

Changes to the competence and training requirements for personnel of Hong Kong financial intermediaries

In brief

The Securities and Futures Commission (SFC) recently released its Consultation Conclusions ("**Conclusions**") on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners.¹ Changes to the existing Guidelines on Competence ("**Competence Guidelines**") and Guidelines on Continuous Professional Training ("**CPT Guidelines**") (together, the "**Guidelines**") will take effect in January 2022. These changes impact the competence and ongoing training requirements for new and existing Responsible Officers (ROs) and Licensed Representatives (LRs) of Licensed Corporations (LCs), as well as Executive Officers (EOs) and Relevant Individuals (Rels) of Registered Institutions (RIs). There will also be enhanced competence requirements for individuals who advise on matters or transactions falling within the ambit of the Codes on Takeovers and Mergers and Share Buy-backs ("**Takeovers Codes**").

In this issue

Key changes

Implementation timeline

Next steps

Key changes

The existing Competence Guidelines and CPT Guidelines have been in place for more than 18 years. They are being updated by the SFC in view of the changing regulatory landscape, evolving financial markets and the development of new financial products.

Competence requirements

Please see below a summary table comparing the key changes under the Competence Guidelines.

ROs and EOs

Existing	New
Academic/Professional qualifications	
<p>There are 3 options (and Option 3 permits entrants with no minimum academic/industry qualification requirement):</p> <p>Option 1: Any of the following:</p> <ul style="list-style-type: none"> Degree in the designated fields (Accounting, Business Administration, Economics, Finance and Law) Other degree with passes in at least 2 courses in the designated fields Professional qualifications in law, accounting or finance Recognised industry qualifications 	<p>There are 3 options (and there is now a minimum academic requirement under all options):</p> <p>Option A: Any of the following:</p> <ul style="list-style-type: none"> Degree in the designated fields (Accounting, Business Administration, Economics, Finance and Law). If an applicant who is a degree holder has attained a postgraduate diploma or certificate that 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 postgraduate diploma or certificate will also be taken into account

¹ <https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?refNo=20CP8&lang=EN>

Existing	New
<p>Option 2:</p> <ul style="list-style-type: none"> Passes in Chinese/English and Mathematics in the Hong Kong Certificate of Education Examination (HKCEE) or equivalent <p>Option 3:</p> <ul style="list-style-type: none"> If the individual does not hold any of the above qualifications, they can still meet the competence requirements provided that they have attained extra years of relevant industry experience 	<ul style="list-style-type: none"> Other degree with passes in at least 2 courses in the designated fields Professional qualifications in law, accounting or finance <p>Option B:</p> <ul style="list-style-type: none"> Degree in fields other than the designated fields (without passes in 2 courses in the designated fields) <p>Option C: Any of the following:</p> <ul style="list-style-type: none"> Level 2 in Chinese/English and Mathematics in the Diploma of Secondary Education (HKDSE) Grade E or above in Chinese/English and Mathematics in the HKCEE Passes in Chinese/English and Mathematics in other high school public examinations in Hong Kong or elsewhere equivalent to HKDSE
Relevant industry experience	
<p>Years of experience required varies depending on the academic qualifications of the individual (see above).</p> <p>Option 1: At least 3 years over the past 6 years</p> <p>Option 2: At least 5 years over the past 8 years</p> <p>Option 3: At least 8 years over the past 11 years</p>	<p>Years of experience required varies depending on the academic qualifications of the individual (see above), as well as, in the case of Option C, the individual's relevant recognised industry qualification (RIQ), or completion of continuous professional training within the 6 months preceding the application submission ("Extra CPT").</p> <p>Option A: At least 3 years over the past 6 years</p> <p>Option B: At least 3 years over the past 6 years</p> <p>Option C:</p> <ul style="list-style-type: none"> With relevant RIQ: At least 3 years over the past 6 years With relevant Extra CPT completed: At least 5 years over the past 8 years <p>The SFC has also provided some guidance on the industry experience assessment. First, the SFC applies 'recency' as a key element in its assessment. In assessing 'relevance', the SFC will consider whether the substance of the experience is directly relevant or crucial to the regulated activity proposed to be carried on by the individual and the role that the individual will take. In certain cases, the SFC may also accept experience gained in a nonregulated situation. In assessing 'sufficiency', the SFC may consider the individual's overall career history accumulated within the financial services industry in its totality. The SFC will critically review cases for inconsistencies, e.g., where the individual claims industry experience with any firm that has been dormant for a prolonged period of time or the individual has a pattern of changing accreditations within short intervals of time.</p>
Management experience	
<p>At least 2 years.</p> <p>The existing guidelines do not clearly define how this criteria can be satisfied.</p>	<p>At least 2 years.</p> <p>The revised guidelines contain more detailed explanation and clarification of this criteria. Management experience refers to hands-on experience supervising and managing essential regulated functions or projects in a business setting.</p> <p>Purely administrative functions (e.g., human resources or office administration) will not normally be accepted.</p> <p>Non-exhaustive examples of management experience include:</p> <ul style="list-style-type: none"> Experience as senior management (e.g., Chief Executive, Business Head or Chief Operating Officer) of an LC, RI or a corporation within the financial industry supervising the performance of regulated activities or financial services Experience in supervising an investment team in the performance of an investment function, whether regulated or not

Existing	New
RIQ or Extra CPT	
No mandatory RIQ requirement unless the individual relies on the RIQ to meet the academic/industry qualification criteria under Option 1. Extra CPT is not a criterion under the existing regime.	<p>Option A: Not required</p> <p>Option B: Either obtained relevant RIQ or completed relevant Extra CPT</p> <p>Option C:</p> <ul style="list-style-type: none"> For individuals who have at least 3 years of relevant industry experience over the past 6 years: Obtained relevant RIQ For individuals who have at least 5 years of relevant industry experience over the past 8 years: Completed relevant Extra CPT
Passing local regulatory framework paper	
Pass in the local regulatory exams for the relevant regulated activity	Pass in the local regulatory exams for the relevant regulated activity

LRs and Rels

Existing	New
Academic/Professional qualification	
<p>There are 3 options (and Option 3 permits entrants with no minimum academic/industry qualification requirement):</p> <p>Option 1: Any of the following:</p> <ul style="list-style-type: none"> Degree in the designated fields (Accounting, Business Administration, Economics, Finance and Law) Other degree with passes in at least 2 courses in the designated fields Professional qualifications in law, accounting or finance <p>Option 2:</p> <ul style="list-style-type: none"> Passes in Chinese/English and Mathematics in HKCEE or equivalent <p>Option 3:</p> <ul style="list-style-type: none"> If the individual does not hold any of the above academic qualifications, they can still meet the competence requirements provided that they have acquired either a RIQ and/or satisfy the relevant industry experience requirements. 	<p>There are 3 options (and there is now a minimum academic requirement under all options):</p> <p>Option A: Any of the following:</p> <ul style="list-style-type: none"> Degree in the designated fields (Accounting, Business Administration, Economics, Finance and Law). If an applicant, who is a degree holder has attained a postgraduate diploma or certificate that 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 postgraduate diploma or certificate will also be taken into account. Other degree with passes in at least 2 courses in the designated fields Professional qualifications in law, accounting or finance <p>Option B:</p> <ul style="list-style-type: none"> Degree in fields other than the designated fields (without passes in 2 courses in the designated fields) <p>Option C: Any of the following:</p> <ul style="list-style-type: none"> Level 2 in Chinese/English and Mathematics in the HKDSE Grade E or above in Chinese/English and Mathematics in the HKCEE Passes in Chinese/English and Mathematics in other high school public examinations in Hong Kong or elsewhere equivalent to HKDSE
Relevant industry experience	
<p>Years of experience required varies depending on the academic qualifications of the individual (see above).</p> <p>Option 1: No minimum requirement</p> <p>Option 2:</p> <ul style="list-style-type: none"> Without relevant RIQ: At least 2 years over the past 5 years With relevant RIQ: No minimum requirement <p>Option 3:</p> <ul style="list-style-type: none"> Without relevant RIQ: At least 5 years over the past 8 years With relevant RIQ: At least 2 years over the past 5 years 	<p>Years of experience required varies depending on the academic qualifications of the individual (see above), as well as, in the case of Options B and C, the individual's relevant RIQ or completion of Extra CPT.</p> <p>Option A: No minimum requirement</p> <p>Option B:</p> <ul style="list-style-type: none"> Without relevant RIQ or Extra CPT: At least 2 years over the past 5 years With relevant RIQ or Extra CPT: No minimum requirement

Existing	New
	Option C: <ul style="list-style-type: none"> Without relevant RIQ but with Extra CPT: At least 2 years over the past 5 years With relevant RIQ: No minimum requirement
RIQ or Extra CPT	
<p>Extra CPT is not a criterion under the existing regime. The RIQ requirement varies depending on the academic qualifications and relevant industry experience of the individual.</p> <p>Option 1: Not required</p> <p>Option 2: Relevant RIQ may be obtained in substitution for the required relevant industry experience</p> <p>Option 3: Relevant RIQ will reduce the years of relevant industry experience required</p>	<p>Option A: Not required</p> <p>Option B:</p> <ul style="list-style-type: none"> For individuals who have at least 2 years of relevant industry experience over the past 5 years: No relevant RIQ or Extra CPT required For individuals who have no relevant industry experience: Either obtained a relevant RIQ or completed relevant Extra CPT <p>Option C:</p> <ul style="list-style-type: none"> For individuals who have at least 2 years of relevant industry experience over the past 5 years: Completed relevant Extra CPT For individuals who have no relevant industry experience: Obtained relevant RIQ
Passing local regulatory framework paper	
Pass in the local regulatory exams for the relevant regulated activity	Pass in the local regulatory exams for the relevant regulated activity

Enhanced competence requirements in relation to advising on the Takeovers Codes

ROs and EOs proposing to advise on Takeovers Codes matters in a sole capacity ("TCRO") will be required to fulfil either of the following options.

Option 1:

- At least five continuous years of corporate finance experience immediately preceding the date of application
- Substantially involved in at least two completed Takeovers Codes transactions (involving the issue of an offer document, offeree board circular, whitewash circular, share buy-back offer document or off-market share buy-back circular) within the last five years immediately preceding the TCRO appointment

Option 2:

- Member of the Takeovers and Mergers Panel in Hong Kong for two years within the last five years preceding the TCRO appointment

LRs and Rels intending to undertake Takeovers Codes transactions (TC Transaction) work will be required to take and pass an examination that specifically focuses on the Takeovers Codes (i.e., the Hong Kong Securities Institute (HKSI) LE Paper 17) not more than three years prior to, and not later than six months after the date of their first engagement (i.e., the first time that an individual is engaged in a TC Transaction as a member of a transaction team following 1 January 2022). TCROs are exempted from passing HKSI LE Paper 17. ROs or EOs in a 'non-sole capacity' will not be exempted.

The SFC has separately noted in the Conclusions that they are not introducing any changes to the existing competence requirements for sponsors and their principals as part of this consultation process.

Grandfathering arrangement – How do the above requirements affect existing licensed/formerly licensed personnel?

The SFC will implement a grandfathering arrangement for licensees who have been licensed before 1 January 2022 but will no longer meet the new minimum academic requirements. For an RO/EO applicant, the SFC will consider their application if they have acquired at least eight years of relevant industry experience in the regulated activity concerned over the past 11 years and have met the management experience and local regulatory framework paper ("LRP") requirements. For an LR/Rel applicant, the SFC will consider their application if they have (a) acquired either: (i) at least five years of relevant industry experience in the regulated



activity concerned over the past eight years; or (ii) at least two years of relevant industry experience over the past five years and obtained the relevant RIQ; and (b) met the LRP requirements.

Individuals who have engaged in TC Transaction work as a Type 6 LR/Rel in at least one completed TC Transaction throughout the duration of that transaction within the three years preceding 1 January 2022 are exempt from passing HKSI LE Paper 17.

CPT Guidelines changes

The SFC has also enhanced the continuing professional training (CPT) requirements within the CPT Guidelines for individuals. We summarise the changes as follows:

Existing	New
<ul style="list-style-type: none"> Undertake a minimum of 5 CPT hours per calendar year 'per regulated activity' except Type 7 regulated activity. Regulated activities are classified into competence groups for the purposes of meeting the requirements. Where a particular course is relevant to more than one competence group, CPT may be claimed in respect of all the relevant regulated activities. Whilst there are general requirements, there are no specific requirements on training on 'ethics', 'compliance' and 'regulatory compliance'. 	<ul style="list-style-type: none"> The CPT requirements will be determined 'per individual'. Each LR and Rel will be required to complete a minimum of 10 CPT hours per calendar year, with ROs and EOs to complete two additional CPT hours on 'regulatory compliance'. <p>Out of the 10 CPT hours (for LRs and Rels) and 12 CPT hours (for ROs and EOs), at least 5 CPT hours must be on topics directly relevant to the regulated activities for which an individual is licensed at the time the CPT hours are undertaken. As a general principle, such CPT hours should be allocated to cover the practice areas of the individual in proportion to the time and effort that they spend in each area. In this regard, individuals who engage in sponsor and Takeovers Codes matters should attend training on specific topics that amount to at least 2.5 CPT hours per annum.</p> <p>Within 12 months after an individual first joins the industry in Hong Kong as an LR/Rel/EO/RO, they must undertake 2 CPT hours on 'ethics'. Thereafter they must complete at least 2 CPT hours per calendar year on topics relating to 'ethics' or 'compliance'.</p>

Implementation timeline

The new requirements will take effect in January 2022.

Next steps

The SFC has acknowledged that the changes to the Guidelines are extensive and accordingly, it may publish further guidance in the form of frequently asked questions or provide separate training sessions to facilitate a more complete understanding of the new requirements. Financial intermediaries and industry practitioners subject to the Guidelines on Competence should:

- Continue to monitor developments from the SFC.
- Consider the new or revised requirements and ensure that they are reflected in the human resources guidelines and training policies and procedures.
- Consider the implications on existing and new personnel (including the new examination requirements on Takeovers Codes staff).
- Revisit the training programs to cater for the new CPT requirements (including on 'ethics', 'compliance', 'regulatory compliance' and other topics that are directly relevant to the regulated activities in question) for new joiners and existing staff.

To discuss how our experience can assist you, or if you have any questions on any of the matters above, please do not hesitate to liaise with your usual contact at Baker McKenzie or the lawyers listed in this Alert.



Contact Us



Karen Man

Partner

karen.man@bakermckenzie.com



Grace Fung

Partner

grace.fung@bakermckenzie.com



Aaron Dauber

Registered Foreign Lawyer/

Knowledge Lawyer

aaron.dauber@bakermckenzie.com

© 2021 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

