



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

## **Consultation Paper on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners**

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11 December 2020

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## Foreword

The Securities and Futures Commission (SFC) invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals by no later than 10 February 2021. Any person wishing to comment on the proposals on behalf of any organisation should provide details of the organisation whose views they represent.

**Please note that the names of the commentators and the contents of their submissions may be published on the SFC's website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement set out in the next section of this consultation paper.**

**You may not wish your name, submission or both to be published by the SFC. If this is the case, please state that you wish your name, submission or both to be withheld from publication when you make your submission.**

Written comments may be sent -

By mail to: Securities and Futures Commission  
54/F, One Island East  
18 Westlands Road, Quarry Bay  
Hong Kong

Re: Consultation Paper on Proposed Enhancements to the  
Competency Framework for Intermediaries and Individual  
Practitioners

By fax to: (852) 2293 4012

By online submission to: <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/>

By e-mail to: [2020\\_Compency\\_Consultation@sfc.hk](mailto:2020_Compency_Consultation@sfc.hk)

All submissions received before the end of the consultation period will be taken into account before the proposals are finalised and a consultation conclusion paper will be published in due course.

Securities and Futures Commission  
Hong Kong

11 December 2020

## Personal information collection statement

1. This Personal Information Collection Statement (PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>1</sup> will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

### Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
  - a) to administer the relevant provisions<sup>2</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
  - b) in performing the SFC's statutory functions under the relevant provisions;
  - c) for research and statistical purposes;
  - d) for other purposes permitted by law.

### Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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<sup>1</sup> "Personal Data" means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

<sup>2</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

## Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer  
Securities and Futures Commission  
54/F, One Island East  
18 Westlands Road, Quarry Bay  
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

## Part I: Introduction

### A. Background

1. Under section 129 of the Securities and Futures Ordinance (SFO), in considering whether a person is “fit and proper” for licensing purposes, the SFC shall assess, among others, the person’s (i) educational or other qualifications or experience having regard to the nature of the functions he or she will perform, (ii) ability to carry on the regulated activity (RA) competently, honestly and fairly and (iii) reputation, character, reliability and financial integrity.
2. The Fit and Proper Guidelines<sup>3</sup> outline a number of matters that the SFC will normally consider in determining whether a person is “fit and proper”. The guidelines are supplemented by the Guidelines on Competence (Competence Guidelines) and the Guidelines on Continuous Professional Training (CPT Guidelines)<sup>4</sup>, which were published in March 2003. The Competence Guidelines and CPT Guidelines set out the entry and ongoing competence requirements expected of a person engaging in RAs.
3. Since 2003, there have been substantial changes in our regulatory landscape, such as the addition of Type 10 RA (providing credit rating services), enhancement of the sponsor regime, introduction of the regulation of the over-the-counter (OTC) derivative market and regulatory framework for virtual asset portfolios managers, fund distributors and trading platform operators.
4. Furthermore, the number of SFC licensees has significantly increased. Licensed corporations (LCs) have grown by more than 130% (from 1,318 in December 2003 to 3,122 in September 2020), whereas the percentage increase for licensed individuals during the same period was 133% (from 18,785 to 43,813).
5. Separately, we note that many other local and overseas regulators recently updated their competence standards. For example, the Insurance Authority (IA), Hong Kong Monetary Authority (HKMA) (together with the Hong Kong Institute of Bankers (HKIB) and Treasury Markets Association (TMA)) and Monetary Authority of Singapore (MAS) have updated their requirements in 2019, 2018 and 2017 respectively.
6. To bring our competency framework up-to-date in view of the changing regulatory landscape and financial markets, as well as the development of new financial products, the SFC conducted thorough research and sought views from the Academic and Accreditation Advisory Committee (AAAC)<sup>5</sup> and various industry associations.

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<sup>3</sup> The SFC published the Fit and Proper Criteria in 2000. It was subsequently replaced by the Fit and Proper Guidelines in 2003, which were further upgraded in 2006 and 2013.

<sup>4</sup> To elaborate on the Fit and Proper Criteria, the SFC published the Guidance Note on Competence and the Guidance Note on Continuous Professional Training in 2001. In March 2003, the Competence Guidelines and CPT Guidelines were published to replace the two Guidance Notes to provide persons regulated by the SFC and the Hong Kong Monetary Authority (HKMA) with general guidance on competence requirements and compliance with the continuous professional training (CPT) requirements.

<sup>5</sup> The AAAC is a regulatory committee set up under the SFO whose responsibilities include (a) advising the SFC on areas to study for the purpose of enhancing Hong Kong’s position as an international financial centre; (b) providing input for the development of industry-related courses and training programmes; (c) approving industry-based courses and examinations for the purpose of meeting the licensing competence requirements; (d) endorsing applications from professional bodies and tertiary institutions to be recognised institutions for providing CPT.

7. This paper discusses our proposals to enhance the competency framework for intermediaries and individual practitioners. We invite market participants and interested parties to comment on the proposals and the relevant amendments to the Competence Guidelines and CPT Guidelines.
8. To maintain a level playing field, executive officers (EOs)<sup>6</sup> and relevant individuals (Rels)<sup>7</sup> have been required to meet the same competence and CPT requirements as responsible officers (ROs) and licensed representatives (LRs) respectively, since the implementation of the SFO in 2003. Thus, the proposals set out in this paper are also intended to be applicable to EOs and Rels.

## **B. Entry requirements**

9. The entry 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 RAs.
10. The competence requirements were first introduced in 2001 and the Competence Guidelines were issued in March 2003 to replace the then Guidance Note on Competence. Since then, no changes have been made to the Competence Guidelines save the amendment to Appendix C in 2011.
11. Over the years, we have provided additional guidance on the application of the competence requirements through circulars, FAQs and our daily interactions with the industry. To facilitate licence applicants’ understanding of our requirements, we consider it appropriate to consolidate the guidance into the Competence Guidelines. We would also like to revise and modernise the requirements in view of the development of the financial markets which have evolved and become more sophisticated.
12. In recent years, the SFC has had concerns about the quality of the work performed by some financial advisers who advise on matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs (Codes on Takeovers). To address our concerns and raise the industry’s standards, we propose to enhance the existing competence requirements for individuals that advise on matters or transactions falling within the ambit of the Codes on Takeovers.
13. Detailed proposals are set out in Part II of this consultation paper.

## **C. Ongoing requirements**

14. The spirit of the CPT requirements (as part of the fitness and properness requirements) is to ensure that individual practitioners remain “fit” by undergoing training that enhances their technical skills and professional expertise and “proper” by regularly refreshing themselves about the relevant ethical standards and regulatory knowledge. In essence, such requirements aim to:

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<sup>6</sup> “Executive officer” means an individual who has been given consent by the HKMA to act as an executive officer of a registered institution (RI) under section 71C of the Banking Ordinance.

<sup>7</sup> “Relevant individual” means an individual whose name is entered in the register maintained by the HKMA under section 20 of the Banking Ordinance.

- a) maintain and enhance the technical knowledge and professional expertise of individual practitioners;
  - b) provide reasonable assurance to investors at large that individual practitioners have the technical knowledge, professional skills and ethical standards required to perform the RAs efficiently, effectively and fairly; and
  - c) maintain and enhance Hong Kong's international reputation for high professional standards.
15. Given the importance of CPT, the SFC has been conducting CPT compliance reviews of LCs of various sizes which are engaged in different businesses to ensure that the relevant CPT requirements are met. Typically, a firm under review is required to provide us with (i) its internal guidelines and policies for CPT compliance and (ii) the CPT records for all of its licensed individuals for the past calendar year.
16. Commencing on 11 April 2019, corporate and individual licensees are required to confirm their CPT compliance along with their electronic submission of annual returns through the SFC Online Portal<sup>8</sup>.
17. In our study of our existing CPT regime and in comparing it with those administered by other local and overseas regulatory and professional bodies which include the HKMA, IA, Mandatory Provident Fund Authority (MPFA), MAS and Financial Conduct Authority (FCA), we identified a few areas for improvement set out in Part III of this consultation paper.

#### **D. Summary of key proposals**

18. The proposed enhancements to the Competence Guidelines are:
- a) to raise the minimum academic qualification requirements for individuals and broaden the scope of recognised academic qualifications;
  - b) to introduce a full exemption from obtaining recognised industry qualifications (RIQs) for temporary licence applicants;
  - c) to refine the applicability of the conditional exemption from passing the local regulatory framework papers (LRPs) under paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines for LRs;
  - d) to elaborate on the relevant industry experience requirements;
  - e) to clarify the management experience requirements for ROs; and
  - f) to enhance the competence requirements for individuals who intend to advise on matters in relation to the Codes on Takeovers.

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<sup>8</sup> The SFC's online platform where a person can manage applications, notifications, annual return submissions or make payments.



19. The proposed enhancements to the CPT Guidelines are:
- a) to simplify the basis for the determination of the CPT obligation by requiring each individual practitioner to take a specific number of CPT hours annually;
  - b) to specify 10 CPT hours per calendar year as the minimum requirement for LRs and Rels, and 12 CPT hours for ROs and EOs;
  - c) to require that every calendar year each individual practitioner attend at least five CPT hours on topics directly relevant to the RAs in which he or she engages, those engaging in sponsor work take 2.5 hours of sponsor-related CPT and those engaging in transactions related to the Codes on Takeovers take 2.5 hours of Codes on Takeovers-related CPT;
  - d) to require each individual practitioner to complete no less than two CPT hours on topics relating to ethics or compliance per calendar year;
  - e) to require each new individual practitioner in Hong Kong (excluding temporary licensees) to complete two CPT hours on ethics within 12 months as a one-off requirement; and
  - f) to update the list of topics relevant for CPT purposes in light of the market development.
20. In addition, we will take the opportunity to make the Competence Guidelines and the CPT Guidelines more reader-friendly and informative.
21. In Part IV, we set out the way forward and the implementation timeframe for the proposed enhanced competency framework.

## Part II: Proposed amendments to the competence requirements

### A. Raise the minimum academic qualification requirements for individuals and broaden the scope of recognised academic qualifications

22. The test of competence for LRs and ROs as set out in Appendix B to the 2003 version of the Competence Guidelines provides three different options to satisfy the test which is based on the individual's academic qualifications. Option 1 caters for those with a degree in designated fields<sup>9</sup>, other degrees with passes in at least two courses in the designated fields or an internationally-recognised professional qualification<sup>10</sup>; Option 2 caters for those who have at least passed either English or Chinese in addition to Mathematics in the Hong Kong Certificate of Education Examination (HKCEE) or equivalent; and Option 3 caters for those who do not possess any academic qualification, including those who are unable to provide proof of their academic qualifications.
23. When the test of competence for LRs and ROs was first introduced in 2001, many who were already in the industry, or wished to enter it, may not have attained any relevant academic qualification. Option 3 was needed at that time to provide those who did not possess the academic qualifications with a means to become an LR or RO.
24. As the securities and futures market has become more sophisticated and tertiary education more commonly available, there is a need to raise the minimum requirements for individuals so that they are better equipped for the current market. In addition, we are cognisant of the fact that knowledge in other disciplines may also be relevant or important to the development of the market.
25. Accordingly, we propose to raise the minimum academic qualification requirements for an individual licence applicant to the attainment of Level 2 in either English or Chinese as well as in Mathematics in the Hong Kong Diploma of Secondary Education Examination (HKDSE) or equivalent. For this purpose, HKDSE equivalent will include the previous HKCEE and other high school public examinations (such as university entry examinations) in Hong Kong and elsewhere<sup>11</sup>.
26. Separately, we also notice that many LCs recruit individuals who hold a degree in other disciplines without two courses in the designated fields. Despite these individuals having completed tertiary education, their academic qualifications have not been properly recognised as they can only apply for a licence under Option 2, just like other high school graduates. Thus, there is a gap between these two options.

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<sup>9</sup> "Designated fields" refer to accounting, business administration, economics, finance and law.

<sup>10</sup> Internationally-recognised professional qualifications in law, accounting or finance. Internationally-recognised professional qualifications in finance include Chartered Financial Analyst, Certified International Investment Analyst and Certified Financial Planner.

<sup>11</sup> Please refer to paragraphs 4.2.1.2 and 4.3.1.2 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

27. We therefore propose to accept the academic qualifications of degree holders in all other disciplines as an additional means to satisfy the competence requirements. In order to ensure that degree holders in other disciplines have sufficient industry knowledge, we propose that for LR applicants, they either (a) possess at least two years of relevant industry experience over the past five years; (b) have obtained the relevant RIQs; or (c) have completed, as a one-off requirement, an additional five CPT hours in each RA that they are applying for, within six months preceding the submission of a licence application (Extra CPT). For RO applicants, we propose that they must possess at least three years of relevant industry experience over the past six years, and have either (a) obtained the relevant RIQs, or (b) completed the relevant Extra CPT<sup>12</sup>.
28. In addition, to ensure that individuals with HKDSE or equivalent academic qualifications have sufficient understanding of the industry, we propose that for LR applicants, they either (a) possess at least two years of relevant industry experience over the past five years and have completed the relevant Extra CPT or (b) have obtained the relevant RIQs. For RO applicants, we propose that they must (a) possess at least three years of relevant industry experience over the past six years and have obtained the relevant RIQs or (b) possess at least five years of relevant industry experience over the past eight years and have completed the relevant Extra CPT<sup>12</sup>.
29. Furthermore, as a result of compulsory education in Hong Kong, individual licence applicants in general are much better educated nowadays as compared to 2001 when the competence requirements were first introduced. We do not envisage that this proposal would discourage new individual practitioners from joining the industry. In order to mitigate the potential impact on existing licensees, we propose to grandfather current and ex-licensees who previously qualified under Option 3 but cannot meet the new minimum academic qualification requirements when the revised Competence Guidelines become effective. The grandfathering arrangement would also extend to situations where these individuals apply for a new licence, addition of RA or approval as RO provided that they can satisfy the other criteria<sup>13</sup>.

*Question 1:*

*Do you agree to raise the minimum academic qualification requirements to the attainment of Level 2 in either English or Chinese as well as in Mathematics in HKDSE or equivalent?*

*Question 2:*

*Do you agree to broaden the scope of recognised academic qualifications to cover degrees in other disciplines?*

<sup>12</sup> Please refer to paragraphs 4.2.1.2 and 4.3.1.2 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

<sup>13</sup> Please refer to paragraphs 4.2.1.3 and 4.3.1.3 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

*Question 3:*

*Do you have any comments on requiring licence applicants with degrees in other disciplines (without passes in at least two courses in the designated fields) and with HKDSE or equivalent academic qualifications to complete Extra CPT to ensure they have sufficient industry knowledge?*

*Question 4:*

*Do you agree with the proposal to grandfather current and ex-licensees who previously qualified under Option 3?*

*Please provide reasons to support your views.*

**B. Introduce a full exemption from obtaining recognised industry qualifications for temporary licence applicants**

30. Under the existing test of competence, individual licence applicants, including temporary licence applicants, may be required to obtain RIQs. We now propose to introduce an exemption from obtaining RIQs for temporary licence applicants.
31. Currently, paragraph (4) of Appendix E to the 2003 version of the Competence Guidelines provides a full exemption from passing the LRPs for temporary licence applicants; however, there is no equivalent exemption for RIQs. We consider that exemption from RIQs is justified on the basis that individual temporary licence applicants have to satisfy the SFC, amongst others, that they carry on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on an RA, under an authorisation by a regulatory body in that place. Therefore, they should already possess industry knowledge in respect of the RAs that they are applying for.
32. As individual temporary licence applicants will only carry on RAs in Hong Kong for a short period of time, and are already exempted from satisfying the LRP requirements, we propose to introduce a full exemption from satisfying the RIQ requirements for them as well<sup>14</sup>.

*Question 5:*

*Do you agree to introduce a full exemption from satisfying the RIQ requirements for temporary licence applicants?*

*Please provide reasons to support your view.*

<sup>14</sup> Please refer to paragraph 4.4.2.1(b) in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

**C. Refine the applicability of the conditional exemption from passing local regulatory framework papers under paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines for LRs**

33. Under the test of competence, all individual licence applicants are required to fulfil the LRP requirements unless an exemption applies. One of the exemptions is paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines, which we consider can be modified.
34. The conditional exemption under paragraph (8) of Appendix E allows LRs who are currently licensed or have been licensed within the past three years to be exempted from taking the LRP when applying to become an LR for an RA with a different competence requirement by completing an additional five CPT hours in regulatory knowledge in the new RA.
35. In fact, the LRP for LRs of all RAs are the same, which is Paper 1 of the Licensing Examination for Securities and Futures Intermediaries (LE) administered by the Hong Kong Securities and Investment Institute (HKSI), except for Type 3 RA (leveraged foreign exchange trading), which is the Vocational Training Council's (VTC) Leveraged Foreign Exchange Trader's Representative Examination Paper 1.
36. For those who have already passed HKSI LE Paper 1, they have already satisfied the LRP requirements for the new RA unless they apply for Type 3 RA. Therefore, they should not be required to take additional CPT hours unless they apply for Type 3 RA.
37. Accordingly, we propose to refine<sup>15</sup> this conditional exemption such that it applies to LRs who have (a) never attempted any LRP (eg, never attempted HKSI LE Paper 1 as the LR was migrated to the SFO regime by way of transitional arrangements) but are still required to satisfy the LRP requirements of the new RA; or (b) have passed one LRP (eg, HKSI LE Paper 1) but are still required to pass another LRP (eg, VTC Leveraged Foreign Exchange Trader's Representative Examination Paper 1) to satisfy the LRP requirements of the new RA. These individuals can complete an additional five CPT hours in regulatory knowledge in the new RA in lieu of passing the LRP for that new RA.

*Question 6:*

*Do you agree to refine the scope of the conditional exemption under paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines as described in paragraph 37 above?*

*Please provide reasons to support your view.*

**D. Elaborate on the relevant industry experience requirements**

38. We propose to take into account relevant industry experience accumulated by individuals over their career history through considering it in totality on a case-by-case basis.

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<sup>15</sup> Please refer to paragraph 4.4.3.7 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

39. In assessing an individual's industry experience, "recency" is a key element to ensure that he or she is kept abreast of market developments and the regulatory landscape. Therefore, only relevant industry experience accumulated within a prescribed period is recognised under the current regime. For example, under Option 1, RO applicants must have at least three years of relevant industry experience over the past six years. Experience acquired outside of the past six years might not be counted.
40. On 12 December 2016, we issued the "Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management" (MIC Circular), stating that when assessing the industry experience of RO applicants who will be assuming the role of the Manager-In-Charge (MIC) of the Overall Management Oversight (OMO) function, we will holistically take into account his or her overall career history within the industry and proposed duties as well as the resources (including systems and expertise) available to the LC, among other things.
41. Following the implementation of the MIC regime, we revisited our competence requirements and believe that a similar approach may also be adopted for other LR or RO applicants. For applicants who are unable to entirely satisfy the recency element of their relevant industry experience, we will also take into account their overall career history within the industry on a case-by-case basis, though less weight may be placed on the dated experience. Applicants would have to demonstrate, among other things, how the dated experience is relevant to their proposed duties, and whether resources (including systems and expertise) are available to their proposed principal. If the SFC accepts the relevancy of the dated experience, the applicants may be granted licences or approvals which may be subject to licensing conditions.
42. We would also like to clarify that the industry experience of individuals who have been accredited to their previous principals only for a short period might not be recognised. Recently, we noted that some licence applicants have a pattern of changing accreditations within a very short period of time. For example, an individual changed principals six times over the past three years, having accredited to each principal for only a few months. Even though the accumulated time will meet our minimum requirements, this raises doubts as to whether the applicant has genuinely discharged his or her duties and accumulated sufficient relevant industry experience during the brief periods of employment.
43. To ensure licencees will have the necessary industry experience to carry on or supervise RAs, we will critically review experience claimed through short periods of accreditation to applicants' previous principals. These applicants would need to provide full details about their roles and responsibilities as well as the activities in which they actually engaged at their previous principals.

*Question 7:*

*Do you agree that on a case-by-case basis we should take into account licence applicants' overall career history within the industry?*

*Question 8:*

*Do you agree that we should critically review experience of applicants claimed through accrediting to previous principals for only a short period of time?*

*Please provide reasons to support your views.*

**E. Clarify the management experience requirements for ROs**

44. All RO applicants are required to accumulate at least two years of management experience prior to submitting their RO application. Currently, the Competence Guidelines do not clearly prescribe what kind of management experience would be accepted by the SFC. As a result, the term may have been interpreted by market participants to include management experience accumulated in any industry, including those unrelated to the RAs.
45. Individuals who will be approved as an RO for a particular RA are expected to supervise that RA for their principals. They are expected to have knowledge and experience in managing the business in that RA. To provide more clarity to the industry, we propose to make clear that management experience only refers to 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, such as through managing a team conducting RAs, or an activity that would have been an RA in the absence of an applicable carve-out. For example, experience gained via managing a team of account executives engaging in brokerage activities or a team of professionals engaging in proprietary trading would be counted; whereas experience gained from managing purely administrative functions, such as human resources or office administration, would not be counted.

*Question 9:*

*Do you agree to confine management experience such that it only refers to 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?*

*Please provide reasons to support your view.*

**F. Enhance competence requirements for individuals who intend to advise on matters in relation to the Codes on Takeovers**

46. An individual who advises on matters or transactions falling within the ambit of the Codes on Takeovers<sup>16</sup> must be licensed or registered to carry on regulated activity in “advising on corporate finance” under the SFO (RA 6). In the case of ROs and EOs, they are able to advise on matters in relation to the Codes on Takeovers if their licence or registration does not prohibit them from so doing.

<sup>16</sup> “Codes on Takeovers” refers to the Codes on Takeovers and Mergers and Share Buy-backs.



### *Existing eligibility criteria*

47. Under the current regime, an RO or EO for RA 6 is eligible to advise on matters in relation to the Codes on Takeovers (TCRO<sup>17</sup>) if he or she:
- (a) has experience in supervising a completed transaction subject to the Codes on Takeovers (TC Transaction);
  - (b) has been a member of the Hong Kong Takeovers and Mergers Panel; or
  - (c) has been a member, executive or secondee of the London Takeover Panel.
48. For LRs or Rels, there are no additional eligibility criteria as long as they work under the supervision of qualified ROs or EOs of their accredited intermediaries which are licensed or registered to advise on matters in relation to the Codes on Takeovers.
49. The Codes on Takeovers provide a framework within which takeovers, mergers and share buy-backs are to be conducted. All relevant parties are required to ensure that the structure of the TC Transaction conforms to this framework. Under section 1.7 of the Introduction to the Codes on Takeovers, all financial advisers must possess the competence, professional expertise and adequate resources to fulfil their role and discharge their responsibility under the Codes on Takeovers. It follows that, before accepting a mandate to advise on a TC Transaction, a financial adviser must satisfy itself that it is fully conversant with the Codes on Takeovers and thus well-positioned to ensure that its client understands and abides by the requirements of the Codes on Takeovers.

### *Unsatisfactory work and practices*

50. In recent years, we have noticed that the work quality of some financial advisers advising on TC Transactions has been deteriorating. In some cases, the standard of the financial advisers' work was poor and they were unaware of or did not understand the requirements under the Codes on Takeovers. In other cases, the financial advisers excessively relied on their legal advisers in the TC Transactions and failed to discharge their own duties and roles. The SFC generally expects that financial advisers should also be present and engage themselves in all major discussions (including those with regulators), and should not shirk their responsibilities.
51. To address our concerns and raise the industry's standards, we propose to enhance the existing competence requirements for individuals who advise on matters in relation to the Codes on Takeovers as set out in paragraphs 53 to 58. Since the competence requirements for individuals who intend to advise on matters relating to the Codes on Takeovers are not expressly set out in any codes or guidelines, we have also taken this opportunity to incorporate them into the Competence Guidelines.

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<sup>17</sup> "TCRO" means an RO or EO for RA 6 who is eligible to advise on matters relating to the Codes on Takeovers in a sole capacity. "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.



52. The proposed “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” (Proposed TC Adviser Guidelines) are included as Appendix B to the indicative draft of the revised Competence Guidelines<sup>18</sup>. The following paragraphs only serve to summarise the crux of the proposals. For details, please refer to the Proposed TC Adviser Guidelines.

*Proposed eligibility criteria for TCROs*

53. Regarding the eligibility requirement outlined in paragraph 47(a) above, we propose that an RO or EO for RA 6 should only be eligible to be a TCRO to advise on matters in relation to the Codes on Takeovers if he or she:
- (a) has a minimum of five years of relevant corporate finance experience<sup>19</sup>; and
  - (b) has been *substantially* involved in two completed TC Transactions (note: the number of transactions will increase from *one* to *two*) within the last five years.
- “Substantial” involvement means that throughout the duration of the TC Transaction, the individual assumes a lead role in the supervision and execution of the transaction, for example, leading and supervising due diligence and making key decisions relating to work carried out by the transaction team. A list of matters that will be taken into account in establishing whether an individual has satisfied such requirement is set out in paragraph 2.2.4 of the Proposed TC Adviser Guidelines.

Please refer to paragraph 2.2.1 “Option 1” in the Proposed TC Adviser Guidelines for details.

54. The above proposals aim to ensure that only those with sufficient experience could be qualified as TCROs. Further, the two completed TC Transactions must be sufficiently recent to ensure that any newly-approved TCRO would have relevant, solid and up-to-date experience on the Codes on Takeovers.
55. Regarding the eligibility requirement set out in paragraph 47(b) above, there are currently no requirements for the minimum period that a member should serve on the Hong Kong Takeovers and Mergers Panel. We propose that members should serve on the Panel for at least two years within the last five years. The proposal would ensure that only Panel members with substantial and up-to-date experience could be eligible to be TCROs. Please refer to paragraph 2.2.1 “Option 2” in the Proposed TC Adviser Guidelines for details.

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<sup>18</sup> Please refer to paragraph 64.

<sup>19</sup> “Corporate finance experience” includes experience gained from providing advice on one or more of the following matters: (i) IPO transactions; (ii) notifiable or connected transactions under the Listing Rules; (iii) right issues or open offers by a listed company in accordance with the Listing Rules; (iv) takeovers and share buy-backs subject to the Codes on Takeovers; and (v) any other significant transactions or equity-fund raising exercises not listed above.

56. We propose to remove the eligibility requirement outlined in paragraph 47(c) above. Different rules, approaches and practices have been adopted by the UK and Hong Kong due to the divergence of market conditions. We consider that the experience of being a member of the London Takeover Panel should no longer be regarded as direct relevant experience. However, when considering whether an RO or EO for RA 6 would be eligible to advise on matters related to the Codes on Takeovers, the SFC would still take into account any substantive experience he or she may have in overseas jurisdictions with a takeovers regime similar to that of Hong Kong, provided that he or she, in the capacity of an adviser to a client in a TC Transaction, acts together with another TCRO.

*Proposed eligibility criteria for LRs and Rels*

57. In addition to the examination requirement applicable to all LRs and Rels<sup>20</sup>, we propose that LRs and Rels intending to undertake TC Transaction work should be required to take and pass an examination which specifically focuses on the Codes on Takeovers.
58. As a one-off grandfathering arrangement for the requirement of an additional examination, all existing LRs and Rels for RA 6, who have engaged in at least one completed TC Transaction throughout the duration of that transaction within the three years immediately preceding the effective date of the enhanced competence requirements in this section, shall be exempted from the requirement of an additional examination as set out in paragraph 57. It is noteworthy that licensed or registered firms are responsible for ensuring that their staff engaging in TC Transactions have satisfied or are exempted from the requirement of an additional examination. Furthermore, they should keep proper records in this regard and be able to demonstrate their compliance upon request.

*Question 10:*

*In respect of the proposed enhancements to the eligibility criteria for ROs and EOs who intend to advise on Codes on Takeovers-related matters, do you agree:*

- (a) to increase the number of completed TC Transactions from one to two?*
- (b) that members of the Hong Kong Takeovers and Mergers Panel should serve on the Panel for at least two years in order for that experience to be considered as relevant experience? and*
- (c) that the experience acquired by the ROs, EOs and members of the Hong Kong Takeovers and Mergers Panel should be recent (i.e. within the last five years)?*

*Question 11:*

*Do you agree with the additional examination requirement for LRs and Rels who intend to undertake TC Transaction work?*

*Please provide reasons to support your views.*

<sup>20</sup> That is, HKSI LE Paper 1.

## G. Other enhancements to the Competence Guidelines

59. In addition to the above proposals, we also want to take this opportunity to modernise the Competence Guidelines, consolidate publicised materials, codify established practices, provide further guidance and remove out-dated materials so as to make the Competence Guidelines more comprehensive and user-friendly.
60. The competence requirements for corporations currently set out in the Competence Guidelines are high-level. We now propose to highlight some key elements in assessing a corporation's fitness and properness, such as 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. We also include further guidance to corporations which engage in certain activities such as managing authorised funds.
61. Since 2003, various circulars and FAQs have been issued and the Licensing Handbook has been updated to clarify, supplement or elaborate on the competence requirements. Examples include the competence requirements for ROs with Fintech experience and exemptions for former industry practitioners to re-enter the industry. In addition, certain practices have been relayed to and accepted by the market throughout the years and have become our general expectations, though these have yet to be documented. For example, individuals are generally not expected to be accredited to two non-group LCs. We propose to consolidate these publicised materials and established practices into the Competence Guidelines.
62. Some of the proposed changes are highlighted below.
- a) Replace the list of overseas RIQs with a general statement.
  - b) Refine<sup>21</sup> the RIQ exemption under paragraph (3) of Appendix D and LRP exemption under paragraph (9) of Appendix E to the 2003 version of the Competence Guidelines to cater for individuals who carry on Type 9 RA (asset management) for managing discretionary accounts only.
  - c) Clarify<sup>22</sup> the applicability of the LRP exemption under paragraph (6) of Appendix E to the 2003 version of the Competence Guidelines.
  - d) Incorporate the LRP exemption under the Pragmatic Approach<sup>23</sup> into the Competence Guidelines.
  - e) Clarify that other industry experience for individuals applying to carry on Type 9 RA is recognised.
  - f) Make consequential amendments to other parts of the Competence Guidelines to reflect changes in areas such as the education system and the regulatory landscape.

<sup>21</sup> Please refer to paragraphs 4.4.2.2 and 4.4.3.3 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

<sup>22</sup> Please refer to paragraph 4.4.3.2 in the revised Competence Guidelines as set out in Appendix A of this consultation paper.

<sup>23</sup> See the circular "SFC Adopts a Pragmatic Approach to Licensing Fund Managers" (11 June 2007).

- g) Propose changes to cover the new and expanded RAs for the OTC derivative licensing regime when it comes into effect.
63. In addition, we propose to move the competence requirements in the “Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers” (Sponsor Guidelines) currently set out in the Fit and Proper Guidelines to the revised Competence Guidelines as a new appendix, and refer the related CPT requirements to the revised CPT Guidelines to be discussed below. For the avoidance of doubt, the SFC does not propose to introduce any changes to the existing competence requirements for sponsors and their principals, other than removing paragraphs that are obsolete and consolidating some existing FAQs into the new appendix. Corresponding changes will also be made to other SFC publications where the Sponsor Guidelines are referenced.
64. Please refer to Appendix A of this paper for the indicative draft of the revised Competence Guidelines (including the additional requirements for corporations and individuals engaging in sponsor and compliance adviser work and which undertake activities in connection with matters regulated by the Codes on Takeovers).

## Part III: Proposed amendments to the CPT requirements

### A. Simplify the basis of the CPT requirements from number of “RA competence groups” to “per individual”

65. The current CPT requirements are set out in paragraph 4 of the 2003 version of the CPT Guidelines. In essence, an individual practitioner must undertake a minimum of five CPT hours per calendar year for each RA he or she engages in, except for Type 7 RA.
66. For compliance with this requirement, a competence approach is adopted under which RAs are categorised into six “RA competence groups” (ie, groups of RAs having the same competence requirements under the 2003 version of the Competence Guidelines) as set out in the table below.

Type of RAs
1 – dealing in securities 4 – advising on securities 8 – securities margin financing
2 – dealing in futures contracts 5 – advising on futures contracts
3 – leveraged foreign exchange trading
6 – advising on corporate finance
9 – asset management
10 – providing credit rating services

67. For example, an individual licensed to engage in both Type 1 and 4 RAs is only required to take five CPT hours per calendar year as these two RAs fall within the same RA competence group. If an individual carries on Type 1, 2 and 3 RAs, he or she is required to take 15 CPT hours per calendar year.
68. We have compared our “RA competence group” basis with a “per individual” basis for determining CPT requirements and consider that a switch to a “per individual” basis, which is adopted by all the professional and regulatory bodies in our study, is more appropriate for our evolving licensing regime, which is characterised by:
- Introduction of new RAs - The SFC introduced Type 10 RA (providing credit rating services) in June 2011, forming a new RA competence group. The SFC will be introducing Type 11 RA (dealing in OTC derivative products or advising on OTC derivative products), Type 12 RA (providing clearing agency services for OTC derivative transactions) and Type 13 RA (acting as a depository (trustee or custodian) of an SFC-authorized collective investment scheme).
  - More individuals licensed for multiple RAs - As at 30 September 2020, about 60% were licensed for more than one RA. It is expected that the trend of individuals holding multiple licences will continue following the introduction of more new RAs.

69. The combined effect of the increased number of new RAs and licensed individuals who are licensed for multiple RAs will complicate the calculation of CPT hours if it is determined based on the number of “RA competence groups” that an individual falls under.
70. Moreover, a number of topics relevant for CPT purposes as set out in paragraph 7.1 of the 2003 version of the CPT Guidelines are commonly applicable to multiple RAs<sup>24</sup>. CPT activities for these topics can be applied across multiple RA competence groups. As such, paragraph 4.3.4 of the 2003 version of the CPT Guidelines specifies that if an individual can show that particular training is relevant to more than a single RA competence group, he or she may claim it as CPT in respect of all relevant RAs.
71. If a “per individual” basis is adopted in determining the CPT obligation, an individual will no longer need to assess the relevance of the CPT topics to an individual RA competence group.
72. This change will also align our CPT requirements with other regulatory and professional bodies.
73. Based on the above, it is proposed<sup>25</sup> that each individual practitioner will be required to complete a fixed number of CPT hours per calendar year<sup>26</sup>, regardless of the number of RAs that he or she is licensed for. The proposed change will simplify our regime and provide more flexibility for individual practitioners and their accredited firms when they plan CPT programmes and monitor annual compliance.

*Question 12:*

*Do you agree with the proposal to change the determination of required number of CPT hours to a “per individual” basis? Please provide reasons to support your view.*

**B. Specify 10 CPT hours per calendar year as the minimum requirement for LRs and Rels, with two additional hours on regulatory compliance for ROs and EOs**

74. In identifying the appropriate minimum number of CPT hours to be undertaken, one of our key objectives is to ensure that an individual undertakes training that enhances his or her technical skills and professional expertise and remains competent to perform his or her roles.
75. We have benchmarked the requirements of various regimes and note that other professional and regulatory bodies require nine to 35 CPT hours per year.
- a) The HKMA, HKIB and TMA specify that retail wealth management practitioners should take at least 10 CPT hours per year, while treasury management practitioners are required to take at least 10 or 20 CPT hours per year, depending on the seniority of a practitioner.

<sup>24</sup> For example, applicable compliance, legislative and regulatory standards, business conduct and ethical standards, general law principles and computer knowledge.

<sup>25</sup> Please refer to paragraph 5.2 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.

<sup>26</sup> 10 or 12 CPT hours per calendar year, depending on his or her role (ie, RO or EO, as opposed to LR or Rel), which will be discussed in section B.

- b) The IA requires its insurance intermediaries, who are individuals, to attend a minimum of 10 CPT hours per year<sup>27</sup>, which will be increased to 15 hours on 1 August 2021.
- c) The MPFA requires its subsidiary intermediaries to attend 10 CPT hours per year.
- d) The FCA specifies that retail investment advisors are required to complete a minimum of 35 CPT hours per year.
- e) The MAS requires at least 30 CPT hours per year for its financial adviser representatives and at least nine CPT hours per year for its capital markets services representatives.

Please refer to Appendix B of this paper for more details.

- 76. To bring our regime in line with similar regimes administered by other local and overseas regulatory and professional bodies, we propose<sup>28</sup> to require LRs and Rels to take 10 CPT hours per calendar year. We believe that this proposal appropriately balances meeting the need to enhance the benefits of CPT without overburdening the industry.
- 77. Senior management, ROs and EOs, should have the primary responsibility to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by their firms. They bear a high level of accountability for the effective and efficient management of their firms' RAs.
- 78. It is proposed<sup>28</sup> that ROs and EOs should undertake two additional CPT hours on topics relating to regulatory compliance in addition to the 10 CPT hours required for all licensed individuals (ie, making up to a minimum requirement of 12 CPT hours per calendar year for ROs and EOs).
- 79. This proposal is in line with some other regulatory bodies which require additional CPT hours for senior management. For example, the HKMA and TMA require 10 additional CPT hours to be undertaken by senior professionals in treasury management.

*Question 13:*

*Do you agree with the proposal concerning minimum requirements for individuals?  
Please provide reasons to support your view.*

<sup>27</sup> Except for those engaging only in restricted scope travel business who are required to take three CPT hours per year.

<sup>28</sup> Please refer to paragraph 5.2 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.



**C. Require each individual practitioner to attend at least five CPT hours on topics directly relevant to the RAs in which he or she engages**

80. A fundamental objective of requiring a licensed person to undertake CPT is to ensure that he or she can properly and professionally perform his or her roles as a licensed person. It is therefore crucial that the individual undertakes CPT activities that are directly relevant to his or her responsibilities in respect of the RAs in which he or she engages.
81. This concept was first introduced when the Sponsor Guidelines came into effect in January 2007. Under paragraph 3.2 of the Sponsor Guidelines, individuals who engage in sponsor work are required to attend training on relevant topics. Training on such topics should constitute at least 50% of the five CPT hours (ie, 2.5 hours) individuals are required to undertake annually with regard to Type 6 RA.
82. The same rationale should apply to other RAs in order to ensure that the CPT training and activities undertaken by individuals focus on the particular RAs they engage in.
83. We therefore propose<sup>29</sup> that each individual practitioner 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 RAs for which he or she is licensed. As a general principle, these five CPT hours should be allocated to cover the practice areas carried on by an individual in proportion to the time and effort that he or she spends in each area.
84. In addition, we propose<sup>29</sup> that persons who engage in transactions related to the Codes on Takeovers should attend at least 2.5 CPT hours per calendar year on topics that are relevant.
85. The minimum sponsor-related CPT requirement for persons who engage in Type 6 RA will remain unchanged, at 2.5 hour per calendar year. However, the current requirement of “50% of the five CPT hours” will be removed. This wording will be reflected in the revised CPT Guidelines where the sponsor-related CPT requirements are incorporated.
86. We have balanced the need for individuals to maintain their competence to perform their roles as licensed persons and flexibility to choose CPT activities and programmes that are suitable and relevant to their individual needs.

*Question 14:*

*Do you agree that individual practitioners should attend at least five CPT hours on topics directly relevant to their RAs every year? Please provide reasons to support your view.*

<sup>29</sup> Please refer to paragraph 5.3 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.



**D. Require each individual practitioner to complete no less than two CPT hours on topics relating to ethics or compliance per calendar year**

87. GP7 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission requires a licensed person to comply with all regulatory requirements applicable to the conduct of business activities so as to promote the best interests of clients and the integrity of the market.
88. It is noted that the HKMA, HKIB, MPFA, MAS and IA have already made or will make CPT on conduct, compliance or rules and regulations<sup>30</sup> compulsory for their regulatees or members:
- a) The HKMA and HKIB require retail wealth management practitioners to take at least three CPT hours on topics relating to compliance, code of conduct, professional ethics or risk management.
  - b) The MPFA requires its subsidiary intermediaries to attend two CPT hours of core activities, which involve training on the Mandatory Provident Fund Scheme Ordinance, any codes and guidelines issued by the MPFA and topics relating to the Mandatory Provident Fund (MPF) system, MPF products or compliance with the performance requirements to be met by a subsidiary intermediary.
  - c) The MAS specifies that its financial adviser representatives and capital markets services representatives should take a minimum of six hours on rules or ethics per year.
  - d) The IA has introduced compulsory continuing professional development (CPD) activities of at least three hours of training related to a topic which falls under ethics or regulations for certain individual licensees, which will be effective on 1 August 2021.
89. Currently, as set out in paragraph 7.1 of the 2003 version of the CPT Guidelines, although relevant topics in our CPT regime include, among others, “applicable compliance, legislative and regulatory standards” and “business conduct and ethical standards”, it is not mandatory for individuals to engage in CPT activities relating to ethics or compliance for the purposes of fulfilling the requirements.
90. To enhance the ethical and compliance standards of individual practitioners, it is proposed<sup>31</sup> that each calendar year they should complete no less than two CPT hours on topics relating to ethics or compliance. These two hours would count towards the required 10 hours for individual practitioners but not to the two additional hours on topics relating to regulatory compliance required of ROs and EOs as mentioned in paragraph 78.
- a) Topics relating to “ethics” include, but are not limited 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.

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<sup>30</sup> Topics include ethics, conduct, standards, compliance, regulations, risk management, etc.

<sup>31</sup> Please refer to paragraph 5.4 and 5.5 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.

- b) Topics relating to “compliance” include, but are not limited to, the legal and regulatory framework of the financial industry, codes of conduct and industry guidelines.

## **E. Require each individual practitioner who first joins the industry in Hong Kong to complete two CPT hours on ethics within 12 months**

91. For individual practitioners who are new to Hong Kong (excluding temporary licensees) and as a one-off requirement, we propose<sup>32</sup> that they should complete at least two CPT hours on topics relating to ethics within the first 12 months after they have obtained their licences.
92. For the avoidance of doubt, these CPT hours on ethics can be counted towards the annual requirement of 10 CPT hours for LR and Rel or 12 CPT hours for RO and EO as described in paragraph 90 above. However, this cannot be counted towards the CPT requirements for conditional exemption of recognised industry qualifications and local regulatory framework paper requirements.

*Question 15:*

*Do you agree with the proposed requirements concerning CPT on ethics and compliance? Please provide reasons to support your view.*

## **F. Other enhancements to the CPT Guidelines**

93. Apart from the above proposals, we will take the opportunity to update the list of topics relevant for CPT purposes. We will also make consequential amendments to the CPT Guidelines.

- a) Update the list of topics relevant for CPT purposes

A list of topics relevant for CPT purposes for individuals at the LR and Rel level is set out in paragraph 7.1 of the 2003 version of the CPT Guidelines. It is proposed<sup>33</sup> to update the list to allow for topics relating to Fintech, cybersecurity and information technology.

- b) Make consequential amendments

Consequential amendments to the CPT Guidelines’ structure and layout are proposed in light of the above-mentioned proposed changes. The proposed amendments are set out in Appendix C of this paper.

- c) Apply to the OTC derivative regime

A consultation paper on the new OTC derivative regime was published in December 2017<sup>34</sup> and the conclusions on the competence and CPT requirements under the regime were published in June 2020. Since the industry

<sup>32</sup> Please refer to paragraph 5.4 and 5.5 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.

<sup>33</sup> Please refer to paragraph 7.1 in the revised CPT Guidelines as set out in Appendix C of this consultation paper.

<sup>34</sup> Consultation Paper on (1) the OTC derivative regime for Hong Kong – Proposed refinements to the scope of regulated activities, requirements in relation to OTC derivative risk mitigation, client clearing, record-keeping and licensing matters; and (2) Proposed conduct requirements to address risks posed by group affiliates.

broadly supported the proposal to have the existing CPT requirements cover the new and expanded RAs, we propose that the above-mentioned changes to the CPT regime in this paper will also apply to the new OTC derivative regime when it becomes effective.

## Part IV: Way forward

94. We have consulted many stakeholders such as the AAAC, HKMA and various industry associations. We believe that the proposals set out in this consultation paper strike an appropriate balance between raising the industry's professional standards and mitigating the impact on existing practitioners.
95. The SFC has started an initial dialogue with HKSI, which will administer the proposed new regulatory examination. The SFC also appreciates that the industry as well as third-party CPT providers may need to prepare themselves for the revised competence requirements and make corresponding adjustments to their training programmes and CPT courses.
96. To allow sufficient time for preparation and adjustments, we propose to implement the revised Competence Guidelines and CPT Guidelines at least six months after their publication and in any event no earlier than 31 December 2021.

*Question 16:*

*Do you agree with the proposed timeframe for implementation? Please provide reasons to support your view.*

97. The proposals set out in this paper will be subject to a two-month public consultation period. The SFC welcomes any comments from the public and the industry on the proposals, the indicative drafts of the revised Competence Guidelines attached as **Appendix A** and the revised CPT Guidelines attached as **Appendix C**.
98. Please submit comments to the SFC in writing (as described in the Foreword) no later than 10 February 2021. Taking into account the comments to be received, a consultation conclusion paper will be issued together with the finalised Competence Guidelines and CPT Guidelines.

## Appendix A – Revised Guidelines on Competence



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

### Guidelines on Competence



[date]

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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)<sup>1</sup> 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).

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<sup>1</sup> 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 Rel, 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 power<sup>2</sup> such that all substantial shareholders<sup>3</sup> and those who exercise ultimate control over the corporation can be properly identified
- (b) The presence of an organisational structure<sup>4</sup> 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, LRs, Managers-In-Charge (MICs)<sup>5</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> As defined in Schedule 1 to the SFO.

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

<sup>5</sup> 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 procedures<sup>6</sup>
- (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 review<sup>7</sup>*

- (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

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<sup>6</sup> 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.

<sup>7</sup> 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 manager<sup>8</sup> 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 system to ensure its compliance with the FRR, and for it to commence and maintain its business operations

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<sup>8</sup> 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 jurisdiction<sup>9</sup>
- (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 Rules<sup>10</sup> 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.

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

<sup>10</sup> 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 practitioner<sup>11</sup>.

#### **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.

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<sup>11</sup> 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.

- 4.1.4 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.
- 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 management<sup>12</sup>

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 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 Condition<sup>13</sup> on his or her licence.

(b) Discretionary account management<sup>14</sup>

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 equity<sup>15</sup>

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.

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<sup>12</sup> See the circular "SFC Adopts a Pragmatic Approach to Licensing Fund Managers" (11 June 2007).

<sup>13</sup> 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.

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

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

(d) Financial technology<sup>16</sup>

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.

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 services<sup>17</sup>

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.

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

<sup>17</sup> See the FAQs on "Credit rating agencies".

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 system as well as the competence of all its key personnel.

### **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 not normally accept management experience which is purely of an administrative nature (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 factors<sup>18</sup>.
- 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.

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<sup>18</sup> See the FAQ on "Outside directorships and business interests".



- (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.

## 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	
<b>Academic or professional qualifications</b>	Degree in the designated fields <sup>19</sup> ; other degree (with passes in at least two courses in the designated fields <sup>19</sup> ); or professional qualifications <sup>20</sup>	Other degree (without passes in two courses in the designated fields <sup>19</sup> )	Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent <sup>21</sup>	
<b>Relevant industry experience</b>	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
<b>RIQ<sup>22</sup> or Extra CPT<sup>23</sup></b>	-	Obtained relevant RIQ or completed relevant Extra CPT	Obtained relevant RIQ	Completed relevant Extra CPT
<b>Management experience</b>	2 years	2 years	2 years	
<b>LRP<sup>24</sup></b>	Pass	Pass	Pass	

<sup>19</sup> "Designated fields" refer to accounting, business administration, economics, finance and law.

<sup>20</sup> 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).

<sup>21</sup> The SFC also recognises passes (a) in either English or Chinese as well as in Mathematics in the Hong Kong Certificate of Education Examination (HKCEE) and (b) other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere as equivalent to HKDSE.

<sup>22</sup> See paragraph 4.2.2.

<sup>23</sup> "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.

<sup>24</sup> 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 the date of this version of the Guidelines, 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 <sup>25</sup>	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 <sup>25</sup>	HKSI LE Papers 7 & 14

<sup>25</sup> 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 <sup>26</sup>	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 <sup>26</sup>	HKSI LE Papers 1 & 13

<sup>26</sup> 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	
<b>Academic or professional qualifications</b>	Degree in the designated fields <sup>27</sup> ; other degree (with passes in at least two courses in the designated fields <sup>27</sup> ); or professional qualifications <sup>28</sup>	Other degree (without passes in two courses in the designated fields <sup>27</sup> )		Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent <sup>29</sup>	
<b>Relevant industry experience</b>	—	At least 2 years over past 5 years	—	At least 2 years over past 5 years	—
<b>RIQ<sup>30</sup> or Extra CPT<sup>31</sup></b>	—	—	Obtained relevant RIQ or completed relevant Extra CPT	Completed relevant Extra CPT	Obtained relevant RIQ
<b>LRP<sup>32</sup></b>	Pass	Pass		Pass	

<sup>27</sup> “Designated fields” refer to accounting, business administration, economics, finance and law.

<sup>28</sup> 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).

<sup>29</sup> The SFC also recognises passes in (a) either English or Chinese as well as in Mathematics in the HKCEE and (b) other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere as equivalent to HKDSE.

<sup>30</sup> See paragraph 4.3.2.

<sup>31</sup> “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.

<sup>32</sup> 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 the date of this version of the Guidelines, 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 <sup>33</sup>	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 <sup>33</sup>	HKSI LE Papers 7 & 14

<sup>33</sup> 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 <sup>34</sup> (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

<sup>34</sup> 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 and 4.4.3 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 requirements<sup>35</sup> and in the same role<sup>36</sup> 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 11<sup>37</sup>.

##### 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 requirements<sup>35</sup> but in the same role<sup>36</sup>.

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

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<sup>35</sup> See paragraph 4.2.2 (RO) and paragraph 4.3.2 (LR) for the RIQ requirements for each RA.

<sup>36</sup> Either as RO or as LR.

<sup>37</sup> 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 LRs

###### *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 requirements<sup>38</sup> and in the same role<sup>39</sup> as previously licensed;
- (b) applies for a temporary licence to carry on RAs 1, 2, 4, 5, 6, 10 or 11<sup>40</sup>; or

<sup>38</sup> See paragraph 4.2.3 (RO) and paragraph 4.3.3 (LR) for the LRP requirements for each RA.

<sup>39</sup> Either as RO or as LR.

<sup>40</sup> 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 system 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 following<sup>41</sup>, as applicable:

- (i) confirmation from the sponsoring corporation that it has suitably qualified back office staff (including finance, compliance, and audit staff);

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<sup>41</sup> 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 requirements<sup>42</sup>.

(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 only<sup>43</sup>) or any other licensing conditions as the SFC considers appropriate.

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<sup>42</sup> See paragraph 4.2.3 (RO) and paragraph 4.3.3 (LR) for the LRP requirements for each RA.

<sup>43</sup> 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 investors<sup>44</sup> only<sup>45</sup>

- (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 funds<sup>46</sup>, 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.

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<sup>44</sup> As defined in the SFO and its subsidiary legislation.

<sup>45</sup> 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).

<sup>46</sup> Collective investment schemes not authorised under Part IV of the SFO.

## Conditional exemptions for LRs 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 investors<sup>47</sup>.
- (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.

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<sup>47</sup> As defined in the SFO and its subsidiary legislation.

### *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 requirements<sup>48</sup> and in the same role<sup>49</sup>; or (b) now applies to carry on an RA with different LRP requirements<sup>48</sup> but in the same role<sup>49</sup>, 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.

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<sup>48</sup> See paragraph 4.3.3 (LR) for the LRP requirements for each RA.

<sup>49</sup> 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 requirements<sup>50</sup> and in the same role<sup>51</sup> 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.

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<sup>50</sup> 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.

<sup>51</sup> Either as RO or as LR.

## 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 Rules<sup>52</sup>.

“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 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 Team<sup>53</sup>.

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 6<sup>54</sup> 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 Management<sup>55</sup> to ensure that Principals appointed by the Sponsor meet the criteria required in the Sponsor Guidelines and are duly licensed.

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<sup>52</sup> 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.

<sup>53</sup> “Transaction Team” means the staff appointed by a Sponsor to carry out a listing assignment.

<sup>54</sup> Type 6 regulated activity (advising on corporate finance).

<sup>55</sup> “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-time<sup>56</sup> 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.

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<sup>56</sup> "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 Condition<sup>57</sup> 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 (i) who is eligible to act as a Principal under Option 1 of paragraph 3.2.3 and based in Hong Kong and (ii) 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 experience<sup>58</sup> 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 role<sup>59</sup> in advising a listing applicant as a Sponsor in at least two completed Initial Public Offering (IPO) transactions<sup>60</sup> on the Main Board or GEM Board of SEHK.

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<sup>57</sup>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.

<sup>58</sup> See paragraph 3.2.4.

<sup>59</sup> See paragraph 3.2.6.

<sup>60</sup> 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 transactions<sup>61</sup> 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 experience<sup>62</sup> in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment;
  - (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 Takeovers; and
- (e) any other significant transactions or equity-fund raising exercises not listed above.

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<sup>61</sup> See paragraph 3.2.5.

<sup>62</sup> See paragraph 3.2.4.

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 16<sup>63</sup> not more than three years prior to and not later than six months after the date of their first engagement<sup>64</sup> 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.

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<sup>63</sup> LRs may also choose to take HKSI LE Paper 15 which requires more in-depth knowledge of sponsor work.

<sup>64</sup> "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.

## 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 <sup>65</sup> who is eligible to advise on matters or transactions falling within the ambit of the Codes on Takeovers in a sole capacity<sup>66</sup>.

“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 Management<sup>67</sup> 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.

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

<sup>65</sup> Type 6 regulated activity (advising on corporate finance).

<sup>66</sup> “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.

<sup>67</sup> “Management” includes the board of directors, managing director, chief executive officer, ROs, EOs and other senior management personnel.

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 Team<sup>68</sup> 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 measure 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

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<sup>68</sup> "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"<sup>69</sup>).

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 experience<sup>70</sup> in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment as a TCRO; and

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<sup>69</sup> "Non-sole capacity" means the RO and EO is subject to a 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.

<sup>70</sup> See paragraph 2.2.2.

- (ii) in the five years immediately preceding his or her appointment, has been substantially involved<sup>71</sup> in advising an offeror or an offeree company in at least two completed TC Transactions<sup>72</sup>.

(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 Rules<sup>73</sup>;
- (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.

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:

- (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:

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<sup>71</sup> See paragraph 2.2.4.

<sup>72</sup> See paragraph 2.2.3.

<sup>73</sup> 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.

- (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 engagement<sup>74</sup> 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 the effective date of the TC Adviser Guidelines are exempted from passing HKSI LE Paper 17.
- 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.

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<sup>74</sup> “First engagement” refers to the first time that an individual is engaged in a TC Transaction as a member of a Transaction Team following the effective date of the TC Adviser Guidelines.

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.

## Appendix B – Summary of CPT regimes adopted by different regulators and professional bodies

Name of regulators and professional bodies	Basis of calculation of CPT-hours	Minimum annual CPT-hours requirements	Minimum annual CPT-hours specific on conduct, compliance or regulations
SFC	RA	5 per RA competence group for individual practitioners	Nil
HKMA, HKIB	Individual	10 for retail wealth management practitioners	3 on topics of compliance, code of conduct, professional ethics or risk management
HKMA, TMA	Individual	10 - 20 for treasury management professionals <sup>1</sup>	Nil
MPFA	Individual	10 for subsidiary intermediaries	2 on subjects involving the Mandatory Provident Fund Schemes Ordinance, any codes and guidelines issued by the MPFA and any topics relating to the MPF System, MPF products, and/or compliance with the performance requirements to be met by a subsidiary intermediary
IA <sup>2</sup>	Individual	Currently 10 for insurance intermediaries <sup>3</sup> , which will be increased to 15 in August 2021	Currently nil, and will become 3 on ethics and regulations in August 2021
MAS	Individual	9 for capital markets services representatives 30 for financial adviser representatives	6 on ethics or rules and regulations, or both
FCA	Individual	35 for retail investment advisers	Nil

<sup>1</sup> Associate Treasury Management Professionals are required to undertake a minimum of 10 CPT hours whereas Certified Treasury Management Professionals or above are required to undertake a minimum of 20 CPT hours in each calendar year.

<sup>2</sup> The IA issued a consultation conclusion on the CPD requirements for licensed insurance intermediaries on 31 July 2019. With effect from 1 August 2021, the minimum CPD hours will be increased from 10 to 15 per year and compulsory CPD activities of at least three hours of training related to topics on ethics and regulations will be introduced. This is not applicable to insurance intermediaries engaging in a restricted scope of travel business.

<sup>3</sup> Except for travel insurance intermediaries of which three CPD hours are required.



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

## Guidelines on Continuous Professional Training

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[Date]

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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 LRs 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 electronically<sup>1</sup>.
- 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.

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<sup>1</sup> For example, in their electronic submission made with an annual return 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)<sup>2</sup> 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 LRs and ROs of LCs) or the HKMA (for training undertaken by Rels and EOs of RIs).

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<sup>2</sup> 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 a 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 activity or activities for which he or she is licensed. 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 Takeovers<sup>3</sup> 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.
- 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,

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<sup>3</sup> "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.

- 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 individual, who is first licensed during the year, can be applied pro-rata with reference to the licensed period. For example, if an individual was granted a licence as a representative 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.

- (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 LRs 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 them<sup>4</sup> 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 seminars<sup>5</sup>;
  - (b) distance learning which requires submission of assignments;
  - (c) self-study or online learning courses<sup>6</sup>;
  - (d) industry research;
  - (e) publication of papers;
  - (f) delivery of speeches<sup>5</sup>;
  - (g) giving lectures or teaching<sup>5</sup>;
  - (h) providing comments to industry consultation papers;
  - (i) attending meetings or undertaking activities as members of the SFC's regulatory committees or formal working groups<sup>7</sup>; 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.

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<sup>4</sup> See paragraph 5.3 above for specific requirements.

<sup>5</sup> Both face-to-face and virtual formats are acceptable.

<sup>6</sup> Independent assessments (such as evaluation or test results) and sufficient records are required to demonstrate fulfilment and duration of training.

<sup>7</sup> 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 standards<sup>8</sup>;
  - (b) business conduct and ethical standards<sup>9</sup>;
  - (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) cybersecurity; and
  - (j) 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.

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<sup>8</sup> See paragraph 5.4 above.

<sup>9</sup> See paragraphs 5.4 and 5.5 above.

- 7.6 Repeatedly undertaking the same CPT activity with the same content will not satisfy the requirements.

## **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.