eligibility criteria:

- (a) Engage in sponsor and compliance adviser work under the Listing Rules¹⁰ of The Stock Exchange of Hong Kong Limited (SEHK). These corporations should also refer to the requirements set out in Appendix A.
- (b) Undertake activities in connection with matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs (Codes on Takeovers). These corporations should also refer to the requirements set out in Appendix B.
- (c) Manage products authorised under the Code on Unit Trusts and Mutual Funds (UT Code) and Code on Real Estate Investment Trusts (REIT Code). Their eligibility would be assessed separately when they apply under these codes to take up the management role.

⁹ See the “Circular clarifying the licensing obligations of corporations and individuals and more particularly those conducting business outside Hong Kong” (1 April 2010).

¹⁰ The term “Listing Rules” refers to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

4. Requirements for individuals

4.1 General principles

- 4.1.1 An individual applying to carry on an RA has to demonstrate competence and satisfy the SFC that he or she:
- (a) has the necessary academic, professional or industry qualifications;
 - (b) is knowledgeable about the financial products that he or she deals in or advises on and the markets in which he or she provides services;
 - (c) has sufficient relevant industry and management experience (where applicable);
 - (d) has a good understanding of the regulatory framework, including the laws, regulations and associated codes governing his or her intended industry sectors; and
 - (e) is familiar with the ethical standards expected of a financial practitioner¹¹.

Academic and professional qualifications

- 4.1.2 For academic qualification, an individual should attain at least Level 2 in either English or Chinese as well as in Mathematics in the Hong Kong Diploma of Secondary Education (HKDSE) or equivalent. Other academic or professional qualifications may also be considered as detailed in paragraphs 4.2.1 and 4.3.1 below.

Recognised industry qualifications and local regulatory framework papers

- 4.1.3 Recognised industry qualifications (RIQ) should be relevant to the activities to be performed by the individual, demonstrating that the individual is knowledgeable about the financial products which he or she deals in or advises on.
- 4.1.4 The local regulatory framework paper (LRP) requirement is to ensure that the individual has an acceptable understanding of the relevant local laws and regulations with which he or she must comply when conducting RAs. This is particularly important in light of the criminal nature of liability for violations under the SFO.

¹¹ For example, *Ethics in Practice – A Practical Guide for Financial Practitioners* published jointly by the SFC, the Independent Commission Against Corruption and other organisations in October 1999.

- 4.1.5 Individuals are expected to obtain the RIQ and pass the LRP not more than three years prior to the submission of the application.
- 4.1.6 However, the SFC may recognise RIQs gained more than three years ago if the individual has substantial relevant working experience and has remained in the industry or can prove recent licence or registration with a relevant regulator either in Hong Kong or elsewhere. The SFC may also recognise LRPs gained more than three years ago if the individual is or has been an LR or RO within the past three years for an RA in which such LRPs are relevant.

For example, if an individual has passed Papers 1 and 7 of the Licensing Examination for Securities and Futures Intermediaries (LE) administered by the Hong Kong Securities and Investment Institute (HKSI) and has been licensed by the SFC for RA 1 within the past three years, the individual will not be required to re-take both examinations when he or she applies to additionally carry on RA 2.

- 4.1.7 Without compromising investor protection, the SFC may, at its sole discretion, consider granting an individual an exemption from obtaining an RIQ, passing an LRP or both if the individual can demonstrate that he or she possesses qualifications comparable to those described in paragraphs 4.1.3 and 4.1.4. Criteria under which exemptions may be considered are detailed in paragraph 4.4.

Industry experience

- 4.1.8 Relevant industry experience generally refers to hands-on working experience acquired through the carrying on of RAs in Hong Kong or similarly regulated activities elsewhere. The SFC may also accept experience gained in a non-regulated situation, for example, where the experience is relevant to the carrying on of the proposed RAs (see elaboration in paragraph 4.1.9) but the related activities are exempted from the licensing or registration requirements in Hong Kong or elsewhere.
- 4.1.9 In assessing the “relevance” of an individual’s experience, the SFC will consider whether the substance of the experience is directly relevant or crucial to the RA proposed to be carried on by the individual and the role that the individual will undertake. Some non-exhaustive examples of relevant industry experience are set out below:

(a) Asset management¹²

The SFC recognises a broader range of industry experience as being relevant when considering RO applications seeking accreditation to private fund managers. For example, experience in proprietary trading, research, and managing alternative investment strategies such as special situations will be considered as industry experience directly relevant to the provision of asset

¹² See the circular “SFC Adopts a Pragmatic Approach to Licensing Fund Managers” (11 June 2007).

management services which target professional investors only. While the SFC may also consider an individual with experience which is indirectly relevant to asset management such as sales, marketing and risk management of funds, that individual will likely be imposed with the Non Sole Condition¹³ on his or her licence.

(b) Discretionary account management¹⁴

The SFC may consider industry experience acquired on a wholly incidental basis as relevant to asset management. For example, the SFC may recognise the discretionary account management experience acquired by an RA 1 LR or RO who conducts such management activities wholly incidental to his or her conduct of dealing activities as relevant industry experience when he or she applies to carry on asset management.

(c) Private equity¹⁵

An individual with the following experience will be regarded as having relevant industry experience for carrying on activities relating to private equity:

- (i) conducting research, valuation and due diligence of companies in related industries;
- (ii) providing management consulting and business strategy advice to companies in related industries;
- (iii) managing and monitoring a private equity fund's underlying investments for the best interests of fund investors; or
- (iv) structuring corporate transactions, such as management buyouts and privatisations.

(d) Financial technology¹⁶

If an individual has previously led the research, development and maintenance of an algorithmic investment and portfolio management system, such experience may be regarded as relevant industry experience for the purpose of his or her licence application accredited to a corporation which provides robo-advisory services.

¹³ A licensing condition where the individual must, when actively participating in or when directly supervising the business of the RA concerned, do so under the advice of another RO who is accredited to the same corporation for the same RA and not subject to this condition.

¹⁴ See the "Circular to clarify competence requirements for existing licensed persons intending to provide asset management services" (23 June 2017).

¹⁵ See the "Circular to private equity firms seeking to be licensed" (7 January 2020).

¹⁶ See the "Circular to clarify the "relevant industry experience" requirement for Responsible Officers under the Guidelines on Competence" (29 September 2017).

If the RA carried on by a corporation is based on the utilisation of a highly innovative technology, an individual's previous direct experience in the relevant technology itself may be essential in integrating the technology into the RA carried on by the corporation. The SFC may recognise this as relevant industry experience if the individual has been a key person in developing, or ensuring the proper and continued functioning of, a technology, platform or system (ie, not merely providing system support); and the technology, platform or system in which the individual has expertise is central to the RA of his or her new principal.

However, a traditional brokerage firm which provides some dealing services through an online trading platform is unlikely to be considered as conducting RAs with the platform being a central element of those activities. As such, the SFC may not recognise this as relevant industry experience.

(e) Credit rating services¹⁷

Apart from being an analyst involved in the rating process of a credit rating agency, experience acquired by an individual in relation to credit risk management of financial institutions, financial analysis, credit analysis or bank's internal counterparty risk assessment will also be considered as relevant industry experience for providing credit rating services.

- 4.1.10 In assessing whether an individual has acquired "sufficient" relevant industry experience, the SFC may consider the individual's overall career history accumulated within the industry in totality.

However, the SFC will critically review the experience of an individual who, for example:

- (a) claims industry experience with any firm which has been largely or completely dormant for a prolonged period; or
- (b) shows a pattern of being accredited to his or her previous principals only for a short period.

These kinds of situations cast doubt as to whether the individual has in fact carried on RAs for his or her principal, and such industry experience purportedly gained by him or her will less likely fulfill the competence requirements.

- 4.1.11 The SFC will consider all relevant factors in assessing each individual's application on a case-by-case basis, taking into account his or her principal's business model, governance structure and internal control systems as well as the competence of all its key personnel.

¹⁷ See the FAQs on "Credit rating agencies".

Management experience

- 4.1.12 Management experience refers to the hands-on experience in supervising and managing essential regulated functions or projects in a business setting, including the management of staff engaging in these functions or projects. For example, managing individuals conducting RAs, or an activity which would have been an RA in the absence of an applicable carve-out, may be considered as relevant management experience.
- 4.1.13 The SFC will also accept management experience acquired in the financial industry. However, the SFC would not normally accept management experience which is purely administrative (eg, supervision of human resources or office administration staff).

Further guidance

- 4.1.14 Individuals who carry on multiple types of RAs concurrently in the corporation or its group of companies should ensure that they and their principals have properly addressed all potential and actual conflicts of interest. ROs should also demonstrate that they can properly manage their time to effectively discharge their supervisory duties in all of the RAs and LCs concerned.
- 4.1.15 An individual who holds a directorship in, or is engaged in the business of, companies other than his or her principal should properly address any conflicts of interest arising from such activities, especially when the directorship or engagement will likely prejudice the interests of investors due to concerns about confidentiality or other factors¹⁸.
- 4.1.16 Individuals who intend to carry on the following activities are required to meet additional eligibility criteria.
- (a) Engage in sponsor and compliance adviser work under the Listing Rules. These individuals should also refer to the requirements set out in Appendix A.
 - (b) Undertake activities in connection with matters regulated by the Codes on Takeovers. These individuals should also refer to the requirements set out in Appendix B.
 - (c) Manage products authorised under the UT Code and REIT Code. Their eligibility would be assessed separately when they apply under these codes to take up the management role.

¹⁸ See the FAQ on "Outside directorships and business interests".

4.2 Responsible officers

4.2.1 Basic elements

4.2.1.1 In assessing the competence of an individual applying to be an RO, the SFC will need to be satisfied that he or she possesses appropriate ability, skills, knowledge and experience to properly manage and supervise the corporation's proposed activities.

4.2.1.2 For an individual applying to be an RO, a summary of the options for satisfying the competence requirements is set out below:

	Option A	Option B	Option C	
Academic or professional qualifications	Degree ¹⁹ in the designated fields ²⁰ ; other degree ¹⁹ (with passes in at least two courses in the designated fields ²⁰); or professional qualifications ²¹	Other degree (without passes in two courses in the designated fields ²⁰)	Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent ²²	
Relevant industry experience	At least 3 years over past 6 years	At least 3 years over past 6 years	At least 3 years over past 6 years	At least 5 years over past 8 years
RIQ²³ or Extra CPT²⁴	-	Obtained relevant RIQ or completed relevant Extra CPT	Obtained relevant RIQ	Completed relevant Extra CPT
Management experience	2 years	2 years	2 years	
LRP²⁵	Pass	Pass	Pass	

¹⁹ If an applicant who is a degree holder has attained a post-graduate diploma or certificate which is (a) issued by a university or other similar tertiary institution in Hong Kong or elsewhere; or (b) recognised as Level 6 or above under the Qualifications Framework in Hong Kong, then the post-graduate diploma or certificate will also be taken into account in assessing the applicant's competence. For further details about the Qualifications Framework in Hong Kong, please visit www.hkqf.gov.hk.

²⁰ "Designated fields" refer to accounting, business administration, economics, finance and law.

²¹ Internationally-recognised professional qualifications in law, accounting or finance. Internationally-recognised professional qualifications in finance include Chartered Financial Analyst (CFA), Certified International Investment Analyst (CIIA) and Certified Financial Planner (CFP).

²² The SFC also recognises (a) the attainment of grade E or above in either English or Chinese as well as in Mathematics in the Hong Kong Certificate of Education Examination (HKCEE) and (b) passes in the same subjects in other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere as equivalent to HKDSE.

²³ See paragraph 4.2.2.

²⁴ "Extra CPT" means that the individual must complete five CPT hours for each RA he or she applies for, which is a one-off requirement. The additional CPT hours should be taken within six months preceding the submission of the application.

²⁵ See paragraph 4.2.3.

4.2.1.3 For an individual who does not possess the academic or professional qualifications set out in paragraph 4.2.1.2 but has been a licensee before 1 January 2022, the SFC will consider his or her application if he or she has:

- (a) acquired at least eight years of relevant industry experience in the RA concerned over the past 11 years; and
- (b) met the management experience and LRP requirements set out in paragraph 4.2.3.

4.2.1.4 For an RO who intends to engage in discretionary account services under RA 3, he or she:

- (a) must have attained the minimum academic qualification of Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent; and
- (b) has to obtain three more years of direct foreign exchange trading experience in the inter-bank foreign exchange market or currency futures market, or its equivalent, over the past six years.

4.2.2 Recognised industry qualifications

4.2.2.1 For an individual applying to be an RO, a summary of the RIQ requirements for each type of RA is set out below. These will be updated on the SFC's website as and when changes occur.

RA	RIQ
1, 4 & 8	HKSI LE Papers 7 & 8
2, 5 & 11 ²⁶	HKSI LE Papers 7 & 9
3	Vocational Training Council (VTC) Leveraged Foreign Exchange Trader's Responsible Officer Examination Paper 2
6	HKSI LE Papers 7 & 11
7	No RIQ requirement
9	HKSI LE Papers 7 & 12
10	HKSI LE Papers 7 & 10
12 ²⁶	HKSI LE Papers 7 & 14

²⁶ For RA 11 and RA 12, effective upon the commencement of the new licensing regime for these RAs.



- 4.2.2.2 The SFC will accept industry qualifications listed in Appendix C of the previous Guidelines issued in June 2011 (please refer to the SFC's website for the previous version). Whilst the SFC may also accept qualifications obtained elsewhere, the individual has to provide supporting documents issued by the relevant academic or professional body which demonstrate the equivalence of such qualifications to the HKSI or VTC papers concerned.

4.2.3 Local regulatory framework papers

- 4.2.3.1 For an individual applying to be an RO, a summary of the LRP requirements for each type of RA is set out below. These will be updated on the SFC's website as and when changes occur.

RA	LRP
1, 4 & 8	HKSI LE Papers 1 & 2
2, 5 & 11 ²⁷	HKSI LE Papers 1 & 3
3	VTC Leveraged Foreign Exchange Trader's Responsible Officer Examination Paper 1
6	HKSI LE Papers 1 & 5
7	No LRP requirement
9	HKSI LE Papers 1 & 6
10	HKSI LE Papers 1 & 4
12 ²⁷	HKSI LE Papers 1 & 13

²⁷ For RA 11 and RA 12, effective upon the commencement of the new licensing regime for these RAs.

4.3 Licensed representatives

4.3.1 Basic elements

4.3.1.1 In assessing the competence of an individual applying to be an LR, the SFC will expect him or her to have a basic understanding of the market in which he or she is to work as well as the laws and regulatory requirements applicable to the industry.

4.3.1.2 For an individual applying to be an LR, a summary of the options for satisfying the competence requirements is set out below:

	Option A	Option B		Option C	
Academic or professional qualifications	Degree ²⁸ in the designated fields ²⁹ ; other degree ²⁸ (with passes in at least two courses in the designated fields ²⁹); or professional qualifications ³⁰	Other degree (without passes in two courses in the designated fields ²⁹)		Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent ³¹	
Relevant industry experience	—	At least 2 years over past 5 years	—	At least 2 years over past 5 years	—
RIQ³² or Extra CPT³³	—	—	Obtained relevant RIQ or completed relevant Extra CPT	Completed relevant Extra CPT	Obtained relevant RIQ
LRP³⁴	Pass	Pass		Pass	

²⁸ If an applicant who is a degree holder has attained a post-graduate diploma or certificate which is (a) issued by a university or other similar tertiary institution in Hong Kong or elsewhere; or (b) recognised as Level 6 or above under the Qualifications Framework in Hong Kong, then the post-graduate diploma or certificate will also be taken into account in assessing the applicant's competence. For further details about the Qualifications Framework in Hong Kong, please visit www.hkqf.gov.hk.

²⁹ "Designated fields" refer to accounting, business administration, economics, finance and law.

³⁰ Internationally-recognised professional qualifications in law, accounting or finance. Internationally-recognised professional qualifications in finance include Chartered Financial Analyst (CFA), Certified International Investment Analyst (CIIA) and Certified Financial Planner (CFP).

³¹ The SFC also recognises (a) the attainment of grade E or above in either English or Chinese as well as in Mathematics in the HKCEE and (b) passes in the same subjects in other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere as equivalent to HKDSE.

³² See paragraph 4.3.2.

³³ "Extra CPT" means that the individual must complete five CPT hours for each RA he or she applies for, which is a one-off requirement. The additional CPT hours should be taken within six months preceding the submission of the application.

³⁴ See paragraph 4.3.3.

4.3.1.3 For an individual who does not possess the academic or professional qualifications set out in paragraph 4.3.1.2 but has been a licensee before 1 January 2022, the SFC will consider his or her application if he or she has:

- (a) acquired either:
 - (i) at least five years of relevant industry experience in the RA concerned over the past eight years; or
 - (ii) at least two years of relevant industry experience in the RA concerned over the past five years and obtained the relevant RIQ; and
- (b) met the LRP requirements set out in paragraph 4.3.3.

4.3.1.4 For an LR who intends to engage in discretionary account services under RA 3, he or she:

- (a) must have attained the minimum academic qualification of Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent; and
- (b) has to obtain three more years of direct foreign exchange trading experience in the inter-bank foreign exchange market or currency futures market, or its equivalent, over the past six years.

4.3.2 Recognised industry qualifications

4.3.2.1 For an individual applying to be an LR, a summary of the RIQ requirements for each type of RA is set out below. These will be updated on the SFC's website as and when changes occur.

RA	RIQ
1, 4 & 8	HKSI LE Papers 7 & 8
2, 5 & 11 ³⁵	HKSI LE Papers 7 & 9
3	VTC Leveraged Foreign Exchange Trader's Responsible Officer Examination Paper 2 or Representative Examination Paper 2
6	HKSI LE Papers 7 & 11
7	No RIQ requirement
9	HKSI LE Papers 7 & 12
10	HKSI LE Papers 7 & 10
12 ³⁵	HKSI LE Papers 7 & 14

³⁵ For RA 11 and RA 12, effective upon the commencement of the new licensing regime for these RAs.



- 4.3.2.2 The SFC will accept industry qualifications listed in Appendix C of the previous Guidelines issued in June 2011 (please refer to the SFC's website for the previous version). Whilst the SFC may also accept qualifications obtained elsewhere, the individual has to provide supporting documents issued by the relevant academic or professional body which demonstrate the equivalence of such qualifications to the HKSI or VTC papers concerned.

4.3.3 Local regulatory framework papers

- 4.3.3.1 For an individual applying to be an LR, a summary of the LRP requirements for each type of RA is set out below. These will be updated on the SFC's website as and when changes occur.

RA	LRP
1 – 12 ³⁶ (except 3 and 7)	HKSI LE Paper 1
3	VTC Leveraged Foreign Exchange Trader's Responsible Officer Examination Paper 1 or Representative Examination Paper 1
7	No LRP requirement

³⁶ For RA 11 and RA 12, effective upon the commencement of the new licensing regime for these RAs.

4.4 Exemptions from the recognised industry qualification and local regulatory framework paper requirements

4.4.1 General principles

- 4.4.1.1 The objective of requiring individuals engaging in RAs to obtain RIQ and pass LRP is to ensure that they are adequately equipped to carry out the RAs and are aware of their legal responsibilities as well as potential liabilities.
- 4.4.1.2 Notwithstanding the above fundamental principle, the SFC will review and consider all relevant facts and circumstances presented in an application in a pragmatic manner, and may at its sole discretion consider:
- (a) granting an individual an exemption from obtaining an RIQ or passing an LRP or both, if he or she can demonstrate that he or she possesses comparable qualifications or industry experience; or
 - (b) granting approval to the licence application of an individual on the condition that he or she must pass an LRP within six months of obtaining the approval.
- 4.4.1.3 In granting the exemptions or approvals, the SFC may impose licensing conditions on, and request the provision of confirmations or undertakings from, the individuals, sponsoring corporation or both, as and when appropriate.
- 4.4.1.4 Exemptions or approvals so granted are specific to the facts and circumstances set forth in the application and in the context of the individual's engagement with the sponsoring corporation, and therefore, *non-transferable*. The individual may be required to obtain an RIQ or pass an LRP if there are changes to his or her role or the sponsoring corporation.
- 4.4.1.5 Criteria under which exemptions may be considered are detailed in paragraphs 4.4.2 to 4.4.4 below. These criteria may be changed and updated where necessary.
- 4.4.1.6 Individuals and sponsoring corporations are reminded that:
- (a) breaching any of the conditions imposed or undertakings provided, or providing false or misleading information in the confirmations may impugn the fitness and properness of the individual, the sponsoring corporation, or both; and

- (b) failure to pass the requisite LRP within the specified time may render the approval invalid and cause the licence to lapse unless a further extension of time is granted by the SFC. The SFC may consider such an extension under exceptional circumstances as it considers appropriate. Where appropriate, the SFC may also impose additional conditions on the individual licensee limiting the scope of his or her business activities.

In addition, the above grace period (including any further extension) is usually granted once with respect to each LRP. If the individual has previously been granted a grace period (including any further extension) but did not pass the LRP concerned, he or she is expected to obtain a pass in that LRP before submitting his or her application again.

4.4.2 Recognised industry qualification exemptions

Full exemption for ROs and LRs

RIQ Full Exemption

- 4.4.2.1 An individual may apply for *full exemption* from the RIQ requirements if he or she:
 - (a) has been a licensee within the past three years or is a current licensee and now applies to carry on an RA with the same RIQ requirements³⁷ and in the same role³⁸ as previously licensed. An example is an LR who is licensed to carry on RA 1 applies to carry on RA 4 as LR; or
 - (b) applies for a temporary licence to carry on RAs 1, 2, 4, 5, 6, 10 or 11³⁹.

Conditional exemption for ROs and LRs

RIQ Conditional Exemption

- 4.4.2.2 Under exceptional circumstances, an individual may apply for *conditional exemption* from the RIQ requirements if he or she is a current licensee who has five years of related local experience over the past eight years and now applies to carry on an RA with different RIQ requirements³⁷ but in the same role³⁸.

For example, if an LR is licensed to carry on RA 1 and applies to carry on RA 2 or RA 9 as LR, the individual may be granted this exemption.

³⁷ See paragraph 4.2.2 (RO) and paragraph 4.3.2 (LR) for the RIQ requirements for each RA.

³⁸ Either as RO or as LR.

³⁹ For RA 11, effective upon the commencement of the new licensing regime for this RA.

(a) Conditions to be imposed

The SFC would consider imposing licensing conditions which restrict the scope of activities to be undertaken by the individual (eg, to act for an introducing broker only or to engage in discretionary account management only) or any other licensing conditions as the SFC considers appropriate.

(b) Confirmations and undertakings to be provided

The individual must complete an additional five CPT hours in industry or product knowledge in respect of the new RA which is a one-off requirement.

- The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
- Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
- The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

4.4.3 Local regulatory framework paper exemptions

Full exemption for ROs and LRAs

LRP Full Exemption

4.4.3.1 An individual may apply for *full exemption* from the LRP requirements if he or she:

- (a) has been a licensee within the past three years or is a current licensee and now applies to carry on an RA with the same LRP requirements⁴⁰ and in the same role⁴¹ as previously licensed;
- (b) applies for a temporary licence to carry on RAs 1, 2, 4, 5, 6, 10 or 11⁴²; or

⁴⁰ See paragraph 4.2.3 (RO) and paragraph 4.3.3 (LR) for the LRP requirements for each RA.

⁴¹ Either as RO or as LR.

⁴² For RA 11, effective upon the commencement of the new licensing regime for this RA.

(c) has been actively involved in regulatory or compliance work:

- (i) in Hong Kong;
- (ii) on a full-time basis;
- (iii) for at least three years over the past six years; and
- (iv) in the same RA as the licence being applied for.

The SFC would consider imposing licensing conditions which restrict the scope of activities to be undertaken by the individual or any other licensing conditions as the SFC considers appropriate.

Conditional exemptions for ROs only

LRP Conditional Exemption 1

4.4.3.2 An RO applicant may apply for a *conditional exemption* from the LRP requirements if he or she can demonstrate all of the following:

(a) Experience

The individual has proven substantial related experience but simply lacks the required level of local regulatory exposure.

"Substantial" means having at least:

- (i) eight years of related experience in a jurisdiction where any of the specified exchanges in Schedule 3 to the FRR is domiciled; or
- (ii) six years of related experience with at least two years licensed in Hong Kong;

with some part of it gained in the most recent three years.

(b) Restriction of permitted activities

- (i) The individual is either only involved in a limited scope of activities for the sponsoring corporation or only assuming a very senior management level role; or
- (ii) the sponsoring corporation will only be carrying on a limited scope of business activities.

- (c) Regulatory support from other personnel
- (i) There is at least one approved RO at the sponsoring corporation who is licensed in the relevant RA, and would be directly reporting to or otherwise responsible for advising the individual as well as supervising the daily operations of the RA.
 - (ii) This approved RO should be designated by name to the SFC and replaced with someone else equivalently approved if the designated person changes job functions or employment. Instead of notifying the SFC whenever there are changes in the designated persons, the sponsoring corporation should provide a confirmation to the SFC that it has a system to maintain records whereby these designations are kept current to reflect personnel changes so that the SFC can inspect them if needed and that if a designated person is not available, the exempted individual and the sponsoring corporation will immediately inform the SFC.
- (d) Internal control systems in place
- The sponsoring corporation has in place an appropriate risk and regulatory compliance infrastructure (including a comprehensive risk management system, internal audit, compliance staff and procedures).
- (e) Conditions to be imposed
- The SFC would consider imposing licensing conditions which restrict the scope of activities to be undertaken by the individual, the sponsoring corporation, or both (eg, the individual's activities are all confined within the same group of related companies, or the individual does not engage in any activities with retail clients) or any other licensing conditions as the SFC considers appropriate.
- (f) Confirmations and undertakings to be provided
- The individual and sponsoring corporation should provide confirmations and undertakings on the following⁴³, as applicable:
- (i) confirmation from the sponsoring corporation that it has suitably qualified back office staff (including finance, compliance, and audit staff);

⁴³ These items are not intended to be exhaustive.

- (ii) undertakings from both the individual and the sponsoring corporation that they will update the SFC in the event there is any significant change to the underlying circumstances, including the job functions or the RA the individual engages in, the sponsoring corporation's business activity relevant to the individual, or changes in any designated licensed or support personnel; and
- (iii) the individual must complete an additional five CPT hours in local regulatory knowledge in the relevant RA which is a one-off requirement.
 - The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
 - Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
 - The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

Note: After the individual has obtained the above conditional exemption and been licensed for three years, the requirement for a designated RO to provide regulatory support can be removed.

LRP Conditional Exemption 2

4.4.3.3 An RO may apply for a *conditional exemption* from the LRP requirements if he or she has five years of related local experience over the past eight years and now applies to carry on an RA with different LRP requirements⁴⁴.

(a) Conditions to be imposed

The SFC would consider imposing licensing conditions which restrict the scope of activities to be undertaken by the individual, the sponsoring corporation, or both (eg, to act for an introducing broker only or to engage in discretionary account management only⁴⁵) or any other licensing conditions as the SFC considers appropriate.

⁴⁴ See paragraph 4.2.3 (RO) and paragraph 4.3.3 (LR) for the LRP requirements for each RA.

⁴⁵ See the "Circular to clarify competence requirements for existing licensed persons intending to provide asset management services" (23 June 2017).

(b) Confirmations and undertakings to be provided

The individual must complete an additional five CPT hours in local regulatory knowledge relevant to the new RA which is a one-off requirement.

- The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
- Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
- The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

LRP Conditional Exemption 3

4.4.3.4 An LR applying for approval to become an RO for the same RA may apply for a *conditional exemption* from the LRP requirements if he or she possesses at least three more years of relevant industry experience in addition to the general competence requirements set out in paragraph 4.2.1.2. The additional three years must be recent and licensed experience acquired in Hong Kong.

(a) Confirmations and undertakings to be provided

The individual must complete an additional five CPT hours in local regulatory knowledge in the relevant RA which is a one-off requirement.

- The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
- Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
- The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

LRP Conditional Exemption 4

4.4.3.5 An RO applicant may apply for a *conditional exemption* from the LRP requirements if he or she can demonstrate all of the following:

(a) Experience

The individual has at least eight years of relevant industry experience in a jurisdiction where any of the specified exchanges in Schedule 3 to the FRR is domiciled.

(b) Serve professional investors⁴⁶ only⁴⁷

- (i) The individual will be accredited to an LC for any or all of its RAs, where the LC is a fund manager or belongs to a fund manager group which serves professional investors only; or
- (ii) the individual will manage private investment funds⁴⁸, and will be accredited to an LC which serves professional investors only in respect of RA 9.

(c) Confirmations and undertakings to be provided

- (i) Undertaking from the sponsoring corporation that it will provide regulatory and compliance support to the individual.
- (ii) The individual must complete an additional five CPT hours in local regulatory knowledge in respect of the relevant RA which is a one-off requirement.
 - The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
 - Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
 - The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

⁴⁶ As defined in the SFO and its subsidiary legislation.

⁴⁷ See the circular "SFC Adopts a Pragmatic Approach to Licensing Fund Managers" (11 June 2007) and the "Circular to clarify competence requirements for existing licensed persons intending to provide asset management services" (23 June 2017).

⁴⁸ Collective investment schemes not authorised under Part IV of the SFO.

Conditional exemptions for LRIs only

LRP Conditional Exemption 5

4.4.3.6 Itinerant professionals, being individuals from elsewhere who need to visit Hong Kong repeatedly for a short period each time to perform RAs in Hong Kong, may apply for a *conditional exemption* from the LRP requirements.

- (a) Conditions to be imposed
 - (i) The individual shall not carry on RAs in Hong Kong for more than 30 days in each calendar year;
 - (ii) the individual shall at all times be accompanied by a licensed person in performing RAs in Hong Kong; and
 - (iii) without compromising investor protection, the SFC may consider removing the chaperoning requirement in condition (ii) and impose an alternative condition to the effect that the individual can only provide services which constitute RAs to professional investors⁴⁹.
- (b) Undertakings to be provided
 - (i) For itinerant professionals subject to conditions (i) and (ii) above, the sponsoring corporation should provide an undertaking to the effect that it will assume full responsibility for the supervision of the individual's activities during his or her stay in Hong Kong and ensure that he or she will comply with the relevant rules and regulations at all times.
 - (ii) For itinerant professionals subject to condition (i) and alternative condition (iii) above, the sponsoring corporation should provide additional undertakings that it will:
 - provide training in the form of a structured course to the individual to ensure that he or she is fully aware of the Hong Kong regulatory framework before he or she commences carrying on RAs in Hong Kong; and
 - comply with the requirements set out under paragraph 4.4.3.2(c), in which it will arrange at least one approved RO who is licensed in the RA to directly supervise or otherwise be responsible for advising the individual in conducting RAs in Hong Kong.

⁴⁹ As defined in Part 1 of Schedule 1 to the SFO but does not include any person of a class which is prescribed by Securities and Futures (Professional Investor) Rules.

LRP Conditional Exemption 6

- 4.4.3.7 An individual who has been an LR within the past three years or is a current LR and (a) has never attempted HKSI LE Paper 1 before and now applies to carry on an RA with the same LRP requirements⁵⁰ and in the same role⁵¹; or (b) now applies to carry on an RA with different LRP requirements⁵⁰ but in the same role⁵¹, may apply for a *conditional exemption* from the LRP requirements.

For example, this exemption may be granted to (a) an LR licensed to carry on RA 1 who has never attempted HKSI LE Paper 1 before applies for addition of RA 2 or (b) an LR licensed to carry on RA 1 applies for addition of RA 3.

(a) Confirmations and undertakings to be provided

The individual must complete an additional five CPT hours in local regulatory knowledge in the relevant RA which is a one-off requirement.

- The additional CPT hours may be taken within six months preceding the submission of the application. In this case, both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours.
- Alternatively, the additional CPT hours may be taken within 12 months after licence approval is granted. In this case, both the individual and the sponsoring corporation should provide undertakings to this effect.
- The related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

⁵⁰ See paragraph 4.3.3 (LR) for the LRP requirements for each RA.

⁵¹ Either as RO or as LR.

4.4.4 Re-entrant exemption

- 4.4.4.1 An individual may apply for a *conditional exemption* from both RIQ and LRP requirements if he or she is a former practitioner who has left the industry between three to eight years, and re-applies for a licence with the same RIQ and LRP requirements⁵² and in the same role⁵³ as previously licensed.

To be eligible for the exemption:

- (a) the individual must complete five CPT hours per RA applied for, per year of absence (any fraction of a year would be rounded up), where training in local regulatory knowledge must make up at least 50% of the CPT activities;
- (b) the required CPT hours should be taken before the submission of the application;
- (c) both the individual and the sponsoring corporation should provide confirmation that the individual has already completed the required CPT hours and that training in local regulatory knowledge was not less than 50% of the CPT activities; and
- (d) the related supporting records and documentary evidence for the CPT hours taken may be inspected by the SFC as and when required.

⁵² See paragraphs 4.2.2 and 4.2.3 (RO) and paragraph 4.3.2 and 4.3.3 (LR) for the RIQ and LRP requirements for each RA.

⁵³ Either as RO or as LR.

Appendix A

Additional competence requirements for corporations and individuals engaging in sponsor and compliance adviser work (Sponsor Guidelines)

Introduction

The Sponsor Guidelines set out additional competence requirements for corporations and individuals which engage in sponsor and compliance adviser work. The Sponsor Guidelines do not replace the requirements set out in other sections of the Guidelines on Competence.

For the purpose of this appendix:

“Sponsor” means a corporation which acts as a sponsor in respect of an application for the listing of any securities under the Listing Rules⁵⁴.

“Compliance Adviser” means a corporation appointed to act as compliance adviser under the Listing Rules.

“Principal” means an individual who meets the criteria stipulated under the Sponsor Guidelines and appointed by a Sponsor to act as a Principal; in respect of a listing assignment, a Principal means an individual appointed by a Sponsor to supervise the Transaction Team⁵⁵.

Sponsors and Compliance Advisers are also reminded that in addition to the Sponsor Guidelines, they must also comply with all other relevant codes, guidelines and regulations prescribed by the SFC, such as the Fit and Proper Guidelines, the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the Corporate Finance Adviser Code of Conduct. These other codes and guidelines are not diminished in any way by any specific requirements set out in the Sponsor Guidelines.

1. Sponsors

- 1.1 A corporation must be licensed for RA 6⁵⁶ and not subject to a condition which prohibits it from carrying on sponsor work in order to be eligible to act as a sponsor in respect of an application for the listing of any securities on a recognized stock market under the Listing Rules.
- 1.2 It is the responsibility of the Management⁵⁷ to ensure that Principals appointed by the Sponsor meet the criteria required in the Sponsor Guidelines and are duly licensed.

⁵⁴ The term “Listing Rules” refers to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

⁵⁵ “Transaction Team” means the staff appointed by a Sponsor to carry out a listing assignment.

⁵⁶ Type 6 regulated activity (advising on corporate finance).

⁵⁷ “Management” includes the board of directors, managing director, chief executive officer, ROs, EOs and other senior management personnel.

The Management should ensure that there are sufficient Principals engaged in a full-time⁵⁸ capacity to discharge its role in supervising the Transaction Teams taking into account the volume, size, complexity and nature of the sponsor work that is undertaken by the Sponsor. When there are joint Sponsors engaged in a particular transaction, each Sponsor should have its designated Principal to supervise the transaction.

- 1.3 A Sponsor should have at least two Principals who have satisfied the eligibility criteria under paragraph 3.2.3 and at least one of the Principals has satisfied the eligibility criteria under Option 1 of paragraph 3.2.3 at all times.

In appointing a Principal, the Management is required to provide a written endorsement to the SFC, on behalf of the LC that the individual proposed to be appointed as Principal has met the respective requirements set out in paragraphs 3.1 and 3.2.

Records of the appointment of an RO as a Principal and assessments made by the Management, the cessation of such appointment and the decision-making process of such appointment should be properly kept to demonstrate compliance with the Sponsor Guidelines.

- 1.4 A Sponsor should notify the SFC in writing of any changes in its appointment of Principals within seven business days after making such changes and, in the case of appointment of a Principal, file an endorsement pursuant to paragraph 1.3. The endorsement should include information, as required by the SFC, which demonstrates how the Principal has met the eligibility criteria.
- 1.5 A Sponsor should maintain an effective reporting line and communication between the Transaction Teams and other members in the Management regarding the sponsor work undertaken. Where circumstances require, a Transaction Team may appoint more than one Principal and they shall be jointly and severally responsible in discharging their roles as Principals.
- 1.6 A Sponsor should maintain a minimum paid-up capital of \$10 million at all times.
- 1.7 A Sponsor should ensure its staff engaging in sponsor work have satisfied or be exempted from the examination requirement pursuant to paragraphs 4.1 to 4.3 and that it would be able to demonstrate to the SFC its compliance with this requirement upon request.

⁵⁸ "Full-time" means the Principal should be engaged by the Sponsor for the purpose of conducting sponsor-related work on a full-time basis. In addition, the Principal, in his or her capacity as an RO of the Sponsor under the SFO, should be available at all times to supervise the RA to which his or her approval as an RO relates.

- 1.8 If a Sponsor ceases to have at least two qualified Principals, of which at least one is eligible to act as a Principal pursuant to Option 1 of paragraph 3.2.3 as required under paragraph 1.3, it will not meet the eligibility criteria to act as a Sponsor. Therefore, the SFC may, after considering the facts and circumstances of the case, impose a licensing condition on the Sponsor restricting it from carrying out sponsor and compliance adviser work. Further, the SFC will not accept any appointment of individuals as Principals under Option 2 or Option 3 from this Sponsor until at least one individual, who is qualified under Option 1 and based in Hong Kong, has been appointed to act as its Principal.

A Sponsor must not accept new sponsor or compliance adviser work once it no longer meets the eligibility criteria to act as a Sponsor. The undertaking of any new sponsor or compliance adviser work by such Sponsor when it is not eligible to do so may raise concerns as to its ability to control business risks and its overall fitness and properness to remain licensed.

- 1.9 Corporations which have been granted temporary licences or have applied for temporary licences will not be eligible to act as Sponsors.

2. Compliance advisers

- 2.1 A corporation must be eligible under its licence to act as a Sponsor in order to carry out work as a compliance adviser.
- 2.2 In addition, all compliance advisers must be eligible to act as Sponsors at all times in order to be initially eligible and continue to be eligible to act as compliance advisers. In the event that an LC ceases to be eligible to act as a Sponsor, it shall cease to be eligible to act as a compliance adviser.
- 2.3 In case of a breach by a compliance adviser of any of the relevant codes or regulations which call into question its fitness and properness to be an LC for RA 6, it may cease to be eligible to be a compliance adviser, a Sponsor or an LC for RA 6.

3. Sponsor Principals

3.1 General principles

- 3.1.1 As a general guidance, a Principal is expected to be in charge of the supervision of the Transaction Team. The Principal should be involved in the making of the key decisions relating to the work carried out by the Transaction Team and must be aware of the key risks in such work and responsible for the measures to address them.

For example, in respect of conducting due diligence review on a listing applicant, the Sponsor should ensure that the Principal is involved in determining the breadth and depth of the due diligence review and the amount of resources to be deployed for carrying out such work, making a critical assessment of the results of the due diligence and overall assessment of the adequacy of the due diligence review and ensuring that steps have been taken to properly resolve all issues arising out of such review. The Principal is also expected to be fully conversant with the key issues in each sponsorship appointment, to be able to respond and react promptly to requests of the regulators (such as the SFC and SEHK) on such issues and to properly advise the applicant.

3.2 Eligibility criteria for Principals

- 3.2.1 In order to qualify as a Principal, an individual must be an RO for RA 6 of the LC to which he or she is accredited and responsible for supervising the RA at all times.
- 3.2.2 The individual's licence should be free from any licensing condition concerning his or her competence to advise on, or engage in, sponsor work. However, a Sponsor can appoint an RO who is subject to the Non Sole Condition⁵⁹ as Principal, provided that he or she is fully competent to act as a Principal and his or her licence is subject to the condition solely because he or she is based elsewhere. Such appointment is subject to the Sponsor having at least one other Principal (a) who is eligible to act as a Principal under Option 1 of paragraph 3.2.3 and based in Hong Kong and (b) whose licence is not subject to the Non Sole Condition or any other condition restricting him or her from advising on, or engaging in, sponsor work.
- 3.2.3 The individual should also demonstrate that he or she has fulfilled one of the following eligibility criteria.
- (a) Option 1
- (i) Has acquired a minimum of five years of corporate finance experience⁶⁰ in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment as a Principal; and
 - (ii) in the five years immediately preceding his or her appointment, has played a substantial role⁶¹ in advising a listing applicant as a Sponsor in at least two completed Initial Public Offering (IPO) transactions⁶² on the Main Board or GEM Board of SEHK.

⁵⁹ A licensing condition where the individual must, when actively participating in or when directly supervising the business of the RA concerned, do so under the advice of another RO who is accredited to the same corporation for the same RA and not subject to this condition.

⁶⁰ See paragraph 3.2.4.

⁶¹ See paragraph 3.2.6.

⁶² See paragraph 3.2.5.

(b) Option 2

- (i) Is highly experienced in the area of due diligence as a result of leading IPO transactions in Australia, the UK, or the US;
- (ii) is highly experienced in the area of corporate finance in respect of companies listed in Australia, the UK, or the US;
- (iii) has completed a refresher course or HKSI LE Paper 15 within six months preceding his or her appointment as a Principal; and
- (iv) is accredited to a Sponsor which has at least one other individual who is appointed as a Principal pursuant to Option 1 above.

(c) Option 3

- (i) Has participated actively and substantially in due diligence work in at least four completed IPO transactions⁶³ in Hong Kong within five years preceding his or her appointment as a Principal;
- (ii) has acquired a minimum of five years of corporate finance experience⁶⁴ in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment as a Principal;
- (iii) has passed HKSI LE Paper 15 within six months preceding his or her appointment as a Principal; and
- (iv) is accredited to a Sponsor that has at least one other individual who is appointed as a Principal pursuant to Option 1 above.

3.2.4 “Corporate finance experience” includes experience gained from providing advice on one or more of the following matters:

- (a) IPO transactions;
- (b) notifiable or connected transactions as defined in the Listing Rules;
- (c) rights issues or open offers by a listed company in accordance with the Listing Rules;
- (d) takeovers and share buy-backs subject to the Codes on Takeovers⁶⁵; and

⁶³ See paragraph 3.2.5.

⁶⁴ See paragraph 3.2.4.

⁶⁵ “Codes on Takeovers” refers to the Codes on Takeovers and Mergers and Share Buy-backs.

- (e) any other significant transactions or equity-fund raising exercises not listed above.

Also, in demonstrating that a Principal has the relevant experience, the Sponsor has to satisfy the SFC the following:

- (i) the appointee for the role of a Principal (Appointee) has acquired a majority of the five years' corporate finance experience from transactions which have an element of equity fund raising from the public by listed issuers and the Management has to be satisfied that such experience is sufficiently recent;
- (ii) the Appointee may acquire some (but not all) of the corporate finance experience in markets other than Hong Kong provided that these markets have comparable legal and regulatory standards for the listing of companies and the public offers of securities, conduct regulation for sponsors or their functional equivalents and enforcement of rules and regulations governing these respective areas. If the Appointee's experience is mainly acquired in markets other than Hong Kong, the Appointee has to demonstrate to the satisfaction of the SFC how the corporate finance experience has been met and the SFC may impose licensing conditions on the Sponsor or Appointee as it considers appropriate; and
- (iii) the Sponsor should avoid attributing the experience of all its Appointees to the same transaction in meeting the requirements.

Where an individual is required to demonstrate five years of corporate finance experience in paragraph 3.2.3, such experience must be obtained over a continuous five-year period.

3.2.5 "Completed IPO transaction" means that the IPO was duly listed on the Main Board or GEM Board of SEHK. Having been through a hearing of, or obtained an approval-in-principle from, the Listing Committee hearing is not a reference point for completion. If an individual left the Transaction Team before its completion, the SFC will not recognise it as a completed transaction, even if the bulk of work was already completed before the individual left the Transaction Team.

3.2.6 Apart from the factors set out in paragraph 3.1.1, the following matters will be taken into account in establishing whether an individual has been engaged in a "substantial role" in an IPO:

- (a) whether the individual was responsible for leading and supervising due diligence and participated in due diligence meetings and discussions with the listing applicant and other professional parties appointed;

- (b) whether the individual was responsible for making key decisions relating to due diligence work carried out by the Transaction Team and was fully aware of key risks involved;
- (c) whether the individual was responsible for signing off for the Sponsor that due diligence had been completed;
- (d) whether the individual was responsible for certifying the referral of any issues arising from due diligence or issues raising reputational risks or material changes in circumstances to the appropriate committee or senior management of the Sponsor;
- (e) whether the individual was responsible for determining the scope, review, and sign off of major documentation submitted to SEHK and the SFC such as the prospectus and formal notice of the IPO, Listing Application Form (Form A1), Sponsors' Declaration and Sponsor's Undertaking to SEHK and any waiver applications;
- (f) whether the individual had a leading supervisory role in advising the client on IPO requirements under the Listing Rules including:
 - (i) advising the listing applicant on corporate and financial structure and compliance with the Listing Rules;
 - (ii) formulating listing timetable and related plans; and
 - (iii) supervision of the transaction, including due diligence and IPO execution.

3.2.7 The SFC may seek further details from corporations and individuals to substantiate their submissions. The provision of false or misleading information in response to such a request is likely to constitute a criminal offence under the SFO and may also have implications for their fitness and properness.

3.2.8 The SFC may exercise its discretion, on a case-by-case basis, to grant a dispensation from strict compliance with the eligibility requirements for Principals under Option 1 of paragraph 3.2.3 if the corporation can demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interests. In considering an application for dispensation, the SFC may take into account, without limitation, the following:

- (a) the nature and structure of the business of the group companies to which the Sponsor belongs and the internal resources and support which the group is able to provide in the carrying out of the sponsor work;
- (b) the governance of the Sponsor and its group companies by securities regulators in other leading and well-regulated markets;
- (c) the Sponsor's internal controls and risk management standards as well as those of its group of companies; and

- (d) the Sponsor's compliance record in Hong Kong and other jurisdictions.

The SFC may impose conditions or require the provision of undertakings by a Sponsor and its group of companies as it considers appropriate in granting a dispensation.

- 3.2.9 For the avoidance of doubt, the requirements set out at paragraph 3.2.3 apply to Principals as initial eligibility criteria only, and are not continuing requirements. However, Principals should at all times ensure that they remain competent in their role as Principals.

- 3.2.10 An individual who has ceased to act as a Principal after having previously been appointed as a Principal under Option 1 or Option 3 will not be required to demonstrate that he or she has fulfilled the eligibility criteria concerning IPO transactions in the five years immediately preceding his or her new appointment as a Principal, provided that such new appointment is made within three years after ceasing to act as a Principal and he or she is seeking to become a Principal again under the same option as he or she was previously appointed.

However, where such appointment is not made within that three years period, the individual will be required to demonstrate that he or she satisfies the eligibility criteria to be appointed as a Principal stipulated in paragraph 3.2.3. This will be so irrespective of whether the individual has remained an RO or an LR for RA 6 during the period after he or she ceased to act as a Principal.

- 3.2.11 As itinerant professionals should not be ROs, they are not eligible to act as Principals.

4. Eligibility criteria for RA 6 LR engaged in sponsor work

- 4.1 Subject to paragraphs 4.2 to 4.3, RA 6 LRs intending to engage in IPO sponsor work are required to have passed HKSI LE Paper 16⁶⁶ not more than three years prior to and not later than six months after the date of their first engagement⁶⁷ in such work. For the avoidance of doubt, itinerant professionals and temporary RA 6 LRs are required to pass HKSI LE Paper 16 unless exempted under paragraph 4.3.
- 4.2 Individuals who are approved as Principals are exempted from passing HKSI LE Paper 16.
- 4.3 Individuals who have passed HKSI LE Paper 16 or are exempted from taking the examination will not be required to take the examination again unless the individuals cease to be licensed for RA 6 for more than three years.
- 4.4 No extension will be granted for taking HKSI LE Paper 16. Individuals who fail to pass HKSI LE Paper 16 before the expiry of the six-month period are prohibited from engaging in any sponsor work until they have passed the examination.

⁶⁶ LRs may also choose to take HKSI LE Paper 15 which requires more in-depth knowledge of sponsor work.

⁶⁷ "First engagement" refers to the first time that an individual is engaged in sponsor work as a member of a Transaction Team.



5. CPT Requirements

- 5.1 Individuals who engage in sponsor and compliance adviser work should also refer to the additional requirements set out in paragraph 5.3(a) of the Guidelines on CPT.

Appendix B

Additional competence requirements for corporations and individuals which undertake activities in connection with matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs (TC Adviser Guidelines)

Introduction

The TC Adviser Guidelines set out additional competence requirements for corporations and individuals which advise on matters or transactions falling within the ambit of the Codes on Takeovers. The TC Adviser Guidelines do not replace the requirements set out in other sections of the Guidelines on Competence.

For the purpose of this appendix:

“Codes on Takeovers” refers to the Codes on Takeovers and Mergers and Share Buy-backs.

“TC Adviser” means a corporation that is permitted under its licence to advise on matters or transactions falling within the ambit of the Codes on Takeovers.

“TCRO” means an RO or EO for RA 6⁶⁸ who is eligible to advise on matters or transactions falling within the ambit of the Codes on Takeovers in a sole capacity⁶⁹.

“TC Transaction” means a transaction falling within the ambit of the Codes on Takeovers.

1. TC Advisers

- 1.1 A corporation should be licensed for RA 6 and not subject to a licensing condition which prohibits it from undertaking activities in connection with matters regulated by the Codes on Takeovers in order to be eligible to act as a TC Adviser.
- 1.2 It is the responsibility of the Management⁷⁰ to ensure that individuals appointed by the TC Adviser to advise on any TC Transaction meet the respective criteria required under the TC Adviser Guidelines and are duly licensed. The Management is expected to allocate to the TC Transaction in question sufficiently experienced and competent professional staff with the appropriate involvement of, and supervision by, a duly approved TCRO. The TCRO and his or her staff are expected to devote sufficient time and effort to the TC Transaction to discharge their responsibility as financial advisers under the Codes on Takeovers.
- 1.3 A TC Adviser should have at least one duly approved TCRO to supervise, and be involved in, each TC Transaction which the TC Adviser is advising on.

⁶⁸ Type 6 regulated activity (advising on corporate finance).

⁶⁹ “Sole capacity” means the RO or EO is not subject to any condition in relation to undertaking activities in connection with matters regulated by the Codes on Takeovers.

⁷⁰ “Management” includes the board of directors, managing director, chief executive officer, ROs, EOs and other senior management personnel.

If a TC Adviser does not have at least one TCRO, the SFC may impose a licensing condition under which the corporation must, in the capacity as an adviser to a client on matters or transactions falling within the ambit of the Codes on Takeovers, act together with another TC Adviser (to the client) not subject to the same condition.

- 1.4 A TC Adviser should maintain an effective reporting line and communication within each Transaction Team⁷¹ and between Transaction Teams and other members in the Management regarding the advisory work undertaken. Where circumstances require, a Transaction Team may appoint more than one TCRO and they shall be jointly and severally responsible in discharging their roles.
- 1.5 A TC Adviser should have adequate resources and internal procedures to ensure full compliance with the Codes on Takeovers and have measures in place to ensure that its clients and all its staff handling matters or transactions under the Codes on Takeovers understand and comply with the Codes on Takeovers.
- 1.6 A TC Adviser should have designated staff responsible for compliance with Rule 22 of the Code on Takeovers and Mergers and put in place internal procedures in this connection.
- 1.7 A TC Adviser should ensure its staff engaging in TC Transactions have satisfied or are exempted from the examination requirements under paragraphs 3.1 to 3.4 below and that it would be able to demonstrate to the SFC its compliance with these requirements upon request.
- 1.8 While there is an increasing trend for a TC Adviser to engage external legal advisers to assist or advise the TC Adviser in relation to TC Transactions, a TC Adviser's primary obligations and duties to its client (whether the offeror or the offeree company) remain and cannot be delegated to external legal advisers.
- 1.9 If a corporation does not intend to advise on matters or transactions falling within the ambit of the Codes on Takeovers, the SFC will impose a licensing condition under which the corporation shall not act as an adviser on the Codes on Takeovers-related matters.

2. ROs of TC Advisers

2.1 General principles

- 2.1.1 Where an individual applies to be an RO for RA 6 and intends to give advice on matters or transactions falling within the ambit of the Codes on Takeovers:
 - (a) if the SFC is satisfied that the individual has sufficient experience in the matter as stipulated under paragraph 2.2.1 below, he or she is eligible to advise on matters or transactions regulated by the Codes on Takeovers in a sole capacity (ie, TCRO); and

⁷¹ "Transaction Team" in this Appendix means the staff assigned by a TC Adviser to advise on a TC Transaction.

- (b) if the SFC is not satisfied that the individual is fully competent to act in a sole capacity, a licensing condition may be imposed on the individual's licence such that he or she shall act together with another TCRO when advising clients on matters or transactions regulated by the Codes on Takeovers (ie, "non-sole capacity"⁷²).

2.1.2 For the avoidance of doubt, an individual who applies to be an RO for RA 6 and intends to give advice on matters or transactions falling within the ambit of the Codes on Takeovers should also satisfy the examination requirement under paragraph 3.1 unless an exemption applies.

2.1.3 As a general guidance, a TCRO is expected to be in charge of the supervision of the TC Transaction and the Transaction Teams. The TCRO should be involved in the making of the key decisions relating to the work carried out by the Transaction Team and must be aware of the key risks in such work and responsible for the measures to address them.

For example, (i) due diligence relating to: the offeror's financial resources, concert party relationships and dealings made by associates of the relevant offeror and offeree company; (ii) alerting the legal and compliance departments so that any trade restrictions would be in place and dealing disclosures are made in a timely manner; (iii) cooperating with the Executive (as defined in the Codes on Takeovers) in accordance with General Principle 10 of the Codes on Takeovers; (iv) complying with the confidentiality requirement under Rule 1.4 of the Code on Takeovers and Mergers; and (v) ensuring all relevant disclosure requirements are met. The TCRO is also expected to be fully conversant with the requirements under the Codes on Takeovers, to be able to respond and react promptly to requests of the Executive and other regulators (such as other departments within the SFC and SEHK) on such issues and to properly advise its client.

2.2 Eligibility criteria for TCROs

2.2.1 In order to qualify as a TCRO, an individual must be an RO for RA 6 of the corporation that has appointed him or her and demonstrate that he or she has fulfilled one of the following eligibility criteria:

- (a) Option 1
 - (i) Has acquired a minimum of five years of corporate finance experience⁷³ in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment as a TCRO; and

⁷² "Non-sole capacity" means the RO and EO is subject to a licensing condition that he or she must in the capacity as an adviser to a client on matters or transactions falling within the ambit of the Codes on Takeovers, act together with another adviser (to the client) not subject to the same condition.

⁷³ See paragraph 2.2.2.

- (ii) in the five years immediately preceding his or her appointment, has been substantially involved⁷⁴ in advising an offeror or an offeree company in at least two completed TC Transactions⁷⁵.

(b) Option 2

- (i) Has been a member of the Takeovers and Mergers Panel in Hong Kong for two years within the last five years preceding the appointment as a TCRO.

2.2.2 “Corporate finance experience” includes experience gained from providing advice on one or more of the following matters:

- (a) IPO transactions;
- (b) notifiable or connected transactions as defined in the Listing Rules⁷⁶;
- (c) rights issues or open offers by a listed company in accordance with the Listing Rules;
- (d) takeovers and share buy-backs subject to the Codes on Takeovers; and
- (e) any other significant transactions or equity fund raising exercises not listed above.

The five years of corporate finance experience described in paragraph 2.2.1 must be obtained over a continuous five-year period.

2.2.3 “Completed TC Transaction” means a TC Transaction which involves the issue, and was so issued, of an offer document, offeree board circular, whitewash circular, share buy-back offer document or off-market share buy-back circular. Engagement as an independent financial adviser would not be considered as being involved in a completed TC Transaction.

2.2.4 “Substantially involved” means taking, except for the TCRO for the relevant TC Transaction in question, the lead role in supervision and execution throughout the duration of the transaction. Apart from the factors set out in paragraph 2.1.3, the following matters will be taken into account in establishing whether an individual has been “substantially involved” in a completed TC Transaction:

⁷⁴ See paragraph 2.2.4.

⁷⁵ See paragraph 2.2.3.

⁷⁶ The term “Listing Rules” refers to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

- (a) whether the individual was responsible for leading and supervising due diligence and participated in due diligence meetings and discussions with the offeror or offeree company and other appointed professional parties, including but not limited to:
 - (i) identifying parties acting in concert (as defined under the Codes on Takeovers) with the relevant offeror or offeree company;
 - (ii) identifying any previous dealings or transactions by relevant parties that may carry implications under the Codes on Takeovers; and
 - (iii) taking steps to ensure that the offeror has sufficient financial resources to satisfy the offers in full;
- (b) whether the individual was responsible for making key decisions relating to work carried out by the Transaction Team and was fully aware of key risks and implications under the Codes on Takeovers;
- (c) whether the individual was responsible for certifying the referral of any issues arising from due diligence or issues raising implications under the Codes on Takeovers or material changes in circumstances to the appropriate TCRO or senior management of the TC Adviser;
- (d) whether the individual was responsible for determining the scope, review and sign off of major documentation and relevant applications submitted to the Executive;
- (e) whether the individual had a leading supervisory role in advising the client on the Codes on Takeovers including:
 - (i) advising the offeror or offeree company on the transaction structure and compliance with the Codes on Takeovers, including dealing disclosure requirements, and ensuring timely and sufficient disclosure during the course of a TC Transaction;
 - (ii) formulating offer timetable and related plans;
 - (iii) supervising the transaction, including due diligence and execution;
 - (iv) maintaining strict confidentiality when necessary; and
 - (v) advising on the requirements in relation to meetings with outside parties.

- 2.2.5 The SFC will not consider an individual to have been substantially involved in a TC Transaction if the individual simply relies on the external legal advisers engaged by the TC Adviser in relation to requirements under the Codes on Takeovers.
- 2.2.6 The SFC may seek further details from corporations and individuals to substantiate their submissions. The provision of false or misleading information in response to such a request is likely to constitute a criminal offence under the SFO and may also have implications for their fitness and properness.
- 2.2.7 For the avoidance of doubt, the requirements set out at paragraph 2.2.1 apply to TCROs as initial eligibility criteria only, and are not continuing requirements. However, TCROs should at all times ensure that they remain competent in their role as TCROs.
- 2.2.8 An individual who has ceased to act as a TCRO after having previously been approved as a TCRO will not be required to demonstrate that he or she has fulfilled the eligibility criteria as stipulated in paragraph 2.2.1, provided his or her new application is made within three years after ceasing to act as a TCRO.
- However, where such application is not made within the three-year period, the individual will be required to demonstrate that he or she satisfies the eligibility criteria to be approved as a TCRO stipulated in paragraph 2.2.1. This will be so irrespective of whether the individual has remained as an RO or an LR for RA 6 during the period after ceasing to act as a TCRO.
- 2.2.9 As itinerant professionals should not be ROs, they will not be eligible to act as TCROs.

3. Eligibility criteria for RA 6 LRs of TC Advisers

- 3.1 Subject to paragraphs 3.2 to 3.4, RA 6 LRs intending to engage in TC Transaction work are required to have passed HKSI LE Paper 17 not more than three years prior to and not later than six months after the date of their first engagement⁷⁷ in such work. For the avoidance of doubt, itinerant professionals and temporary RA 6 LRs are required to pass HKSI LE Paper 17 unless exempted under paragraphs 3.3 or 3.4.
- 3.2 Individuals who are TCROs are exempted from passing HKSI LE Paper 17.
- 3.3 Subject to paragraph 3.4, individuals who have engaged in TC Transaction work as an RA 6 LR in at least one completed TC Transaction throughout the duration of that transaction within the three years preceding 1 January 2022 are exempted from passing HKSI LE Paper 17.

⁷⁷ "First engagement" refers to the first time that an individual is engaged in a TC Transaction as a member of a Transaction Team following 1 January 2022.



- 3.4 Individuals who have passed HKSI LE Paper 17 or are exempted from taking the examination will not be required to take the examination again unless the individuals cease to be licensed for RA 6 for more than three years.
- 3.5 No extension will be granted for taking HKSI LE Paper 17. Individuals who fail to pass HKSI LE Paper 17 before the expiry of the six month period are prohibited from engaging in any TC Transaction work until they have passed the examination.

4. CPT Requirements

- 4.1 Individuals who advise on matters or transactions falling within the ambit of the Codes on Takeovers should also refer to the additional requirements set out in paragraph 5.3(b) of the Guidelines on CPT.



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

Guidelines on Continuous Professional Training

January 2022

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1. Introduction

- 1.1 In a fast changing and highly competitive financial market, persons engaging in regulated activities should continuously update their knowledge and skills through continuous professional training (CPT) in order to maintain their professional competence to remain fit and proper.
- 1.2 The spirit of the CPT requirements is to ensure that a person engaging in regulated activities remains “fit”, by undergoing training that enhances his or her technical skills and professional expertise, and “proper”, by periodically refreshing himself or herself about the relevant ethical standards and regulatory knowledge.
- 1.3 The Guidelines on Continuous Professional Training (Guidelines) are published under section 399 of the Securities and Futures Ordinance, Cap. 571 (SFO) by the Securities and Futures Commission (SFC). They provide general guidance for persons to comply with the CPT requirements.
- 1.4 The 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. Failure to follow these Guidelines may reflect adversely on the fitness and properness of a person to continue to carry on the regulated activities.
- 1.5 The Guidelines should be read in conjunction with the Fit and Proper Guidelines and the Guidelines on Competence.

2. Application and interpretation

- 2.1 The Guidelines are applicable to the following persons carrying on any regulated activities under Part V of the SFO:
- (a) a licensed corporation (LC);
 - (b) a registered institution (RI);
 - (c) a licensed representative (LR);
 - (d) a licensed representative who is approved as a responsible officer (RO);
 - (e) a relevant individual (Rel) whose name is entered in the register maintained by the Hong Kong Monetary Authority (HKMA) under section 20 of the Banking Ordinance; and
 - (f) a person who has been given consent to act as an executive officer (EO) of an RI under section 71C of the Banking Ordinance.
- 2.2 For the purposes of the Guidelines, persons in paragraphs 2.1(a) and (b) above are named "corporations" while persons in paragraphs 2.1(c), (d), (e) and (f) above are known as "individuals".

3. Objectives of CPT

- 3.1 CPT is the systematic maintenance, improvement and broadening of knowledge and skills to enable individuals carrying on regulated activities to perform their duties competently and professionally. The objectives of the CPT programme are:
- (a) to maintain and enhance their technical knowledge and professional expertise;
 - (b) to provide reasonable assurance to investors at large that they have the technical knowledge, professional skills and ethical standards required to perform the regulated activities efficiently, effectively and fairly; and
 - (c) to maintain and enhance Hong Kong's international reputation for high professional standards.
- 3.2 The SFC takes the view that the objectives of CPT could not be achieved solely through work experience or on-the-job training. It will generally be necessary for individuals to undertake CPT if they are to remain fit and proper.
- 3.3 The requirements for CPT will vary according to the size and nature of the business and the nature of the responsibilities to be undertaken by an individual. Rather than mandating particular programmes, these Guidelines describe the general attributes of the CPT programme.
- 3.4 LCs, ROs and LRAs are required to confirm their compliance (or explain non-compliance) with the applicable CPT requirements annually with the SFC. SFC licensees shall provide such confirmation for the previous calendar year when they submit their annual returns electronically¹.
- 3.5 Failure to satisfy any applicable CPT requirements will cast doubt on the fitness and properness of corporations and individuals to remain licensed or registered and may lead to disciplinary action by the SFC or the HKMA (as the case may be). Nevertheless, the SFC or the HKMA will adopt a pragmatic approach taking into account the circumstances and the facts of the breach before taking any action.

¹ For example, in their electronic submission of an annual return with an anniversary date in 2020, they would confirm their compliance (or non-compliance) with the CPT requirements for calendar year 2019.

4. Requirements for corporations

- 4.1 Corporations are held primarily responsible for planning and implementing a continuous education programme best suited to the training needs of the individuals they engage which will enhance their industry knowledge, skills and professionalism. The apportioning of training costs will be a matter between the corporations and the individuals.
- 4.2 Corporations should at least annually evaluate their training programmes and make commensurate adjustments to cater for the training needs of the individuals they engage.
- 4.3 In developing the training programmes, consideration should be given to the corporation's size, organisational structure, risk management system and scope of business activities as well as the prevailing regulatory framework and market development.
- 4.4 The training programmes can be provided internally or the corporations can make use of appropriate external sources. In selecting training courses, corporations should satisfy themselves of the quality of the trainers and the standard of the training programmes. They should also ensure that the contents of such courses are appropriately structured and of benefit to the individuals in performing their functions. Subjects which are relevant to the individuals' functions and may help to enhance the performance of their functions would meet the CPT purpose.
- 4.5 Neither the SFC nor its Academic and Accreditation Advisory Committee (AAAC)² would endorse any training courses, whether provided internally or externally.
- 4.6 Corporations should keep the details of the training conducted, the attendance records and materials provided for individuals who have completed the training.
- 4.7 Sufficient records of the programmes and the CPT activities undertaken by the individuals should be kept for a minimum of three years and be made available for inspection or upon request by the SFC (for training undertaken by LR and ROs of LCs) or the HKMA (for training undertaken by ReIs and EO of RIs).

² The AAAC is comprised of representatives from the SFC, the industry and academic institutions. It regularly reviews the CPT requirements to ensure that they meet general market needs and international standards and considers applications as recognised institutions for CPT purposes (see paragraph 8 below).

5. Requirements for individuals

- 5.1 Individuals must remain fit and proper at all times. One of the criteria is that an individual is continuously competent to perform the regulated activities. The SFC considers that an individual's competence may be achieved by undertaking training that enhances his or her technical skills, professional expertise, ethical standards and regulatory knowledge.
- 5.2 An LR or Rel must undertake a minimum of 10 CPT hours per calendar year (regardless of the number and types of regulated activities he or she engages in). In view of the higher level of responsibility and accountability placed on ROs or EOs, they are required to take two additional CPT hours (ie, at least 12 CPT hours per calendar year). These two CPT hours should cover topics relating to regulatory compliance.
- 5.3 An individual should attend at least five CPT hours per calendar year (out of the 10 hours for LRs and Rels and 12 hours for ROs and EOs) on topics directly relevant to the regulated activities³ for which he or she is licensed at the time the CPT hours are undertaken. As a general principle, such CPT hours should be allocated to cover the practice areas of the individual in proportion to the time and effort that he or she spends in each area. In addition, the following two types of individuals are required to comply with specific requirements.
- (a) Individuals who engage in the sponsor work of a corporation are required to attend training on topics which are relevant to their sponsor work, eg, relevant skills and knowledge of the regulatory rules and their changes. Training on these topics should amount to at least 2.5 CPT hours per annum.
 - (b) Individuals who engage in Codes on Takeovers⁴ transaction work for a corporation are required to attend training on topics which are relevant to their Codes on Takeovers advisory work, eg, relevant skills and knowledge of the regulatory rules and their changes. Training on these topics should amount to at least 2.5 CPT hours per annum.

For the avoidance of doubt, the specific requirements set out in paragraph 5.3(a) and (b) can be counted towards the five CPT hours on topics directly relevant to the regulated activities for which the individual is licensed. Moreover, for an individual whose RA licence changes during the calendar year, it is reasonable that these five CPT hours be on topics which are directly relevant to the regulated activities for which he or she is licensed at the time.

- 5.4 Within the 12 months after a person first becomes an individual as defined in paragraph 2.2, that person must undertake two CPT hours on "ethics", which include, but are not limited to, topics relating to integrity, fairness, due care and diligence, good faith, objectivity, best interests of clients, treating clients fairly, avoidance of conflicts of interest and confidentiality of clients' information. Thereafter, he or she is required to complete at least two CPT hours per calendar year on topics relating to ethics or compliance. Topics relating to "compliance" include, but are not limited to,

³ Such as applicable compliance, legislative and regulatory standards, business conduct, market developments, new financial products and risk management systems.

⁴ "Codes on Takeovers" refers to the Codes on Takeovers and Mergers and Share Buy-backs.

the legal and regulatory framework for the financial industry, codes of conduct and industry guidelines issued by regulatory authorities, as well as policies and guidelines set out by individual corporations internally or by other professional bodies.

- 5.5 For the avoidance of doubt, an individual who first joins the industry can count the mandatory two CPT hours on ethics towards the annual CPT requirement set out in paragraph 5.4. However, they cannot be counted towards the two additional CPT hours required of ROs and EOs set out in paragraph 5.2 nor be used to meet the CPT requirements for conditional exemption of recognised industry qualification and the local regulatory framework paper requirements.
- 5.6 Individuals are also required to retain appropriate records of all CPT activities completed in a calendar year. Documentary evidence sufficient to support their attendance or completion of the CPT activities such as certificates of attendance issued by the course providers and examination results should be kept by the individuals for a minimum of three years. The SFC may request LRs and ROs of LCs, and the HKMA may request Rels and EOs of RIs, to produce such documentary evidence as and when required.
- 5.7 The SFC or the HKMA (as the case may be) may impose a higher CPT hours requirement under certain circumstances, such as, a person seeking exemption from meeting the recognised industry qualifications or completing a recognised local regulatory framework paper. Please refer to the Guidelines on Competence for details of the exemption criteria and the additional CPT hours required.
- 5.8 Several practical issues regarding the accumulation of CPT hours are set out in the following paragraphs.
- (a) The CPT hours required for an individual⁵, who is first licensed during the year, can be applied pro-rata with reference to the licensed period⁶. For example, if an individual was granted a licence as an LR on 1 July, the total number of CPT hours required of him or her for the calendar year would be five (ie, one half of the annual CPT requirement for LRs).
 - (b) The training courses attended prior to the date of licence but within the same calendar year can be counted as CPT hours. This would include study hours for fulfilling competence requirements if a pass in the relevant examination is proven.
 - (c) When an individual changes his or her employer within the same calendar year, he or she can carry forward his or her CPT hours undertaken at the previous employer. The new employer does not need to get the CPT information from the previous employer. It can rely on the declaration and the documentary evidence provided by the individual.

⁵ Including the (i) 10 CPT hours per calendar year for LRs, Rels, ROs and EOs; (ii) additional two CPT hours on regulatory compliance for ROs and EOs; (iii) five CPT hours on topics directly relevant to the RAs in which an individual engages; and (iv) two CPT hours on topics relating to ethics or compliance.

⁶ Except for the one-off mandatory requirement of two CPT hours on ethics required of new joiners as set out in paragraph 5.4.

- (d) It is not necessary for an individual to apportion his or her CPT hours undertaken in accordance with his or her periods of employment with the previous and new employers.
- (e) The new employer will not be accountable for the non-compliance of the individual who has not undertaken enough CPT hours at his or her previous employer. Thereafter, it has to ensure that the individual meets the annual CPT hours requirements, ie, 10 CPT hours for LR or Rels, or 12 CPT hours for ROs or EOs.
- (f) Excess CPT hours accumulated in one calendar year cannot be carried forward to the following year.

6. Relevant activities

- 6.1 CPT hours are time spent by individuals in undertaking CPT activities. The CPT activities should be relevant to the functions to be performed by them⁷ and should incorporate significant intellectual and practical content and involve interaction with other persons.
- 6.2 The following are acceptable means of obtaining CPT:
- (a) attending courses, workshops, lectures and seminars⁸;
 - (b) distance learning which requires submission of assignments;
 - (c) self-study or online learning courses⁹;
 - (d) industry research;
 - (e) publication of papers;
 - (f) delivery of speeches⁸;
 - (g) giving lectures or teaching⁸;
 - (h) providing comments to industry consultation papers;
 - (i) attending meetings or undertaking activities as members of the SFC's regulatory committees or formal working groups¹⁰; and
 - (j) attending luncheon talks which normally last for one to two hours in total (0.5 hour will be counted).
- 6.3 Normal working activities, general reading of financial press or technical, professional, financial or business literature and activities which do not involve interaction with other persons will generally not be regarded as CPT activities.

⁷ See paragraph 5.3 above for specific requirements.

⁸ Both face-to-face and virtual formats are acceptable.

⁹ Independent assessments (such as evaluation or test results) and sufficient records are required to demonstrate fulfilment and duration of training.

¹⁰ Formal working groups set up for the purpose of making decisions on a predetermined subject, meetings of which are presided over by a chairman and with minutes.

7. Relevant topics

- 7.1 Individuals are required to remain fit and proper to perform their functions at a professional level. Relevant topics for individuals at the LR or Rel level include:
- (a) applicable compliance, legislative and regulatory standards¹¹;
 - (b) business conduct and ethical standards¹²;
 - (c) market developments, new financial products and risk management systems;
 - (d) business communication skills and trade practices;
 - (e) general law principles;
 - (f) basic accounting theories;
 - (g) fundamental economic analysis;
 - (h) Fintech;
 - (i) environmental, social and governance (ESG);
 - (j) cybersecurity; and
 - (k) information technology.
- 7.2 Relevant topics for ROs or EOs who play a crucial role in ensuring effective corporate governance and control may, in addition to the above topics, include the following:
- (a) business management;
 - (b) risk management and control strategies;
 - (c) general management and supervisory skills;
 - (d) macro and micro economic analysis; and
 - (e) financial reporting and quantitative analysis.
- 7.3 The topics listed above are only examples and are by no means exhaustive.
- 7.4 Generally speaking, language courses cannot be counted as CPT. Management training can be counted towards CPT if the training assists in enhancing the person's ability to carry out the regulated activities.
- 7.5 Seminars given by the SFC pertaining to regulatory updates and other relevant topics can be counted towards CPT.
- 7.6 Repeatedly undertaking the same CPT activity with the same content will not satisfy the requirements.

¹¹ See paragraph 5.4 above.

¹² See paragraphs 5.4 and 5.5 above.

8. Seeking approval as a recognised institution for providing CPT

- 8.1 The AAAC is responsible for endorsing applications from professional bodies and tertiary institutions to be recognised institutions for providing CPT.
- 8.2 Applications should be made to the Secretary of the AAAC in the "Application Form for Professional Bodies and Tertiary Institutions for Approval as a Recognised Institution".
- 8.3 The criteria for approval as a recognised institution for providing CPT include the following:
- (a) it is an established professional body or institution with a track record of at least three years in providing training;
 - (b) it has and will develop training related to regulated activities;
 - (c) it has set up an independent committee, with representatives who are industry participants, to develop and ensure the quality of training;
 - (d) its training programmes are evaluated on an ongoing basis;
 - (e) the trainers are professionally qualified and have relevant industry experience;
 - (f) the training is interactive (self-study and online learning courses without assessments or examinations are not acceptable);
 - (g) it has attendance controls in place, including verification of the identity of the person attending the training, an audit trail to keep track of the duration of each person's training and attendance records which are kept for at least three years; and
 - (h) attendance certificates are issued upon successful completion of training, eg, when an attendee achieves a pass in an assessment for an online learning course.
- 8.4 Recognised institutions for providing CPT are expected to notify the SFC if there are any material changes to the matters set out in paragraph 8.3 above. The SFC may, if necessary, monitor their CPT programmes and review their status as a recognised institution for providing CPT.
- 8.5 The AAAC has endorsed a list of recognised institutions for providing CPT. Institutions which provide recognised industry qualifications for competence purposes can also provide CPT courses. The list will be updated and posted on the SFC's website as and when changes occur.
- 8.6 As mentioned in paragraph 4.5 above, neither the SFC nor the AAAC endorses CPT courses. Generally, it is expected that the contents of these courses would relate to the topics set out in paragraphs 7.1 and 7.2 above.
- 8.7 The AAAC will regularly review the CPT requirements to ensure that they meet general market needs and international standards.



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 propriety.

- (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.