

LEGAL UPDATE

Proposed Enhancements to Competency Framework for Intermediaries and Market Practitioners

The Securities and Futures Commission (SFC) has launched a consultation on “Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners” on 11 December 2020 (**Consultation Paper**). The consultation is open for comments for two months. Public comments are required to be submitted to SFC no later than **10 February 2021**.

The following key enhancements are proposed:

- (a) the minimum academic qualification requirements for individuals would be raised and a broader range of academic qualifications would be recognized;
- (b) applicants would have more flexibility for meeting the industry qualification and regulatory examination requirements;
- (c) competence requirements for individuals who are to advise on matters regulated by the Codes on Takeovers would be upgraded to address SFC’s concerns about the quality of work performed by some financial advisers on matters regulated by the Codes on Takeovers; and
- (d) continuous professional training (CPT) requirements for individual practitioners would also be enhanced.

Background

The SFC notes there have been substantial changes in its regulatory landscape since 2003 when the Guidelines on Competence (**Competence Guidelines**) and the Guidelines on Continuous Professional Training (**CPT Guidelines**) were issued, which outline the entry and ongoing competence requirements expected of a person engaging in regulated activity (**RA**). Separately, many other local and overseas regulators have recently updated their competence standards. In view of the development of the financial markets which have been evolving and becoming more sophisticated, the SFC therefore sees it essential to raise the industry’s professional standards bringing its competency framework up-to-date and thus would like to revise and modernize the competence requirements. Details of the proposed changes to the Competence Guidelines and CPT Guidelines are set out in Appendix A and Appendix C of the Consultation Paper respectively.

The SFC also raised concern about the quality of work performed by some financial advisers on matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs (**Codes on Takeovers**), where certain financial advisers were unaware of or did not understand the requirements under the Codes on Takeovers or relied excessively on their legal advisers in relevant transactions and failed to discharge their own duties and roles. To address this, SFC has proposed to upgrade and set out expressly the competence requirements for individuals who are to advise on matters or transactions falling within the scope of the Codes on Takeovers.

The proposed enhancements would be the first time the competency requirements are revised since 2003 and the proposed changes are fairly extensive.

Who will the proposals apply to?

The proposed amendments set out in the Consultation Paper will apply to corporation which applies for a licence or is licensed as a licensed corporation (LC), authorized financial institution which applied for a registration or registered as a registered institution (**RI**); individual who applies for a licence or is licensed as a representative (**LR**), an LR who applies for an approval or is approved as a responsible

officer (**RO**), a relevant individual whose name is to be or is entered in the register maintained by the Hong Kong Monetary Authority (**REIs**) and a person who applies to the Hong Kong Monetary Authority (HKMA) for consent or who has been given consent to act as an executive officer of an RI (**EO**).

What do the proposals cover?

Proposed enhancements to the entry competence requirements were set out under the proposed revised Competence Guidelines include:

1. **Minimum academic qualification requirements.** To raise the minimum academic qualification requirements for individuals;
2. **Recognised academic qualifications.** To broaden the scope of recognised academic qualifications;
3. **RIQs full exemption for temporary licence applicants.** To introduce a full exemption from obtaining recognised industry qualifications (**RIQs**) for temporary licence applicants;
4. **LRP conditional exemption.** 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;
5. **Relevant industry experience.** To elaborate on the relevant industry experience requirements;
6. **Management Experience for RO.** To clarify and confine the management experience requirements for ROs to be relevant to the particular regulated activity, and only refer to hands on experience in supervising and managing essential regulated functions or projects in a business setting and;
7. **Financial advisers under Codes on Takeovers – eligibility for ROs or EOs for type 6 regulated activity eligible to advise on matters relating to the Codes on Takeovers (TCROs), LRs and REIs.** To enhance the competence requirements for individuals who intend to advise on matters in relation to the Codes on Takeovers.

Proposed enhancements to the ongoing competence requirements were set out under the proposed revised CPT Guidelines include:

1. **Calculation basis of CPT requirements.** 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;
2. **Minimum CPT requirements for individual practitioners.** To specify 10 CPT hours per calendar year as the minimum requirement for LRs and REIs, and 12 CPT hours for ROs and EOs;
3. **Minimum CPT requirements for individual practitioners – on topics directly relevant to their RAs.** 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;
4. **Minimum CPT requirements for individual practitioners – on compliance and ethics.** To require each individual practitioner to complete no less than two CPT hours on topics relating to ethics or compliance per calendar year; 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.

Overview of the proposed enhanced competency framework

This table summarises more details on the key enhancements to the proposed revised Competence Guidelines:

	Existing Requirements	Proposed Enhancements
1. Minimum academic qualification requirements	<ul style="list-style-type: none"> At least passed either English or Chinese in addition to Mathematics in the Hong Kong Certificate of Education Examination (HKCEE) or equivalent 	<ul style="list-style-type: none"> Raising 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
2. Recognised academic qualifications	<ul style="list-style-type: none"> <u>Option 1</u>: Degree in designated fields i.e. accounting, business administration, economics, finance and law; other degrees with passes in at least two courses in the designated fields <u>Option 2</u>: pass in either English or Chinese in addition to Mathematics in HKCEE or equivalent <u>Option 3</u>: no academic qualifications 	<ul style="list-style-type: none"> Accepting the academic qualifications of degree holders in all <u>other</u> disciplines as an additional means to satisfy the competence requirements as the SFC is aware that knowledge in other disciplines (i.e. besides accounting, business administration, economics, finance and law) may also be relevant or important to the development of the market Broadening the scope of recognised academic qualifications to over degree in other disciplines but to ensure that 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 have sufficient industry knowledge, it is proposed 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

		<p>submission of a licence application.</p> <ul style="list-style-type: none"> • Providing grandfathering arrangements for 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.
3. RIQs full exemption – for temporary licence applicants	<ul style="list-style-type: none"> • Under the existing test of competence, individual licence applicants, including temporary licence applicants, may be required to obtain RIQs 	<ul style="list-style-type: none"> • Fully exempt temporary licence applicants from obtaining RIQs considering that the individual temporary licence applicants will only carry on RA in Hong Kong for a short period of time and are already exempted from satisfying the LRP requirements
4. LRP Conditional exemption	<ul style="list-style-type: none"> • LRs who are currently licensed or have been licensed within the past 3 years are allowed to be exempted from taking LRP when applying to become an LR for a RA with a different competence requirement by completing an additional 5 CPT hours in regulatory knowledge in the new RA 	<ul style="list-style-type: none"> • Taking the additional 5 CPT hours should not be required for those who have already passed HKSI LE Paper 1 (which is the same LPR for LRs of all RAs) as they have already satisfied the LRP requirements for the new RA unless they apply for Type 3 RA • Refining the applicability of the LRP conditional exemption such that it applies to LRs who have (a) never attempted an LRP (HKSI LE Paper 1) before and now applies to carry on an RA with the same LRP requirements and in the same role (i.e. either as RO or as LR); or (b) now applies to carry on an RA with different LRP requirements but in the same role (i.e. either as RO or as LR); • Completing an additional 5 CPT hours in LRP in the relevant RA (which is a one-off requirement is required) in lieu of passing the LRP for the new RA
5. Relevant industry experience	<ul style="list-style-type: none"> • Recency is key element for SFC in assessing an individual's industry experience and therefore only relevant industry experience accumulated within a prescribed period is recognized under the current regime 	<ul style="list-style-type: none"> • Taking into account the applicants' overall career history within the industry on a case-by-case basis for applicants who are unable to entirely satisfy the recency element of their relevant industry experience. SFC may be granting licences or

	<ul style="list-style-type: none"> For example RO applicants under option 1 must have at least 3 years of relevant industry experience over the past 6 years. Experience outside of the past 6 years might therefore not be counted 	<p>approvals subject to licensing conditions if it accepts the relevancy of the dated experience.</p> <ul style="list-style-type: none"> Critically reviewing experience of applicants claimed through accrediting to previous principals for only short period of time, to ensure licensees will have the necessary industry experience to carry on or supervise RAs and to address doubt on whether the applicant has genuinely discharged his or her duties and has accumulated sufficient relevant industry experience during the brief periods of employment
<p>6. Management experience for RO</p>	<ul style="list-style-type: none"> Two years of management experience is among one of the 4 basic elements which an individual must fulfil in order to qualify as a RO but the current Competency Guidelines do not clearly prescribe what kind of management experience would be accepted by the SFC There is market misconception that management experience accumulated in any industry, including those unrelated to the RAs would be accepted by the SFC 	<ul style="list-style-type: none"> Confining management experience to only 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
<p>7. Financial advisers under Codes on Takeovers –</p> <p>(i) Eligibility for TCROs</p>	<ul style="list-style-type: none"> 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) if he or she: <ul style="list-style-type: none"> (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. <p><i>(NB: there are currently no requirements for the minimum period that a member should serve on the Hong Kong Takeovers and Mergers Panel)</i></p>	<ul style="list-style-type: none"> Tightening the eligibility for TCRO so that he or she must have fulfilled one of the following eligibility criteria: <p><u>Option A</u></p> <ul style="list-style-type: none"> (i) Has acquired a minimum of five years of corporate finance experience in respect of companies listed on the Main Board or GEM Board of SEHK preceding his or her appointment as a TCRO; and (ii) in the five years immediately preceding his or her appointment, has been substantially involved in advising an offeror or an offeree company in at least two completed TC Transactions

	<ul style="list-style-type: none"> 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 	<p><i>(NB: the number of completed TC Transactions has been increased from one to two and must be sufficiently recent i.e. within the last five years)</i></p> <p><u>Option B</u></p> <p>(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</p> <p><i>(NB: a minimum period that members should serve on the Panel for at least two years and that the experience acquired by members of the Panel should be recent (i.e. within the last five years) were specified in order for that experience to be considered as relevant experience)</i></p>
<p>8. Financial advisers under Codes on Takeovers –</p> <p>(i) Eligibility for LRs and REIs</p>	<ul style="list-style-type: none"> There are no additional eligibility criteria as long as they work under the supervision of qualified ROs or Eos of their accredited intermediaries licensed or registered to advise on matters in relation to the Codes on Takeovers 	<ul style="list-style-type: none"> Tightening the eligibility for LRs and REIs so that LRs and REIs intending to undertake TC Transaction work should be required to take and pass an examination which specifically focuses on the Codes on Takeovers

This table summarises more details on the key proposed enhancements to the revised CPT Guidelines:

	Existing Requirements	Proposed Enhancements
<p>1. Calculation basis of CPT requirements</p>	<ul style="list-style-type: none"> An individual practitioner must undertake a minimum of 5 CPT hours per calendar year for each RA he or she engages in (except for Type 7 RA). RAs are categorized into six “RA competence groups” as indicated in the table below. On such basis, 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. 	<ul style="list-style-type: none"> Adopting a “per individual basis” (instead of the RA competence groups” basis) in determining the CPT obligation so that an individual will no longer need to assess the relevance of the CPT topics to an individual RA competence group. Each individual practitioner will be required to complete a fixed number of CPT hours per calendar year, regardless of the number of the RAs he or she is licensed for

	RA	RIQ	
	1, 4 & 8	HKSI LE Papers 7 & 8	
	2, 5 & 11 ³³	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 ³³	HKSI LE Papers 7 & 14	
2. Minimum CPT requirements for individual practitioners	<ul style="list-style-type: none"> SFC has been comparing its existing CPT regime with other local and overseas regulatory and professional bodies and identified a few areas for improvement 		<ul style="list-style-type: none"> Specifying 10 CPT hours per calendar year as the minimum requirement for LRs and REIs and 2 additional CPT hours on topics relating to regulatory compliance required for ROs and EOs, in addition to the 10 CPT hours, in view of the higher level of responsibility and accountability placed on ROs and Eos
3. Minimum CPT requirements for individual practitioners - on topics directly relevant to their RAs	<ul style="list-style-type: none"> Under paragraph 3.2 of the Sponsor Guidelines which came into effect in Jan 2007, individuals who engage in sponsor work are required to attend training on relevant topics, which 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. A similar rationale should apply to other RAs to ensure that the CPT training and activities undertaken by individuals focus on the particular RAs they engage in 		<ul style="list-style-type: none"> Specifying at least 5 CPT hours per calendar year (out of the 10 CPT hours for LRs and REIs, and 12 CPT hours for ROs and EOs) as the minimum requirement for individual practitioner to attend on topics directly relevant to the RAs for which he or she is licensed
4. Minimum CPT requirements for individual practitioners – on compliance and ethics	<ul style="list-style-type: none"> Currently it is not mandatory for individuals to engage in CPT activities relating to ethics or compliance 		<ul style="list-style-type: none"> Specifying that no less than 2 CPT hours per calendar year should be completed on topics relating to ethics or compliance (these 2 CPT hours would count towards the 10 CPT hours required for LRs and REIs, but not to the 2 additional CPT hours on topics relating to regulatory compliance required of ROs and EOs) Specifying the timeframe for completing the 2 CPT hours on ethics to be within 12 months after obtaining the licence for individual practitioner who first joins the industry in Hong Kong

Proposed implementation timeframe

The SFC has proposed to implement the revised Competence Guidelines and CPT Guidelines at least six months after their publication and in any event no later than 31 December 2021.

Given the proposed implementation timeline, industry practitioners should consider whether to make any consultation response and/or to prepare themselves for the revised competence requirements, and CPT training providers may wish to make corresponding adjustments to their training programs and CPT courses to be ready for the proposed enhancements once they are in force.

Access the SFC's website here for the full consultation paper:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/intermediaries-licensing/openFile?refNo=20CP8>

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual contact at our firm.

Vivien Teu Managing Partner Tel: (852) 2969 5316 vivien.teu@vteu.co	Christina Suen Counsel Tel: (852) 2969 5362 Christina.suen@vteu.co
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