

23 June 2017

## **Circular to clarify competence requirements for existing licensed persons intending to provide asset management services**

This circular aims to provide further guidance to licensed corporations and individuals seeking to be licensed for Type 9 regulated activity (asset management) under the Securities and Futures Ordinance (SFO), in particular on the applicability of certain competence requirements. Under the current licensing regime, licensed corporations and individuals are required to apply for an additional Type 9 licence if the asset management services they propose to conduct are not wholly incidental to the regulated activities for which they are already licensed.

### **Competence requirements for corporations**

In determining whether a corporation is competent to carry on Type 9 regulated activity, the SFC would consider whether it has a proper business and governance structure, good compliance and internal control systems and qualified personnel for the proper management of risks when carrying on its business. For further information, see paragraph 4 and Appendix A to the SFC's [Guidelines on Competence](#).

As with other regulated activities, each corporation licensed for Type 9 regulated activity is required to have at least two competent responsible officers (ROs) to supervise its business, and one of them must be an executive director<sup>1</sup>.

After considering the overall competence of a corporation and its proposed ROs, the SFC may consider imposing certain conditions on their licences limiting the scope of their business activities.

### **Competence requirements for ROs**

In assessing the competence of an individual applying to be an RO, the SFC will ensure that he or she possesses the appropriate technical skills, regulatory knowledge and industry experience to properly manage and supervise the licensed corporation's proposed asset management activity.

#### *Relevant industry experience*

The SFC will take into account an RO applicant's accumulated career history in the financial industry when considering whether he or she meets the experience requirement.

For example, if a Type 1 licensed person is currently allowed to conduct asset management activity which is wholly incidental to his or her conduct of dealing activity, such as discretionary account management, the SFC will consider such experience as relevant when considering his or her RO application for Type 9 regulated activity.

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<sup>1</sup> As defined in section 113(1) of the SFO.



The SFC also recognises other industry experience<sup>2</sup>, such as research, private equity and proprietary trading, as being relevant when it considers such an application.

#### Local regulatory framework paper (LRP) requirements

In general, an RO for Type 9 regulated activity is required to have passed certain LRP, namely HKSI's<sup>3</sup> Licensing Examination Papers 1 and 6, to ensure that he or she has an acceptable understanding of the relevant legal and regulatory requirements. However, the SFC has the discretion to exempt an RO applicant from passing the LRP if it considers it appropriate to do so.

The SFC exercises this discretion based upon each applicant's specific circumstances. For example, the SFC may agree to exempt an RO applicant for Type 9 regulated activity from the LRP requirement in the following situations:

1) *An RO applicant who intends to manage discretionary accounts only*<sup>4</sup>

Minimum experience: An applicant is an existing RO for Type 1 regulated activity and has five or more years of related experience in managing discretionary accounts over the past eight years.

Restriction on permitted activities: The applicant will only be allowed to engage in discretionary account management. If the applicant also serves as a Manager-In-Charge of the Overall Management Oversight function<sup>5</sup> of a licensed corporation, the corporation will be subject to the same restriction.

Regulatory knowledge: As a one-off requirement, the applicant must complete an additional five continuous professional training (CPT) hours on local regulatory knowledge of Type 9 regulated activity within 12 months after approval unless he or she has already completed the same within six months preceding the application. For the avoidance of doubt, CPT hours on general market or regulatory knowledge are unlikely to be accepted by the SFC as meeting this requirement.

2) *An RO applicant<sup>2</sup> who intends to manage private investment funds*<sup>6</sup>

Minimum experience: An applicant has over eight years of industry experience in recognised local or overseas markets<sup>7</sup>. Alternatively, the applicant is already registered or licensed in the United Kingdom or the United States for investment management or advisory business.

Restriction on permitted activities: The applicant will only be allowed to be accredited to a licensed corporation which only serves professional investors<sup>8</sup> in respect of its Type 9 business<sup>9</sup>.

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<sup>2</sup> [Circular titled "SFC Adopts a Pragmatic Approach to Licensing Fund Managers" dated 11 June 2007.](#)

<sup>3</sup> Hong Kong Securities and Investment Institute.

<sup>4</sup> Paragraph 9 of Appendix E to the Guidelines on Competence.

<sup>5</sup> [Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management dated 16 December 2016.](#)

<sup>6</sup> Collective investment schemes not authorized under Part IV of the SFO.

<sup>7</sup> As identified in Parts 2 and 3 of Schedule 1 to the SFO.

<sup>8</sup> As defined in the SFO and its subsidiary legislation.

<sup>9</sup> With appropriate measures in place (including a Chinese Wall), the sponsoring principal may be allowed to serve non-professional investors for other types of regulated activities.



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The above scenarios are for illustration only. Whilst the circular aims to provide guidance to the industry, it is at the SFC's sole discretion to grant an individual applicant an exemption from an LRP requirement. Accordingly, the SFC will consider every licensing application or application for exemption based on the specific circumstances of each case.

[Question 5](#) of the licensing-related frequently asked questions under the topic of "Licensing examinations" has been revised to include the clarifications provided in this circular. Please also refer to the [Licensing Handbook](#) or relevant webpages for more information on relevant approval criteria and application procedures.

**Licensing Department  
Intermediaries Division  
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