Charltons - Hong Kong Law Newsletter - 13 September 2006

[online version](http://www.charltonslaw.com/update-on-new-sponsor-requirements/)

# Update on New Sponsor Requirements to Take Effect on January 1, 2007

The Securities and Futures Commission (**SFC**) published two circulars on September 5, 2006 in relation to the Guidelines for Sponsors and Compliance Advisers (**Sponsor Guidelines**), which form part of the Fit and Proper Guidelines and will come into effect from January 1, 2007. The Sponsor Guidelines set out new eligibility criteria and ongoing obligations for corporate advisory firms wishing to act as sponsors and compliance advisers.

A summary of the requirements of the new regime is set out in our May newsletter, which can be viewed by clicking [here](/newsletters/hklaw/en/2006/35/nl-hklaw-20060512-35.html).

## The First Circular

The first circular, 'Circular to intermediaries licensed or registered for Type 6 regulated activity', sets out the steps which intermediaries are required to take. The term "intermediaries" includes both corporations licensed and authorised institutions registered by the SFC to advise on corporate finance.

Under the Sponsor Guidelines, only corporate advisory firms meeting the new eligibility criteria will be allowed to act as sponsors after January 1, 2007. Firms that do not satisfy the new criteria will be imposed with a licensing condition restricting them from undertaking sponsor work: this will also prevent them from acting as compliance advisers. The onus is on intermediaries and their management to demonstrate that their firm satisfies the eligibility criteria set out in the Sponsor Guidelines.

### Existing Intermediaries that DO NOT INTEND to act as sponsors after January 1, 2007

Existing intermediaries that **do not** intend to act as sponsors or compliance advisers after January 1, 2007 must inform the SFC accordingly by returning the reply slip attached to the circular on or before **October 6, 2006**. A "no sponsor work" licensing condition will be imposed on these intermediaries prohibiting them from acting as sponsors or undertaking sponsor work with effect from January 1, 2007. They will not be subject to the higher minimum paid-up capital requirement of HK$10 million which will apply to licensed corporations acting as sponsors.

### Existing Intermediaries that DO INTEND to act as sponsors after January 1, 2007

Existing intermediaries that **do** intend to act or continue to act as sponsors must make a written submission to the SFC **as soon as practicable** demonstrating that they will meet the new eligibility criteria. The SFC has published on its website the submission forms[[1]](#footnote-27) for intermediaries which intend to act as sponsors and/or compliance advisers after January 1, 2007.

The SFC will then assess intermediaries' eligibility to act as sponsors, taking into account the criteria set out in the Sponsor Guidelines as well as their general fitness and properness as a corporate finance advisory firm under the Fit and Proper Guidelines.

The submission form requires applicant intermediaries to provide:

* their contact details;
* details of their experience of completed IPOs on either the Main Board or GEM of the Hong Kong Stock Exchange;
* details of appointed Principals: for each Principal Supplement 10s (Experience of a Principal) and Supplement 9 (Licence Record) must be completed;
* confirmation that effective internal systems and controls as required by section 1.5 of the Sponsor Guidelines are in place and the date these were last reviewed;
* their organisational structure showing reporting lines and the responsibilities of all staff undertaking sponsor work;
* confirmation that they have paid-up share capital of at least HK$10 million; and
* details of experience of acting as a compliance adviser.

In the case of registered institutions, a copy of the submission forms must also be sent to the Hong Kong Monetary Authority at the time of submission to the SFC.

## The Second Circular

The second circular entitled 'Securities and Futures (Financial Resources) (Amendment) Rules 2006 for Sponsors' relates to the requirement of the Sponsor Guidelines that intermediaries intending to act as sponsors must have paid-up share capital of at least HK$10 million. Amendments to the Securities and Futures (Financial Resources) Rules, which will impose the same minimum paid-up share capital requirement, will come into effect on August 1, 2007.

All corporations licensed for Type 6 regulated activity will be required to meet the new HK$10 million paid-up share capital requirement unless they are subject to the "no sponsor work" licensing condition. Firms not intending to conduct sponsor work after January 1, 2007 must inform the SFC by October 6, 2006 in order to qualify for the lower paid-up share capital requirement.

The two circulars, the Sponsor Guidelines, submission forms and a set of frequently asked questions in connection with the Sponsor Guidelines can be downloaded from the SFC website at [http://www.sfc.hk](http://www.sfc.hk/web/EN/index.html).

The purpose of this note is to provide a summary only of recent regulatory developments in Hong Kong. It does not constitute legal advice and specific advice should be sought in any particular situation.

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1. Sponsor submission forms – Form 1(s) and Supplements 9 and 10(s) can be downloaded from the SFC website ([http://www.sfc.hk](http://www.sfc.hk/web/EN/index.html)) under "Licensing Related Matters" of the Intermediaries, Licensing and Investment Products section. [↑](#footnote-ref-27)