



Consultation Paper on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners

The Law Society's Submissions

The Securities and Futures Commission (“SFC”) issued a “Consultation Paper on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners” on 11 December 2020 (the “Consultation Paper”). In response thereto, the Law Society provides the following submissions on the questions posed.

Question 1:

Do you agree to raise the minimum academic qualification requirements to the attainment of Level 2 in either English or Chinese as well as in Mathematics in HKDSE¹ or equivalent?

Law Society's response:

For the reasons given in paragraph 24 of the Consultation Paper, we support the SFC's proposal to raise the minimum academic qualification requirements to the attainment of Level 2 in either English or Chinese as well as in Mathematics in HKDSE or equivalent.

Question 2:

Do you agree to broaden the scope of recognised academic qualifications to cover degrees in other disciplines?

Law Society's response:

For the reasons given in paragraph 26 of the Consultation Paper, we support the SFC's proposal to broaden the scope of recognised academic qualifications to cover degrees in other disciplines.

¹ “HKDSE” means Hong Kong Diploma of Secondary Education Examination

Question 3:

Do you have any comments on requiring 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 complete Extra CPT² to ensure they have sufficient industry knowledge?

Law Society's response:

We agree to require 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 complete Extra CPT to ensure they have sufficient industry knowledge.

Question 4:

Do you agree with the proposal to grandfather current and ex-licensees who previously qualified under Option 3³?

Please provide reasons to support your views.

Law Society's response:

We agree with the proposal to grandfather current and ex-licensees who previously qualified under Option 3 in order to mitigate the potential impact on existing licensees.

Question 5:

Do you agree to introduce a full exemption from satisfying the RIQ⁴ requirements for temporary licence applicants?

Please provide reasons to support your view.

Law Society's response:

² "Extra CPT" means that the individual must complete five CPT hours for each regulated activity he or she applies for, which is a one-off requirement. The additional CPT hours should be taken within six months preceding the submission of the application.

³ "Option 3" is one of the eligibility criteria for Sponsor Principles. For further details, please refer to paragraph 3.2.3(c) of Appendix A to the Consultation Paper titled "Additional competence requirements for corporations and individuals engaging in sponsor and compliance adviser work (Sponsor Guidelines)"

⁴ "RIQ" means qualified industry qualifications

We agree to introduce a full exemption from satisfying the RIQ requirements for temporary licence applicants. Since such applicants have to satisfy the SFC, amongst others, that they carry on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on an RA⁵, under an authorization by regulatory body in that place, the temporary licence applicants should already possess industry knowledge in respect of the RAs that they are applying for.

Question 6:

Do you agree to refine the scope of the conditional exemption under paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines as described in paragraph 37 above?

Please provide reasons to support your view.

Law Society's response:

For the reasons given in paragraphs 35 & 36 of the Consultation Paper, we agree to refine the scope of the conditional exemption under paragraph (8) of Appendix E to the 2003 version of the Competence Guidelines as described in paragraph 37 of the Consultation Paper.

Question 7:

Do you agree that on a case-by-case basis we should take into account licence applicants' overall career history within the industry?

Law Society's response:

We agree that on a case-by-case basis the SFC should take into account licence applicants' overall career history within the industry, provided that such approach is strictly limited to situation where the SFC would like to take into account an applicant's dated experience. To do so in other situations would give the SFC unfettered discretion resulting in uncertainty in the application process.

Question 8.

Do you agree that we should critically review experience of applicants claimed through accrediting to previous principals for only a short period of time?

⁵ "RA" means regulated activity

Please provide reasons to support your views.

Law Society's response:

We agree that the SFC should critically review experience of applicants claimed through accrediting to previous principals for only a short period of time, given that there are doubts as to whether such applicants have genuinely discharged their duties and accumulated sufficient relevant industry experience during the brief periods of employment.

Question 9:

Do you agree to confine management experience such that it only refers to 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?

Please provide reasons to support your view.

Law Society's response:

In order to provide more clarity to the industry, we agree to confine management experience such that it only refers to 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.

Question 10:

In respect of the proposed enhancements to the eligibility criteria for ROs⁶ and EOs⁷ who intend to advise on Codes on Takeovers-related matters, do you agree :

- (a) to increase the number of completed TC Transactions⁸ from one to two?*
- (b) that members of the Hong Kong Takeovers and Mergers Panel should serve on the Panel for at least two years in order for that experience to be considered as relevant experience? and*
- (c) that the experience acquired by the ROs, EOs and members of the Hong Kong Takeovers and Mergers Panel should be recent (i.e. within the last five years)?*

⁶ "ROs" means Responsible Officers

⁷ "Eos" means Executive officers

⁸ "completed TC Transactions" means completed transactions subject to the Codes on Takeovers

Law Society’s response:

We agree to (a) and (c).

In relation to (b), if the number of completed Takeover deals is increased to 2 deals with substantial involvement (similar to that of the IPO Sponsor Principal), we suggest that the SFC can consider lowering the years of experience requirement from 5 years to 3 years simultaneously.

There are not many completed Takeover deals in Hong Kong every year, the total number of deals is far lower than that of IPOs. It is practically difficult for a candidate to accumulate 2 completed Takeover deals. To add a 5 year requirement on top of the 2-completed-deal requirement would discourage perspective candidates to specialise in Takeover deals to become Takeover ROs. Also, increasing the completed deal requirement from 1 deal to 2 deals have already ensured that the candidate have better experience in giving advices on Takeover Code.

As a matter of fact, there is a shortage of ROs in the industry who are able advise on Takeover deals in a sole capacity. It is practically difficult for LCs⁹ and RIs to hire professionals, despite attractive salary packages. To lower the years of requirement from 5 to 3 would allow and encourage firms to groom future talents and to consolidate its Takeover deals to one specific team instead of spreading over different teams.

Question 11:

Do you agree with the additional examination requirement for LRs¹⁰ and ReIs¹¹ who intend to undertake TC Transaction work?

Please provide reasons to support your views.

Law Society’s response:

In order to enhance understanding of the requirements under the Codes on Takeovers by financial advisers advising on TC Transactions, we agree with the proposal that LRs and Rels intending to undertake TC Transaction work should be required to take and pass an examination which specifically focuses on the Codes on Takeovers.

⁹ “LC” means licensed corporation

¹⁰ “LR” means an individual who applies for a licence or is licensed as a representative

¹¹ “Rel” means an individual whose name is entered in the register maintained by the Hong Kong Monetary Authority under section 20 of the Banking Ordinance (Cap. 155).

HKSI currently organises its Paper 15 examination only once a month. We wish to suggest that the Takeover Code examination be organised at least once a month, or more frequently. With the high number of IPO deals and Takeover deals to come from issuers from Mainland China, the Belt and Road Region and Greater Bay Area in the coming years, the industry needs more qualified sponsor principals and Takeover Code RO to supervise its engaged deals.

Question 12:

Do you agree with the proposal to change the determination of required number of CPT hours to a “per individual” basis? Please provide reasons to support your view.

Law Society’s response:

For the reasons given in paragraphs 69, 71 and 72 of the Consultation Paper, we agree with the proposal to change the determination of required number of CPT hours to a “per individual” basis.

Question 13:

Do you agree with the proposal concerning minimum requirements for individuals? Please provide reasons to support your view.

Law Society’s response:

We agree with the proposal concerning minimum requirements for individuals as it brings our regime in line with similar regimes administered by other local and overseas regulatory and professional bodies, and that it appropriately balances meeting the need to enhance the benefits of CPT without overburdening the industry.

Question 14:

Do you agree that individual practitioners should attend at least five CPT hours on topics directly relevant to their RAs every year? Please provide reasons to support your view.

Law Society’s response:

We agree that individual practitioners should attend at least five CPT hours on topics directly relevant to their RAs every year as it is crucial for an individual to

undertake CPT activities that are directly relevant to his or her responsibilities in respect of the RAs in which he or she engages.

Question 15:

Do you agree with the proposed requirements concerning CPT on ethics and compliance? Please provide reasons to support your view.

Law Society's response:

We agree with the proposed requirements concerning CPT on ethics and compliance as it brings our regime in line with similar regimes administered by other local and overseas regulatory and professional bodies.

Question 16:

Do you agree with the proposed timeframe for implementation? Please provide reasons to support your view.

Law Society's response:

We agree with the proposed timeframe for implementation as six months after the publication of the revised Competence Guidelines and CPT Guidelines would be sufficient for the industry to make the necessary arrangements to ensure compliance.

**The Law Society of Hong Kong
2 February 2021**