



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

Guidelines on Competence

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1. Introduction

2. Application and Interpretation

- 2.1 These Guidelines are applicable to the following persons carrying on any regulated activities under Part V of the SFO:
- (a) an individual who applies for licence or is licensed as a representative;
 - (b) a licensed representative who applies for approval or is approved as a responsible officer;
 - (c) a corporation which applies for licence or is licensed as a licensed corporation; and
 - (d) an authorized financial institution which applies for registration or is registered as a registered institution.
- 2.2 An individual whose name is to be or is entered in the register maintained by the Hong Kong Monetary Authority (“HKMA”) under section 20 of the Banking Ordinance (“relevant individual”) has to meet the same competence requirements as a representative. It is the responsibility of a registered institution to ensure that a relevant individual meets the same competence requirements as those applicable to a representative before submission of his name to the HKMA for the purpose of entering in this register.
- 2.3 Separately, an individual who applies to the HKMA for consent or who has been given consent to act as an executive officer of a registered institution under section 71C of the Banking Ordinance has to meet the same competence requirements as those applicable to a responsible officer. The HKMA will take this into account when considering whether to grant consent.
- 2.4 For the purposes of these Guidelines, corporations and authorized financial institutions are collectively known as “corporations”. “Corporate licensees” refer to licensed corporations or registered institutions. “Individual licensees” refer to individuals licensed under the SFO including responsible officers.
- 2.5 Throughout these Guidelines, unless otherwise stated, where references to “responsible officer” are made, the term covers executive officer of a registered institution; similarly, the term “representative” covers relevant individual (other than an executive officer) of a registered institution.

- 2.6 For paragraphs 5.1 to 7.6, and Appendices D and E of these Guidelines, unless otherwise stated, regarding the SFC

3. Fitness and Properness

- 3.1 The SFC is obliged to refuse to grant a licence or registration if the applicant fails to satisfy the SFC that he is fit and proper. Similarly, the HKMA is obliged to refuse to grant consent to an individual to be an executive officer of a registered institution unless the individual satisfies the HKMA that he is fit and proper. Besides, it shall be a statutory condition of registration for every registered institution that its relevant individuals are fit and proper. Under section 129 of the SFO, the matters that shall be considered in assessing a person's fitness and properness include his:
- (a) financial status or solvency;
 - (b) educational or other qualifications or experience having regard to the nature of the functions to be performed;
 - (c) ability to carry on the regulated activity competently, honestly and fairly; and
 - (d) reputation, character, reliability and financial integrity.
- 3.2 The Fit and Proper Guidelines set out the SFC's general expectation 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 competently.
- 3.3 The Fit and Proper Guidelines provides that the SFC may consider taking disciplinary action if the corporate licensees and individual licensees are no longer considered fit and proper. The SFC and HKMA may also consider taking disciplinary action if the relevant individuals or executive officers of registered institutions are no longer fit and proper. In this regard, corporate licensees, individual licensees as well as the relevant individuals and executive officers of registered institutions are expected to remain competent in order to remain licensed, registered, or as relevant individuals or executive officers as the case may be.
- 3.4 The expectations set out in these Guidelines are not exhaustive.

5. Assessment of Competence for Individual

5.1 An individual applying to carry on a regulated activity has to demonstrate competence and satisfy the SFC that he:

- (a) has a good understanding of the regulatory framework, including the laws, regulations and associated codes governing his intended industry sectors;
- (b) is aware of the ethical¹ standards expected of an individual licensee; and
- (c) is knowledgeable of the financial products that he deals in or advises upon and the markets in which he provides services.

5.2 Where an individual applies to carry on a Type 6 (advising on corporate finance) regulated activity and intends to give advice on matters falling within the ambit of the Codes on Takeovers and Mergers and Share Repurchases (“Codes”), he should satisfy the SFC that he has sufficient experience in this area. For this purpose, he has to complete the **“Questionnaire on respondent’s experience relating to the Codes”**. If the SFC is not satisfied that he is competent to acting on his own to advise on Codes-related matters, certain conditions may be imposed on his licence limiting the scope of his work.

5.3 *Test of Competence for Responsible Officer*

In assessing the competence of an individual applying to be a responsible officer, the SFC will ensure that he possesses appropriate ability, skills, knowledge and experience to properly manage and supervise the corporation’s proposed activities. To be a responsible officer, he has to fulfil four basic elements as follows:

¹ One reference point is the “Ethics in Practice – A Practical Guide for Financial Practitioners” published jointly with the Independent Commission Against Corruption, SAR in October 1999.

Test of Competence for Responsible Officer

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- ² Internationally recognized professional qualifications in Finance include Chartered Financial Analyst (“CFA”), Certified International Investment Analyst (“CIIA®”) and Certified Financial Planner (“CFP”).
- ³ All high school public examinations (such as university entry examinations) will be recognized as

5.4 *Test of Competence for Representative*

In assessing the competence of an individual applying to be a representative, the SFC will expect him to have a basic understanding of the market in which he is to work as well as the laws and regulatory requirements applicable to the industry. There are three basic elements for an individual seeking to be a licensed representative:

<i>Test of Competence for Representative</i>
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- 5.5 A summary of the options for satisfying the competence requirements for responsible officer and representative is attached as Appendix B.
- 5.6 An individual licensee, or a relevant individual (whether an executive officer or not) of a registered institution, should comply with the CPT requirements as set out in the Guidelines on CPT to demonstrate that he has taken steps to remain competent.

6. Points to Note

- 6.1 The recognized industry qualifications and local regulatory framework papers mentioned above should be relevant to the activities to be performed by the individual. Lists of recognized industry qualifications and local regulatory framework papers versus each type of regulated activity are set out in Appendix C which will be updated as and when changes occur.
- 6.2 For an individual who satisfies the competence requirements other than the element of regulatory knowledge, the SFC may grant approval on condition that he must pass a recognized local regulatory framework paper within 6 months of obtaining the approval. This will allow the applicant an

7. Exemptions from the Recognized Industry Qualification and Local Regulatory Framework Paper Requirements

- 7.1 The recognized industry qualification requirement is to assess whether the individual is sufficiently knowledgeable in the financial products in which he deals or on which he advises.
- 7.2 The local regulatory framework paper requirement is to ensure that the individual has an acceptable understanding of the relevant local laws and regulations with which he must comply when conducting the regulated activities. This is particularly important, in light of the criminal nature of liability that will be imposed on intermediaries for violations under the SFO.
- 7.3 The objective of requiring individuals engaging in regulated activities to meet the recognized industry qualification and pass the regulatory exam is to ensure that they are adequately equipped to carry out the regulated activities and are aware of their legal responsibilities as well as potential liabilities.
- 7.4 The SFC may, at its sole discretion, consider granting exemption for an individual from obtaining a recognized industry qualification and/or passing a local regulatory framework paper if he can demonstrate that he possesses qualifications comparable to those prescribed above. The SFC will review and consider all relevant facts and circumstances presented in a pragmatic manner in granting the exemptions. Criteria under which exemptions may be considered are given at Appendices D and E. These criteria may be changed and updated where necessary.
- 7.5 In granting the exemptions, the SFC may impose other conditions on and/or request for the provision of undertakings to the SFC from the individuals and/or sponsoring corporation as and when appropriate. Conditional exemptions so granted are specific to the facts and circumstances set forth in the application and in the context of the individual's engagement with the sponsoring corporation, and therefore, ***non-transferable***. The individual may be required to obtain a relevant industry qualification or pass a recognized local regulatory framework paper if there are changes to his role or to the sponsoring corporation.
- 7.6 A breach of any of the conditions imposed or undertakings provided shall be deemed to be a violation of the Fit and Proper Guidelines and subject the individual and/or the sponsoring corporation to possible disciplinary action.

8. Role of the Academic and Accreditation Advisory Committee

- 8.1 The Academic and Accreditation Advisory Committee (“AAAC”) of the SFC is comprised of representatives from the SFC, the industry and academic institutions. It will consider and approve industry based qualifications and local regulatory framework papers for meeting the competence requirements.
- 8.2 The AAAC will from time to time amend the list of approved qualifications that it has endorsed for meeting the competence requirements, and the list will be updated on the SFC website at www.hksfc.org.hk as and when changes occur.

Examples of matters that will be considered by the SFC in assessing the competence of a corporation applying to carry on a regulated activity

I. Organizational Structure

- (a) Corporate Governance
 - the presence of an organizational structure with clear lines of responsibility and authority
 - a Board of Directors and senior management, including Committees of the Board, composed of individuals with an appropriate range of skills and experience to understand and run the corporation's proposed activities
 - a Board of Directors and senior management, including Committees of the Board, organized in a way that enables it to address and control the activities of the corporation
- (b) Business Profile and Risk Profile
 - information on the proposed lines of business
 - information on target market clientele, products and service type
 - extent of system automation
 - analysis of risks inherent to the key lines of business such as market risk, credit risk, liquidity risk and operational risk
- (c) Risk Management and Control Strategy
 - the presence of a clear risk management strategy with reference to the proposed lines of business
 - the setting of proper exposure limits for each key line of business
 - the anticipated risks being supported by the available capital (typically this will be demonstrated by a projected Financial Resources Rules calculation, if applicable)
 - the timing of review of established policies (e.g. subject to regular review or just with respect to changes in business and markets...etc)
 - risk management and control strategy for branch operations

Appendix A (cont'd)

Appendix A (cont'd)

- (g) Internal Control System
 - adequate internal control systems set up in accordance with the relevant codes and guidelines
 - arrangements in place to ensure

Table 1 – Test of Competence for Responsible Officer

Appendix C

Table 1 – Recognized Industry Qualifications and Local Regulatory Framework Papers versus Regulated Activities (Responsible Officer)

RA	Country	Recognized Industry Qualifications	Local Regulatory Framework Papers
1, 4, 8	Hong Kong	- HKSI DPE Papers 1+3 - HKSI LE Papers 7+8	- HKSI DPE Paper 2 - HKSI PPE Paper 1 (+2 for SEHK participant engaging in RA1) - HKSI LE Papers 1*+2
	US	- NASD Series 24 - AIMR Chartered Financial Analyst Designation	
	Australia	- Diploma Courses provided by SIA (in securities)	
	UK	- SFA Registered Persons Exams (in securities)	
	Canada	- Examinations conducted by CSI (in securities)	
	Japan	- JSDA Representative of Public Securities Course	
2, 5	Hong Kong	- HKSI DPE Papers 1+3 - HKSI LE Papers 7+9	- HKSI DPE Paper 2 - HKSI PPE Paper 1 (+3 for HKFE participant engaging in RA2) - HKSI LE Papers 1*+3
	US	- NASD Series 3 - AIMR Chartered Financial Analyst Designation	
	Australia	- Diploma Courses provided by SIA (in derivatives)	
	UK	- SFA Registered Persons Exams (in derivatives)	
	Canada	- Examinations conducted by CSI (in derivatives)	
3	Hong Kong	- VTC Leveraged Foreign Exchange Trader's Responsible Director Examination Paper 2	- VTC Leveraged Foreign Exchange Trader's Responsible Director Examination Paper 1
	US	- AIMR Chartered Financial Analyst Designation	

Appendix C (cont'd)

RA	Country	Recognized Industry Qualifications	Local Regulatory Framework Papers
6	Hong Kong	- HKSI DPE Papers 1+3 - HKSI LE Papers 7+11	- HKSI DPE Paper 2 - HKSI PPE Paper 1 - HKSI LE Papers 1[*]+5
	US	- NASD Series 24 - AIMR Chartered Financial Analyst Designation	
	Australia	- Diploma Courses provided by SIA (in securities)	
	UK	- SFA Registered Persons Exams (in securities)	
	Canada	- Examinations conducted by CSI (in securities)	
	Japan	- JSDA Representative of Public Securities Course	
9	Hong Kong	- HKSI DPE Papers 1+3 - HKSI LE Papers 7+12	- HKSI DPE Paper 2 - HKSI PPE Paper 1 - HKSI LE Papers 1[*]+6
	US	- NASD Series 24 - AIMR Chartered Financial Analyst Designation	
	Australia	- Diploma Courses provided by SIA	
	UK	- SFA Registered Persons Exams	
	Canada	- Examinations conducted by CSI	
	Japan	- JSDA Representative of Public Securities Course	

Note: 1) ^{*} Not required for a licensed representative applying to be a responsible officer.
2) There is no competence requirement for a Type 7 (providing automated trading services) regulated activity.

Appendix C (cont'd)

RA	Country	Recognized Industry Qualifications	Local Regulatory Framework Papers
3	Hong Kong	- VTC Leveraged Foreign Exchange Trader's Responsible Director Examination Paper 2	- VTC Leveraged Foreign Exchange Trader's Responsible Director Examination Paper 1
		- VTC Leveraged Foreign Exchange Trader's Representative Examination Paper 2	- VTC Leveraged Foreign Exchange Trader's Representative Examination Paper 1
	US	- AIMR Chartered Financial Analyst Designation	

Appendix C (cont'd)

Key:

AIMR	The Association for Investment Management and Research
CSI	The Canadian Securities Institute
DPE	HKSI Diploma Programme Examination
FPE	HKSI Foundation Programme Examination

Exemptions from the Recognized Industry Qualification Requirement

I. Full Exemption

An individual may obtain full exemption from the recognized industry qualification requirement if he:

- (1) has been licensed under the SFO within the past 3 years or is a current licensee and now applies to carry on a regulated activity or is to be a relevant individual engaging in a regulated activity with the same competence requirement¹ and in the same role² as previously licensed. An example is for a person who is licensed to carry on a Type 1 (dealing in securities) regulated activity applies to carry on a Type 4 (advising on securities) regulated activity; or
- (2) similar to the above, has been a relevant individual within the past 3 years after the commencement of the SFO or is a current relevant individual of a registered institution and now applies for a licence, or is to be engaged by a registered institution, to carry on a regulated activity with the same competence requirement¹ and in the same role² as previously engaged.

¹ See Appendix C of these Guidelines.

² Responsible officer versus representative.

II. Conditional Exemption

- (6) An individual may obtain conditional exemption from taking the local regulatory framework paper if he can demonstrate **all** of the following:
- (a) Experience. The individual has proven substantial related experience but simply lacks the required level of local regulatory exposure. “Substantial” means having at least:
 - (i) 8 years related experience in recognized markets (with reference to Parts 2 and 3 of Schedule 1 to the SFO); or
 - (ii) 6 years related experience with at least 2 years licensed or being an executive officer or relevant individual of a registered institution in Hong Kong; with some part of it gained in the recent 3 years.
 - (b) Restriction of Permitted Activities.
 - (i) Applicant is either only involved in a limited scope of activities for the sponsoring corporation or only assuming a very senior management level role (e.g.³, Regional Research Head coming to Hong Kong occasionally and is accompanied by other local licensed staff in client meetings, persons providing technical advice to clients on the structuring of corporate finance deals); or
 - (ii) The sponsoring corporation will only be carrying on a limited scope of business activities.
 - (c) Regulatory Support from Other Personnel. There is at least one approved responsible officer at the sponsoring corporation who is licensed in the relevant regulated activity, and would be directly reporting to or otherwise responsible for advising the applicant as well as supervising the daily operations of the regulated activity. This approved responsible officer should be designated by name to the SFC and replaced with someone else equivalently approved if the designated person changes job functions or employers. Instead of notifying the SFC whenever there are changes in the designated persons, the sponsoring corporation should provide an undertaking to the SFC that it has a system to maintain records whereby these designations are kept current to reflect personnel changes so that it can be inspected by the SFC if needed and that if there is no designated person available, the sponsoring corporation and the exempted individual will immediately inform the SFC.

³ The examples set out here are not exhaustive.

Appendix E (cont'd)

- (d) *Internal Control System in Place*. The sponsoring corporation has in place an appropriate risk and regulatory compliance infrastructure (including a comprehensive risk management system, internal audit, compliance staff and procedures).

Conditions to be Imposed

- p The SFC would consider whether it is necessary to impose any conditions on the sponsoring corporation and/or the individual to provide extra regulatory comfort. Example of conditions may include a restriction on the business activities (e.g.

Appendix E (cont'd)

- p The individual must complete an additional 5 CPT hours in

III. Conditional Exemption for Representative Only

- (8) A representative who has been licen

IV. Conditional Exemption for Responsible Officer Only

- (9) A responsible officer who has 5 years related experience over the past 8 years and now applies for approval to

Undertakings to be Provided

- p The individual must complete an additional 5 CPT hours in regulatory knowledge in the relevant regulated activity which is a one-off requirement. These additional CPT hours may be taken within 6 months preceding the application, in which case, the application should be accompanied by documentary evidence. Alternatively, he may take the additional CPT hours within 12 months after the approval is granted, in which case, an undertaking to this effect has to be provided by the sponsoring corporation.