



Hong Kong

January 2021

SFC CONSULTS ON CHANGES TO COMPETENCY REQUIREMENTS FOR LICENSED INTERMEDIARIES AND INDIVIDUALS

The Securities and Futures Commission of Hong Kong (**SFC**) published a Consultation Paper on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners¹ on 11 December 2020 proposing to amend the entry requirements for licence applicants and the ongoing competency standards for individual practitioners. The proposals will apply to responsible officers and licensed representatives of SFC-licensed corporations and to executive officers and relevant individuals of authorised institutions registered by the Hong Kong Monetary Authority (**HKMA**). The deadline for responding to the consultation is 10 February 2021.

The SFC notes in the Consultation Paper the substantial changes in Hong Kong's regulatory landscape and the increase in the number of SFC licensees since its Fit and Proper Guidelines, Guidelines on Competence and Guidelines on Continuous Professional Training were published in March 2003. It also notes that many other local and overseas regulators recently updated their competence standards. The SFC is also seeking to address its concerns about the quality of the work performed by some financial advisers who advise on matters regulated by the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (**Takeovers Code**) in recent years by raising the competence requirements for individuals advising on matters or transactions under the Hong Kong Takeovers Code.

¹ SFC. Consultation Paper on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners. 11 December 2020. Available at: <https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=20CP8>

The proposals involve amendments to the SFC Guidelines on Competence and the SFC Guidelines on Continuous Professional Training which respectively set out the entry and ongoing competence requirements expected of a person engaging in regulated activities.

The key changes under the proposals are to:

- Raise the minimum academic qualification requirements for individual licence applicants and recognise a broader range of academic qualifications;
- Provide applicants with more flexibility for meeting the industry qualification and regulatory examination requirements;
- Exempt temporary licence applicants from obtaining recognised industry qualifications;
- Elaborate on the relevant industry requirements
- Clarify the management experience requirements for Responsible Officers;
- Upgrade the competence requirements for individuals who advise on Hong Kong Takeovers Code matters;
- Set the Continuous Professional Training (**CPT**) requirements for individual practitioners by reference to a specific number of CPT hours annually;

- Require Licensed Representatives and Relevant Individuals to complete 10 CPT hours per calendar year and Responsible Officers and Executive Officers to complete 12 CPT hours per calendar year;
- Require individual practitioners to attend at least five CPT hours on topics directly relevant to the regulated activities in which he or she engages in each calendar year. Those engaging in sponsor work will be required to undertake 2.5 hours of sponsor-related CPT and those engaging in Takeovers Code transactions will be required to take 2.5 hours of Takeovers Code-related CPT in each calendar year;
- Require each individual practitioner to complete no less than two CPT hours on topics relating to ethics or compliance per calendar year; and
- Require each new individual practitioner in Hong Kong (excluding temporary licensees) to complete two CPT hours on ethics within 12 months of becoming licensed as a one-off requirement.

The indicative drafts of the revised Guidelines on Competence and the Guidelines on Continuous Professional Training are set out in the Consultation Paper at Appendix A and Appendix C, respectively. The consultation period will close on 10 February 2021.

SFC's Proposals for Entry Competence Requirements

1. Raise the Minimum Academic Qualification Requirements for Individuals and Broaden the Scope of Recognised Academic Qualifications

Current Competence Test for Licensed Representatives and Responsible Officers

There are currently three different options² for satisfying the test of competence for SFC Licensed Representatives and Responsible Officers:

- Option 1 provides for those with a degree in designated fields (i.e. accounting, business administration, economics, finance and law), other degrees with passes

in at least 2 courses in the designated fields or an internationally-recognised professional qualification.

- Option 2 caters for those who have at least passed either English or Chinese and Mathematics in the Hong Kong Certificate of Education Examination (**HKCEE**) or equivalent.
- Option 3 applies to those without any academic qualification (including those who are unable to provide proof of their academic qualifications).

Proposed Changes to Competence Test for Licensed Representatives and Responsible Officers

(i) Increase in Minimum Academic Qualification Requirements

The SFC proposes to raise the minimum academic qualification requirements for an individual licence applicant to the attainment of Level 2 in either English or Chinese and Mathematics in the Hong Kong Diploma of Secondary Education Examination (**HKDSE**) or equivalent. The HKDSE equivalent will include the previous HKCEE and other high school public exams (e.g. university entrance exams) in Hong Kong and overseas.

The SFC also proposes additional requirements for individuals with HKDSE or equivalent academic qualifications. SFC Licensed Representative applicants, will be required to:

- a) have at least two years' relevant industry experience over the past five years and have completed, as a one-off requirement, an additional five CPT hours in each regulated activity that they are applying for, within 6 months preceding the submission of a licence application (**Extra CPT**); or
- b) have obtained the relevant recognised industry qualifications.

SFC Responsible Officer applicants with HKDSE or equivalent academic qualifications will be required to have 3 years' of relevant industry experience over the past six years and to have either: (a) obtained the relevant recognised industry qualifications; or (b) have completed the relevant Extra CPT.

(ii) Recognition of Academic Qualifications of Degree Holders in Other Disciplines

² SFC. Appendix B to the 2003 version of the Competence Guidelines. Available at: <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-competence/Guidelines-on-Competence.pdf>

The SFC proposes to recognise the academic qualifications of degree holders in other disciplines without at least 2 courses in designated fields, if they meet certain conditions.

The additional conditions to be satisfied by SFC Licensed Representative applicants are that they:

- a) have two years' relevant industry experience over the past five years;
- b) have the relevant recognised industry qualifications; or
- c) have completed the relevant Extra CPT.

The additional conditions to be satisfied by SFC Responsible Officer applicants are that they:

- a) have at least three years' relevant industry experience over the past 6 years: and
- b) have either: (1) obtained the relevant the relevant recognised industry qualifications; or (2) completed the relevant Extra CPT.

(iii) Grandfathering Arrangement

The SFC is proposing to grandfather current and ex-licensees who previously qualified under Option 3 but cannot meet the new minimum academic qualification requirements when the revised Guidelines on Competence become effective. The grandfathering arrangement will also extend to situations where these individuals apply for a new licence, the addition of a regulated activity or approval as a SFC Responsible Officer, provided they can meet the other criteria.

2. Introduce a Full Exemption from Obtaining Recognised Industry Qualifications for Temporary SFC Licence Applicants

The SFC Guidelines on Competence grant temporary licence applicants a full exemption from passing the local regulatory framework papers.³ There is however no exemption for temporary licence applicants from the requirement for recognised industry qualifications.

The SFC is proposing to grant individual temporary licence applicants a full exemption from satisfying the recognised

industry qualifications requirements.

3. Refine Applicability of Conditional Exemption from Passing the Hong Kong Regulatory Framework Papers

Current Conditional Exemption: Passing Hong Kong Regulatory Framework Papers

Currently, all individual licence applicants are required to meet the local regulatory framework papers requirement unless an exemption applies. A conditional exemption allows licensed representatives who are currently licensed or have been licensed within the past three years to be exempted from taking the local regulatory framework papers when applying to become a licensed representative for a regulated activity with a different competence requirement by completing an additional five CPT hours in regulatory knowledge in the new regulated activity.⁴

The SFC notes that the local regulatory framework papers required to be passed are the same for licensed representatives for all regulated activities (i.e. Paper 1 of the Licensing Examination for Securities and Futures Intermediaries administered by the Hong Kong Securities and Investment Institute (**HKSI**)), except for Type 3. For licensed representatives who have already passed Paper 1, they will have already met the local regulatory framework paper requirement for licensing for another regulated activity without undertaking additional CPT hours, unless they apply for Type 3 regulated activity.

Proposed Change to Conditional Exemption: Passing Hong Kong Regulatory Framework Papers

It is proposed that the conditional exemption should be amended so that it applies only to SFC licensed representatives who have: (a) never attempted any local regulatory framework paper but are still required to satisfy the local regulatory framework paper requirements of the new regulated activity; or (b) have passed one local regulatory framework paper but are still required to pass another to satisfy the LRP requirements of the new regulated activity (e.g. when applying for a licence for Type 3).

These individuals can complete an additional five CPT hours in regulatory knowledge in the new regulated activity in lieu of passing the local regulatory framework paper for that new regulated activity.

³ SFC. Paragraph (4) of Appendix E to the 2003 version of the Competence Guidelines.

⁴ SFC. Paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines.

4. SFC Relevant Industry Experience Requirements

Existing SFC Relevant Industry Experience Requirement

“Recency” is a key element in assessing an individual’s industry experience. Therefore, only relevant industry experience accumulated within a prescribed period is recognised under the current regime.

Proposed Change to SFC Relevant Industry Experience Requirement

For licensed representative or responsible officer applicants unable to entirely satisfy the recency element of their relevant industry experience, the SFC proposes to take into account their overall career history within the industry on a case-by-case basis, although less weight may be given to the dated experience. If the SFC accepts the relevancy of the dated experience, applicants may be granted licences or approvals which are subject to licensing conditions.

The SFC also reviewed and clarified that the industry experience of individuals who have been accredited to their previous principals only for a short period might not be recognised. It noted that some licence applicants change principals frequently (giving as an example a licence applicant who changed principals six times over three years). The SFC notes that a pattern of changing accreditations over a short period may raise doubts as to whether the licence applicant has genuinely discharged their duties and accumulated sufficient relevant industry experience. The SFC would critically review experience claimed in short periods of accreditation to applicants’ previous principals and applicants would need to provide full details of their roles and responsibilities and the activities in which they actually engaged at their previous principals.

5. Clarify the Management Experience Requirements for SFC Responsible Officers

Existing Management Experience Requirement for Responsible Officers

All responsible officer applicants are required to accumulate at least two years’ of management experience prior to submitting their application for approval as a responsible officer. The current SFC Guidelines on Competence do not clearly prescribe what kind of management experience would be accepted by the SFC. It is possible that the term may

have been misinterpreted by market participants to include management experience accumulated in industries unrelated to regulated activities.

Clarification of SFC’s Management Experience Requirement for Responsible Officers

The SFC proposes to clarify 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. It would include managing a team conducting regulated activities, or an activity that would have been a regulated activity in the absence of an applicable carve-out. For example, experience gained in 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.

6. Competence Requirements for Individuals Advising on Hong Kong Takeovers Code Matters

Current Eligibility Criteria for Advising on Hong Kong Takeovers Code Matters

Responsible Officers and Executive Officers licensed or registered for Type 6 regulated activity (advising on corporate finance) are eligible to advise on matters relating to the Hong Kong Takeovers Code in their sole capacity (i.e. without any restriction on their licence) if they:

- a) have experience in supervising a completed transaction subject to the Hong Kong Takeovers Code;
- b) have been a member of the Hong Kong Takeovers and Mergers Panel (but note there is no current requirement for the minimum period that a member should serve on the Panel); or
- c) have been a member, executive or secondee of the London Takeover Panel.

Proposed Changes to the Eligibility Criteria for Advising on Hong Kong Takeovers Code Matters

It is the SFC's view that the work of some financial advisers working on Hong Kong Takeovers Code transactions has deteriorated. It complains that some financial advisers had inadequate knowledge of the Takeovers Code's requirements or relied excessively on their legal advisers. It notes its expectation that financial advisers should be present and engage in all major discussions including those with the regulators. It therefore proposes to raise the competence requirements for individuals advising on Hong Kong Takeovers Code matters and, since these are not expressly set out in the SFC's codes and guidelines, will include them in the SFC Guidelines on Competence.

Responsible Officers and Executive Officers Advising on Hong Kong Takeovers Code Matters

The SFC is therefore proposing to tighten the eligibility criteria for Type 6 Responsible Officers and Executive Officers who are eligible to advise on matters relating to the Hong Kong Takeovers Code in their sole capacity (i.e. without any restriction on their licence). The proposed new eligibility criteria are that the person must fulfil the requirements of Option 1 or 2 as set out below.

Option 1 requires that the person:

- a) has five years' corporate finance experience in respect of companies listed on the Hong Kong Stock Exchange; and
- b) was substantially involved in advising an offeror or an offeree company in two completed takeover transactions in the past five years.

Option 2 requires that the person has been a member of the Hong Kong Takeovers and Mergers Panel for at least two years within the preceding five years.

The existing eligibility requirement for a member of the London Takeover Panel would be removed under the proposals as the SFC no longer views such membership as direct relevant experience. Nevertheless, the SFC will still consider a person's substantive experience in overseas jurisdictions with a similar takeovers regime to Hong Kong in considering whether a Type 6 Responsible Officer or Executive Officer is eligible to advise on Hong Kong Takeovers Code matters provided that the relevant person in advising a client on a Takeovers Code transaction acts together with another Responsible Officer or Executive Officer who is not subject to any condition in relation to advising on the transaction.

"Substantial" involvement under Option 1 requires that throughout the Takeovers Code transaction, the individual assumed a lead role in the supervision and execution of the transaction (e.g. by leading and supervising due diligence and making key decisions relating to work carried out by the transaction team. A list of the matters that will be considered in determining whether an individual has met this requirement are set out at paragraph 2.2.4 of the proposed "Additional competence requirements for corporations and individuals that undertake activities in connection with matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs" (as set out as Appendix B to the Revised Guidelines on Competence included at Appendix A to the Consultation Paper).

Licensed Representatives and Relevant Individuals Advising on Hong Kong Takeovers Code Matters

Currently, there are no additional eligibility criteria for Licensed Representatives and Relevant Individuals who work on Hong Kong Takeovers Code matters, provided they work under the supervision of qualified Responsible Officers or Executive Officers.

The SFC is proposing that Licensed Representatives and Relevant Individuals who intend to work on Hong Kong Takeovers Code transactions should be required to take and pass an examination which specifically focuses on the Hong Kong Takeovers Code, in addition to the examination requirement applicable to all Licensed Representatives and Relevant Individuals.

A one-off grandfathering arrangement for the requirement of an additional examination is proposed for all existing Licensed Representatives and Relevant Individuals licensed or registered for Type 6 regulated activity who have engaged in at least one completed takeover transaction throughout the duration of that transaction within the three years immediately preceding the effective date of the enhanced competence requirements. These individuals will be exempt from the additional examination requirement.

Responsibility of Licensed Corporation/ Registered Institution

Type 6 Licensed Corporations and Registered Institutions will be responsible for ensuring that their staff engaging in Takeovers Code Transactions have met or are exempt from the requirement to have passed an additional examination. They will also be required to keep records to show that staff have passed the required examination.

7. Other Changes to the Guidelines on Competence

The SFC is also proposing to update the Guidelines on Competence by consolidating published materials, codifying established practices and providing additional guidance and removing outdated information.

It notes that the competence requirements for corporations are high-level. The proposed revisions will highlight some key elements for assessing a corporation's fitness and properness, such as its business, corporate governance, internal controls, operational review, risk management and compliance and the combined competence of its senior management and other staff members. Further guidance is included for corporations managing authorised funds.

Other changes include:

- a) Replacing the list of overseas recognised industry qualifications with a general statement;
- b) Refining the recognised industry qualification exemption under paragraph (3) of Appendix D and the local regulatory framework paper exemption under paragraph (9) of Appendix E to the 2003 version of the Guidelines on Competence to cater for individuals who carry on Type 9 regulated activity (asset management) for managing discretionary accounts only;
- c) Clarify the applicability of the local regulatory framework paper exemption under paragraph (6) of Appendix E to the 2003 version of the Guidelines on Competence;
- d) Incorporate the local regulatory framework paper exemption under the Pragmatic Approach (under the SFC Circular "SFC Adopts a Pragmatic Approach to Licensing Fund Managers" of 11 June 2017);
- e) Clarify that other industry experience for individuals applying to carry on Type 9 regulated activity is recognised;
- f) Make consequential amendments to other parts of the Guidelines on Competence to reflect changes to the education system and regulatory landscape; and
- g) Proposed changes to cover the new and expanded regulated activities for the OTC derivative licensing regime when it takes effect.

The Additional Fit and Proper Guidelines for Corporations and Authorised Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (the **Sponsor Guidelines**) would be moved from the Fit and Proper Guidelines to the revised Guidelines on Competence as a new Appendix. The SFC will also delete obsolete paragraphs and consolidate some existing FAQs into the new Appendix.

SFC's Proposed Amendments to the Guidelines on Continuous Professional Training

1. Determination Basis of CPT Obligation by Specifying the Number of CPT Hours Required Annually

Existing CPT Requirements

An individual practitioner must undertake a minimum of five CPT hours per calendar year for each regulated activity he or she engages in, except for Type 7 regulated activity.⁵

Currently, a competence approach is adopted under which regulated activities are categorised into six "RA competence groups" (i.e. groups of regulated activities having the same competence requirements under the 2003 version of the Guidelines on Competence). An individual licensed to engage in more than one regulated activity under the same RA competence group is only required to take five CPT hours per calendar year.

The 6 RA competence groups		
1 – dealing in securities	2 – dealing in futures contracts	3 – leveraged foreign exchange trading
4 – advising on securities	5 – advising on futures contracts	
8 – securities margin financing		

⁵ SFC. Paragraph 4 of the 2003 version of the CPT Guidelines. Available at: <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-continuous-professional-training/Guidelines-on-Continuous-Professional-Training.pdf>

The 6 RA competence groups		
6 – advising on corporate finance	9 – asset management	10 – providing credit rating services

Proposed Changes to CPT Requirements

The SFC proposes to adopt a “per individual” basis in determining the CPT obligation. Each individual practitioner will be required to complete a fixed number of CPT hours per calendar year, regardless of the number of regulated activities they are licensed for.

2. Minimum CPT Requirement Per Calendar Year

The SFC is proposing that:

- Licensed Representatives and Relevant Individuals should undertake 10 CPT hours per calendar year; and
- Responsible Officers and Executive Officers should undertake two additional CPT hours on topics relating to regulatory compliance in addition to the 10 CPT hours for all licensed individuals (i.e. a minimum requirement of 12 CPT hours in total).

3. Minimum CPT Requirement on Topics Directly Relevant to the Regulated Activity

Existing CPT Requirements

Under the Sponsor Guidelines⁶, 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 (i.e. 2.5 hours) the individuals are required to undertake annually for Type 6 regulated activity.

Proposed Change to CPT Requirements

The Consultation Paper proposes that:

- a) Each individual practitioner should attend at least five CPT hours on topics directly relevant to the regulated activities for which he or she is licensed.

⁶ SFC. Paragraph 3.2 of the Sponsor Guidelines which came into force on 1 January 2007 as Appendix I of the Fit and Proper Guidelines. Available at: <https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/fit-and-proper-guidelines/Fit-and-Proper-Guidelines.pdf>

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/she spends in each area;

- b) Persons who engage in transactions related to the Hong Kong Takeovers Code should attend at least 2.5 CPT hours on topics that are relevant.
- c) Persons who engage in Type 6 regulated activity should attend at least 2.5 hours on sponsor-related CPT.

The above topic-based CPT requirements will count towards the total minimum CPT hours required (i.e. the 10 CPT hours for Licensed Representatives and Relevant Individuals, and 12 CPT hours for Responsible Officers and Executive Officers) per calendar year.

4. Minimum CPT Requirement for Ethics or Compliance Topics

The Consultation Paper is proposing that individual practitioners should complete no less than two CPT hours on topics relating to ethics or compliance each calendar year. 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 Responsible Officers and Executive Officers.

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. 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.

The SFC is further proposing to impose a one-off requirement on each new individual practitioner in Hong Kong (excluding temporary licensees) to complete at least two CPT hours on topics relating to ethics within 12 months after they obtain their licences.

5. Update the List of Topics Relevant for CPT Purposes

A list of topics relevant for CPT purposes for individuals at the Licensed Representative and Relevant Individual level is set out in the current CPT Guidelines.⁷

⁷ SFC. Paragraph 7.1 of the 2003 version of the CPT Guidelines.

The SFC is proposing to update the list to include topics relating to Fintech, cybersecurity and information technology. The updated CPT regime will also apply to the new OTC derivative regime when it takes effect.

Implementation Timeframe for the Proposed Enhancements

To allow sufficient time for preparation and adjustments, the SFC proposes to implement the revised Guidelines on Competence and Guidelines on Continuous Professional Training at least six months after their publication and in any event no earlier than 31 December 2021.

CHARLTONS

**Boutique Transactional Law Firm of the Year 2020
Asian Legal Business Awards**

This newsletter is for information purposes only.

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

Hong Kong Office
Dominion Centre
12th Floor
43-59 Queen's Road East
Hong Kong
Tel: + (852) 2905 7888
Fax: + (852) 2854 9596

www.charltonslaw.com