

Guidelines on Competence

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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)¹ 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 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 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).

¹ 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.



2.6 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.
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



Corporate governance

- (a) The presence of a shareholding structure clearly setting out its chain of ownership and voting power² such that all substantial shareholders³ and those who exercise ultimate control over the corporation can be properly identified
- (b) The presence of an organisational structure⁴ 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 c
- (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



- (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 procedures⁶
- (d) Reporting systems ensuring that robust information is produced for risk management and decision-making purposes
- (e) A



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 manager⁸ 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 systems to ensure its compliance with the FRR, and for it to commence and maintain its business operations

⁸ 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.





4.1.5



If the RA carried on by a corporation is based on the utilisation of
previous direct
experience in the relevant technology itself may be e



Management experience

4.1.12 Management experience refers to the hands-on experience in supervising and managing essential regulated functions or projects in a



4.2



4.2.1.3 For an individual who does not



- 4.2.2.2 The SFC will accept industry qualifications listed in Appendix C of the 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 website as and when changes occur.

RA	LRP
1, 4 & 8 2, 5 & 11 ²⁷	HKSI LE Papers 1 & 2

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	
Academic or professional qualifications	Degree ²⁸ in the designated fields ²⁹ ; other degree ²⁸ (with passes in at least two courses in the designated fields ²⁹); or professional qualifications ³⁰	Other degree (without passes in two courses in the designated fields ²⁹)		Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent ³¹	
Relevant industry experience		At least 2 years over past 5 years		At least 2 years over past 5 years	
RIQ³² or Extra CPT³³			Obtained relevant RIQ or completed relevant Extra CPT	Completed relevant Extra CPT	Obtained relevant RIQ
LRP³⁴	Pass	Pass		Pass	

²⁸ If an applicant who is a degree holder has attained a post-graduate diploma or certificate which is (a) issued by a university or other similar tertiary institution in Hong Kong or elsewhere; or (b) recognised as Level 6 or above under the Qualifications Framework in Hong Kong, then the post-graduate diploma or certificate will also be taken into account in assessing the applicant. For further details about the Qualifications Framework in Hong Kong, please visit www.hkqf.gov.hk.

²⁹ accounting, business administration, economics, finance and law.

³⁰ 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).

³¹ The SFC also recognises (a) the attainment of grade E or above in either English or Chinese as well as in Mathematics in the HKCEE and (b) passes in the same subjects in other high school public examinations (such as university entry examinations) in Hong Kong or elsewhere as equivalent to HKDSE.

³² See paragraph 4.3.2.

³³



- (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 requirements³⁷ and in the same role³⁸ 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 11³⁹.

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 requirements³⁷ but in the same role³⁸.

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



(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 *nBTF3 11.04 Tf1 0 0 1 228.05 480.79 Tm0 g0 0



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 investors⁴⁶ only⁴⁷

- (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 funds⁴⁸, 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.



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 n



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 requirements⁵⁰ and in the same role⁵¹; or (b) now applies to carry on an RA with different LRP requirements⁵⁰ but in the same role⁵¹, 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.

⁵⁰ See paragraph 4.3.3 (LR) for the LRP requirements for each RA.

⁵¹ Either as RO or as LR.



4.4.4 Re-entrant exemption

4.4.4.1



Appendix A

Additional competence requirements for corporations and individuals engaging in sponsor and compliance adviser work (Sponsor Guidelines)

Introduction



The Management should ensure that there are sufficient Principals engaged in a full-time⁵⁸ 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 designat



- 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





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.



Appendix B

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:

“Corporation” means a corporation that is permitted under its licence to advise on matters or transactions falling within the ambit of the Codes on Takeovers and Mergers and Share Buy-backs.

“Individual” means an RO or EO for RA 6⁶⁸ who is eligible to advise on matters or transactions falling within the ambit of the Codes on Takeovers in a sole capacity⁶⁹.

“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 Management⁷⁰ 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 be experienced in the relevant area of the TC Transaction.



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 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 Team⁷¹ 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 measures 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



- (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 such that he or she shall act together with another TCRO when advising clients on matters or transactions regulated by the Codes on Takeovers



- 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~~



- 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