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# SFC Publishes FAQ On The New Sponsor Regime

On 8 October 2013, the Securities and Futures Commission (**SFC**) published [Frequently Asked Questions](http://www.sfc.hk/web/EN/faqs/intermediaries/licensing/other-topical-issues/sponsor-regime.html) (the **FAQ**s) ([see archive](FAQ.pdf)) on the new regime on the regulation of sponsors under the SFC’s new paragraph 17 (**Paragraph 17**) of the Code of Conduct for Persons Licensed by or Registered with the SFC (the **Code of Conduct**) which came into effect on 1 October 2013 (together with the complementary rule changes published by The Stock Exchange of Hong Kong Limited (the **Exchange**), the **New Sponsor Regime**).

The FAQs include clarifications on various licensing issues, including with regard to sponsor principals and examinations, and on the requirement under Paragraph 17 of the Code of Conduct for sponsors to provide team structure charts to the SFC.

Previously, we published a [newsletter](/newsletters/hklaw/en/2013/198/nl-hklaw-20130813-198.html) on the Exchange’s rule changes to complement new Paragraph 17 of the Code of Conduct, a [newsletter](/newsletters/hklaw/en/2013/199/nl-hklaw-20130813-199.html) on [Frequently Asked Questions Series 24](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_24.pdf) ([see archive](FAQ_24.pdf)) published by the Exchange concerning its rule changes to complement new Paragraph 17 of the Code of Conduct and a [newsletter](/newsletters/hklaw/en/2013/208/nl-hklaw-20130930-208.html) summarising some key aspects of the New Sponsor Regime as well as the publication of the Hong Kong Sponsor Due Diligence Guidelines by Hong Kong sponsors.

This newsletter provides a summary of the FAQs.

## Relevant Requirements

### Additional Fit and Proper Guidelines for Corporations and Authorised Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (the Sponsor Guidelines)

#### (A) Expanded eligibility criteria for Principals

According to paragraph 1.3 of the revised Sponsor Guidelines which came into effect on 1 October 2013, a **Principal** means an individual that meets the criteria stipulated under the Sponsor Guidelines who is appointed by a sponsor to act as a Principal; in respect of a listing assignment, a Principal means an individual appointed as a responsible officer or an executive officer by a sponsor to supervise the staff appointed by a sponsor to carry out a listing assignment (the **Transaction Team**).

The New Sponsor Regime now recognises the experience gained by individuals in certain overseas jurisdictions with comparable regulatory standards to Hong Kong for the purpose of satisfying the eligibility criteria for Principals.

Under paragraph 1.4.1 of the new Sponsor Guidelines, an individual who wishes to be qualified as a Principal must be a responsible officer of the licensed corporation to which he is accredited or an executive officer of the registered institution that has appointed him and must demonstrate that he has fulfilled one of the following eligibility criteria:

##### Option 1

1. has acquired a minimum of five years of corporate finance experience in respect of companies listed on the Main Board and/or Growth Enterprise Market (GEM Board) of the Exchange preceding the appointment as a Principal; and
2. in the five years immediately preceding his appointment, has played a substantial role in advising a listing applicant as a sponsor in at least two completed initial public offering (IPO) transactions on the Main Board and/or GEM Board of the Exchange.

##### Option 2

1. is highly experienced in the area of due diligence as a result of leading IPO transactions in Australia, the UK, or the USA;
2. is highly experienced in the area of corporate finance in respect of companies listed in Australia, the UK, or the USA;
3. has completed a refresher course or special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the six months preceding the appointment by a sponsor as a Principal; and
4. is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.

##### Option 3

1. has participated actively and substantially in due diligence work in at least four completed IPO transactions in Hong Kong within the five years preceding the appointment as a Principal;
2. has acquired a minimum of five years of corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the Exchange preceding the appointment as a Principal;
3. has passed a special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the six months preceding the appointment by a sponsor as a Principal; and
4. is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.

#### (B) Eligibility criteria for a Type 6 licensed representative or relevant individual engaged in sponsor work and new regulatory examination

Paragraph 1.4A.1 of the new Sponsor Guidelines provides that Type 6 licensed representatives or relevant individuals intending to engage in IPO sponsor work are required to have passed the relevant examination (**Examination**) for Type 6 licensed representative or relevant individual engaging in sponsor work not more than 3 years prior to and not later than 6 months after the date of their first engagement in such work.

#### (C) Exemptions

The following individuals are exempt from passing the Examination under the grandfathering provisions of the Sponsor Guidelines:

1. individuals who have engaged in sponsor work as a Type 6 licensed representative or relevant individual within the 3 years preceding the effective date of paragraph 1.4A of the Sponsor Guidelines in at least 1 completed IPO transaction (paragraph 1.4A.2 of the Sponsor Guidelines); and
2. individuals who are approved as Principals (paragraph 1.4A.3 of the Sponsor Guidelines).

Further, paragraph 1.4A.4 of the Sponsor Guidelines provides that individuals who pass the Examination or are exempt from taking the Examination are not be required to take the Examination again unless the relevant individual ceases to be licensed or registered for Type 6 regulated activity for more than 3 years.

#### (D) Sponsors to have sufficient number of Principals

Paragraph 1.3.1 of the Sponsor Guidelines requires a sponsor to have (i) at least two Principals who have satisfied the eligibility criteria under paragraph 1.4.1 of the Sponsor Guidelines and; (ii) at least one of the Principals who has satisfied the eligibility criteria under Option 1 of paragraph 1.4.1 at all times. There must be sufficient Principals engaged in a full time capacity in order to discharge their role in supervising the Transaction Team.

### Paragraph 17 of the Code of Conduct

Paragraph 17.11(f) of the Code of Conduct provides that, upon completion of a listing transaction, a sponsor should submit to the SFC, within 2 weeks after the first day of dealings, its team structure chart in respect of that listing transaction countersigned by a Principal who supervised the transaction. The chart should show the reporting line of each of the licensed or registered staff within the team together with their respective names, business titles and responsibilities.

## The FAQs

### Eligibility to act as sponsor (or compliance adviser)

Only Type 6 intermediaries that (i) meet the eligibility requirements set out in the Sponsor Guidelines and; (ii) remain fit and proper as licensees or registered will be eligible to act as sponsors or compliance advisers. The FAQs clarify that in order to act as a compliance adviser, a firm must be eligible under its licence or registration to act as a sponsor. Provisions in the Sponsor Guidelines that are applicable to individuals engaging in sponsor work are equally applicable to individuals who engage in compliance adviser activities.

A newly established firm with no track record can apply to act as a sponsor by applying for a Type 6 licence and filing a submission to the SFC to demonstrate that it is able to meet the eligibility criteria under the Sponsor Guidelines. The SFC will also consider more generally the firm’s fitness and properness as a corporate finance advisory firm under the Fit and Proper Guidelines. However, intermediaries currently licensed or registered for Type 6 regulated activity that are subject to a licensing condition restricting them from providing advice in respect of the Listing Rules or corporations that have been granted temporary licences or have applied for temporary licences will not be eligible to act as sponsors.

The FAQs emphasise that regardless of who signs the relevant forms, declarations and listing application submitted to the Exchange on behalf of the sponsor, the sponsor’s Management is ultimately responsible for the work carried out by the sponsor and for the supervision of the sponsor work. Such responsibilities cannot be delegated.

Intermediaries are required to notify the SFC immediately of any change in the information contained in the submissions made to the SFC.

### Sponsor Principals

The FAQs clarify that the term “principal” referred to in the SFC’s Licensing Information Booklet and in various licensing application forms means the corporation to which an individual licensed by, or registered with, the SFC is accredited. This meaning of “principal” differs from the term “Principal” used in the Sponsor Guidelines, which means a responsible officer or an executive officer appointed by the sponsor to be in charge of the supervision of the Transaction Team.

With respect to the requirement under paragraph 1.3.1 of the Sponsor Guidelines that a sponsor must have at least two Principals at all times, one of whom must be eligible to act as a Principal pursuant to Option 1 of the Sponsor Guidelines, the FAQs clarify that:

1. such requirement applies even when the sponsor has no sponsor mandates;
2. Principals should be engaged by the sponsor for the purpose of conducting sponsor-related work on a full-time basis (as opposed to simply engaged on a full-time basis on any work);
3. a sponsor who ceases to meet the eligibility criteria to act as a sponsor (e.g., it has only one Principal or does not have a Principal eligible to act as a Principal pursuant to Option 1) must not accept new sponsor or compliance adviser work. The SFC may, after considering the facts and circumstances of the case, impose a licensing condition on such sponsor restricting it from carrying out sponsor work; and
4. the SFC will not accept the appointment of individuals qualified to act as Principal under Option 2 or Option 3 until at least one individual who is qualified under Option 1 and who is based in Hong Kong has been appointed to act as a Principal by the sponsor.

The appointment by a sponsor of a responsible officer who is subject to the non-sole condition solely because he/she is domiciled overseas as Principal is permitted provided that the sponsor has at least one other Principal who is eligible to act as a Principal under Option 1, who is based in Hong Kong and whose licence is not subject to the non-sole condition or any other condition restricting him/her from advising on, or engaging in, sponsor work.

Pursuant to new paragraph 17.11(c)(ii) of the Code of Conduct, a sponsor should appoint at least one Principal to act as the supervisor of the Transaction Team in respect of each listing transaction and therefore, each of the joint sponsors working on a particular listing transaction must have its own designated Principal to supervise the listing transaction.

Under paragraph 1.3.4 of the Sponsor Guidelines, a sponsor is required to notify the SFC in writing in respect of any new appointment or cessation of its Principals within seven business days after such changes. Supplement 10(s) must also be submitted in respect of any newly appointed Principal.

### Eligibility to act as Principal

In relation to an individual’s eligibility to act as a Principal, the SFC in its FAQs clarifies that:

1. the term “completed IPO transaction” in the Sponsor Guidelines means an IPO transaction in which an issuer has successfully been listed on the Exchange. With regard to an individual’s eligibility to act as a Principal, acting as a sponsor for an IPO which went through an Exchange Listing Committee hearing or obtained an in-principle approval from the Listing Committee but subsequently failed to list on the Exchange will not be regarded as relevant IPO experience;
2. the 5 years’ corporate finance experience requirement in Option 1 must be obtained over a continuous 5-year period;
3. a responsible officer or executive officer will not be regarded as qualified to act as a Principal if his/her licence or registration is subject to any condition concerning his/her competence to advise on, or engage in, sponsor work;
4. an individual who 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 again that he/she has fulfilled the eligibility criteria concerning IPO transactions in the five years immediately preceding his/her new appointment as a Principal, provided that such appointment is made within three years after his/her cessation to act as a Principal and he/she is seeking to be qualified as a Principal under the same Option as he/she was previously appointed;
5. where an individual who formerly qualified as a Principal under Option 2 seeks to become a Principal under Option 1 he/she will still be required to demonstrate that he/she satisfies the eligibility criteria of Option 1;
6. an individual who played less than a substantial role, but participated actively and substantially in due diligence work, in at least four completed IPO transaction in Hong Kong within the preceding five years may seek to be appointed as a Principal under Option 3;
7. where the firm to which an individual has been accredited acted as a listing agent of real estate investment trusts (**REIT**s), an individual’s experience in the listing of REITs will be regarded as relevant IPO experience. Where an individual’s firm acted only as a financial adviser in the listing of REITs, the individual’s experience will only be regarded as relevant corporate finance experience; and
8. itinerant professionals will not be eligible to act as Principals.

In relation to the eligibility requirement under Option 1 that a Principal must have played a “substantial role” in at least 2 completed IPO transactions, a person who has played less than a leading supervisory role in an IPO transaction is generally not considered to have played a substantial role. Sponsors may not attribute the experience of all the appointees of the firm to the same transaction when attempting to meet the eligibility requirements as Principals.

In relation to the evidence and supporting documents required for the purpose of demonstrating an individual’s eligibility to act as a Principal, the SFC explains that:

1. it expects that the documentation submitted would, in all the circumstances, lead the sponsor to reasonably conclude that the proposed Principal has the relevant required experience under Option 1, 2 or 3 of the Sponsor Guidelines. Sponsors are expected to perform their own due diligence in verifying the information provided by the proposed Principal;
2. in respect of Option 2, the SFC does not consider it necessary to dictate the number or recency of IPOs completed in Australia, the UK or the USA in which an individual gained experience in the area of due diligence. If an individual is from another group and the sponsor cannot satisfy itself that the individual meets the criteria under Option 2, the sponsor should not appoint the individual as a Principal; and
3. where an individual has completed an IPO with another sponsor, the team structure chart submitted to the SFC may be utilised in assessing whether a proposed Principal has satisfied the eligibility criteria and sponsors are expected to cooperate by providing team structure charts to each other for the purpose of facilitating such assessment.

In exceptional circumstances, the SFC may exercise its discretion to grant a dispensation from certain requirements regarding eligibility of Principals if such dispensation will not prejudice the overall protection of investors’ interests. The SFC may take into account, amongst others, the firm’s business nature and model, supporting expertise and resources, compliance track record and systems, and the comparability of the overseas experience acquired by the Principal.

### Examination

The FAQs clarify that, unless otherwise exempted, an individual who engages in Type 6 regulated activity in respect of a listing assignment will generally be required to pass the Examination. Activities such as underwriting, distribution, or marketing of securities of the listing applicant are non-Type 6 activities and individuals only engaged in such non-Type 6 activities are not required to pass the Examination.

The Examination is organised by the Hong Kong Securities and Investment Institute (**HKSI**) and there are two relevant examinations:

1. Licensing Examination Paper 15 (Sponsor Examination for Principals) designed for individuals who seek to become a Principal; or
2. Licensing Examination Paper 16 (Sponsor Examination for representatives), which requires less in-depth knowledge of sponsor work, is designed for individuals intending to engage in Type 6 regulated activity and with particular intention of engaging in listing assignment.

Individuals seeking to be qualified as a Principal under Option 2 or Option 3 must pass Paper 15 within 6 months preceding their appointment as a Principal. Individuals to be qualified under Option 2 may alternatively take a refresher course developed by the HKSI.

Since a firm must be eligible to act as a sponsor in order to be a compliance adviser pursuant to section II of the Sponsor Guidelines, individuals engaging in compliance adviser work are also required to pass the Examination.

Under paragraph 1.4A.1 of the Sponsor Guidelines, “first engagement” refers to the first time that an individual is engaged as a member of a Transaction Team in Type 6 activities following the commencement of the New Sponsor Regime on 1 October 2013. Under the New Sponsor Regime, the date of filing of Form A1 is not relevant in determining the date of first engagement. Accordingly, (i) the first engagement for an existing individual who is licensed or registered for Type 6 activity and who is already engaged in sponsor work (regardless of whether the IPO has been put on hold) will be 1 October 2013; and (ii) the first engagement for an individual who was not licensed or registered for Type 6 regulated activity before 1 October 2013, or an individual who was licensed or registered for Type 6 regulated activity, but who was not engaged in any sponsor work on 1 October 2013 will be the date on which the individual first became engaged in sponsor work after 1 October 2013.

The SFC makes it clear that it will not grant an extension of time to individuals who fail to pass the Examination within 6 months after the date on which they were first engaged in sponsor work and such individuals are prohibited from engaging in any sponsor work until they have passed the Examination.

### Examination exemptions

Pursuant to paragraph 1.4A.5 of the Sponsor Guidelines, a sponsor firm must ensure that its staff engaging in sponsor work satisfy, or are exempt from the requirements in relation to the Examination.

As mentioned above, to be eligible for an exemption from the Examination under paragraph 1.4A.2 of the Sponsor Guidelines, an individual must have engaged in at least 1 completed IPO transaction within the 3 years preceding the effective date of the New Sponsor Regime (i.e. 1 October 2013). The SFC expects a sponsor to have relevant and appropriate evidence or documentation that led the sponsor to reasonably conclude that the individual participated in an IPO transaction and is therefore eligible for the exemption. Sponsors are required to perform their own due diligence in assessing whether the individual has satisfied the competence and experience requirements. If the individual was previously accredited to another sponsor, he/she should obtain a copy of the team structure chart that the other sponsor submitted to the SFC with regard to that IPO.

The SFC clarifies that a completed IPO transaction for the purpose of qualifying for an exemption from taking the Examination means that the IPO was duly listed on the Exchange and whether an IPO has ever been put on hold is irrelevant. An IPO can be counted as long as the individual was engaged as a Type 6 licensed representative or relevant individual in the IPO and the IPO was completed within a 3 year period before 1 October 2013. Further, a completed “listing by introduction” is counted as a completed IPO for the purpose of qualifying for an exemption from taking the relevant examination.

Itinerant professionals and temporary licensed representatives for Type 6 regulated activity are not eligible for an exemption from taking the Examination.

### Team Structure Chart

Under paragraph 17.11(f) of the Code of Conduct, sponsors are required to submit the team structure chart in respect of a listing within 2 weeks after the first day of dealings of an IPO to the Licensing Department of the SFC. Notwithstanding that the SFC Consultation Conclusions state that the new Paragraph 17 of the Code of Conduct applies to listing applications submitted on or after 1 October 2013, FAQ 50 provides that the obligation to submit a team structure chart applies to IPOs completed after 1 October. Therefore, sponsors to listing applications submitted prior to 1 October 2013, but completed on or after 1 October 2013 must comply with this requirement. Sponsors are also encouraged to submit team structure charts for IPOs completed in the five years before 1 October 2013.

The requirement to submit a team structure chart applies to all sponsors regardless of their size. Transaction Team members named in the Form A1 filed with the Exchange (except for parties that do not belong to the sponsor, such as legal advisers, auditors and valuers) are the sponsor’s representatives who participated in the relevant IPO transaction and should be included in the team structure chart.

The SFC expects a sponsor to provide a copy of a team structure chart submitted to the SFC for IPOs completed on or after 1 October 2013 to each of the individuals named therein. Where a team structure chart is submitted to the SFC for an IPO completed within five years before 1 October 2013, sponsors should provide copies of team structure charts to members of the teams when requested to do so.

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