

10 February 2021

Q1. 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 HKDSE or equivalent?

ASIFMA agrees it would be sensible 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) so that licensed representatives are better equipped for the current sophisticated market.

Q2. Do you agree to broaden the scope of recognised academic qualifications to cover degrees in other disciplines?

ASIFMA agrees to a broadening of the scope of recognized academic qualifications to cover degrees in other disciplines, as there may be some cross-disciplinary subjects such as data analysis, FinTech and cybersecurity which are relevant to the financial industry. In particular, ASIFMA members would like to highlight that some subjects, such as mathematics/statistics might not *per se* be “relevant” to the financial industry, yet could be applicable and relevant for some roles within the industry (e.g., product structurers or those response for mathematical modelling). Considering that not all the degrees in other disciplines could equip the licence applicants for the recent sophisticated market, it is suggested that the regulatory framework should be made more flexible, in order that Licensed Corporations (“LCs”) can make their own judgement as to academic qualification.

Q3. 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 CPT to ensure they have sufficient industry knowledge?

ASIFMA is generally supportive of the proposal 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 CPT to ensure they have sufficient industry knowledge. It is also suggested that applicants with years of experience (e.g., at least 5 years over 8 years), who have been in the industry long enough continuously and are well-seasoned in terms of industry knowledge, experience and development, to be exempted from the RIQ and Extra CPT requirements.

In addition, ASIFM would appreciate clarification from SFC as to:

- whether there are specific requirements (e.g., on topics/disciplines) for the “additional five CPT hours in each RA that they are applying for, within six months preceding the submission of a license application (Extra CPT)” referring to paragraph 27(c) of the SFC consultation paper; and
- the nature of the documentary evidence/proof of “Extra CPT” that SFC would require for a license application. For example, would an attestation by the applicant suffice?

Q4. Do you agree with the proposal to grandfather current and ex-licensees who previously qualified under Option 3? Please provide reasons to support your views.

ASIFMA agrees with the proposal to grandfather current licensees and ex-licensees who previously qualified under Option 3, as they are considered to have accumulated substantial relevant experience prior to obtaining their licenses. However, the industry would like to seek clarity from SFC as to

whether those ex-licensees who previously qualified under Option 3 and then left the industry for over three years can still be exempted from the new minimum academic requirement. Further guidance from SFC on the grandfathering arrangements would be appreciated.

Q5. Do you agree to introduce a full exemption from satisfying the RIQ requirements for temporary licence applicants? Please provide reasons to support your views.

ASIFMA is supportive of introducing a full exemption from satisfying the RIQ requirements for temporary licence applicants. According to paragraph 5.3.7 of the [SFC Licensing Handbook](#), temporary licence applicants are expected to already perform a similar role overseas, as well as possess industry knowledge in respect of the RAs that they are applying for, so that they are already eligible to conduct the similar RA(s) in HK.

Q6. 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 views.

ASIFMA agrees to refine the scope of the conditional exemption so that the LRs under grandfathering arrangements who now wish to apply for a new RA type can elect to take 5 hours of CPT in place of the required HKSI LE Paper 1, considering that they have been in the industry for an extended period of time and they should understand the regulatory framework and requirements.

Q7. Do you agree that on a case-by-case basis we should take into account licence applicants' overall career history within the industry?

ASIFMA generally agrees that license applicants' overall career history within the industry should be considered on a case-by-case basis given that each applicant might have a unique background, while the "recency" of the applicants' industry experience is also a key element to ensure that they are kept abreast of market developments and the general regulatory landscape. In this regard, SFC should remain holistic in the approval process and impose appropriate licensing conditions on an applicant. ASIFMA would appreciate guidance from SFC on its expectation, especially from the recruitment and licensing application purposes.

Q8. Do you agree that we should critically review experience of applicants claimed through accrediting to previous principals for only a short period of time? Please provide reasons to support your views.

ASIFMA agrees that critical review is required in determining the competency of an applicant if they have claimed experience through accrediting to previous principals for only a short period of time. SFC should scrutinize this type of application, which might potentially misrepresent the amount of experience gained by an applicant through the actual work performed (compared to the amount of time spent on gardening leave). This could also serve as a message to the industry that SFC is aware of this industry bad practice and wishes to deter the unethical 'responsible officer for hire' arrangements, which promotes credibility of LCs and protection to investors. SFC should undertake and assess such critical reviews on a case-by-case basis, considering that each individual's circumstances are different (e.g., traders would already be conducting regulated activities on the first day when joining a new LC).

Q9. 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 views.

ASIFMA disagrees to confine management experience such that it only refers to “hands-on” experience in supervising and managing essential regulated functions. Reporting lines and decision matrices in financial institutions are always complex. An individual without direct reporting line(s) does not necessarily imply that he/she does not have management experience (he/she can be overseeing certain business divisions), and by the same token, an individual with subordinates and reporting lines does not necessarily indicate he/she has direct management experience.

It would be impractical for some financial institutions to change their existing complex supervising matrices by restricting management experience to hands-on experience in supervising and managing essential regulated functions. For example, if an LC conducts Type 1, 2, 4 and 9 RAs and intends to appoint an RO applicant as the Manager-In-Charge (“MIC”) of Overall Management Oversight (“OMO”), the RO applicant would not be expected to have 2 years of management experience in each of the RAs engaged by the LC. Managing staff do not solely need knowledge and experience in managing the business in those RAs but also leadership skills, which might not be accumulated from the work environment that involves RAs. Hence, SFC should not set a boundary for management experience accumulation while the management experience should be at least relevant to the financial industry.

Q10. In respect of the proposed enhancements to the eligibility criteria for ROs and EOs who intend to advise on Codes on Takeovers-related matters, do you agree.

- (a) to increase the number of completed TC Transactions 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)?**

- (a) ASIFMA views that increasing the number of completed TC transaction from one to two over the past five years is a high bar to meet given that the success rate of closing out a HK TC transaction is not high. It would pose a major challenge for the industry to identify qualified candidate of the TC RO/EO who is able to meet the new competency requirements, and eventually it may lead to insufficient TC RO/EO in the industry. ASIFMA members propose to keep the number of completed TC Transactions unchanged (i.e., one transaction within the last five years).
- (b) ASIFMA agrees that members of the Hong Kong Takeovers and Mergers Panel should serve on the Panel for at least 2 years considering that the membership is usually in two years term, where the members would have opportunity to accumulate the knowledge on the Codes on Takeovers-related matters. Reviewing difficult/important cases related to Codes on Takeovers as well as reviewing the provisions should be considered as relevant experience. Offshore experience in takeover deals such as for Singapore and UK might also be relevant as these jurisdictions have very similar takeover codes compared to HK.
- (c) ASIFMA agrees that “recency” should be taken into account to ensure that the applicant is aware of any market developments and the regulatory landscape. SFC should also consider the eligibility

of the applicant if he/she is attempting to attribute all of the experience into the two required transactions.

Q11. Do you agree with the additional examination requirement for LRs and Rels who intend to undertake TC Transaction work? Please provide reasons to support your views.

ASIFMA agrees with the additional examination requirement that LRs and Rels who intend to undertake TC Transaction work should pass the required HKSI LE 17 so as to ensure their competence **before** they are allowed to perform the related RA. As TC Transactions relate to listed companies in Hong Kong, misunderstandings regarding the Codes on Takeovers by a TC Adviser would likely have a materially negative impact on a company, and the market generally.

In addition, for Type 6 ROs without any licensing condition on advising on TC Transactions, ASIFMA would like to confirm with SFC if such persons are intended to be automatically exempted from passing the HKSI LE Paper 17? Are they required to undergo the grandfathering assessment?

Q12. 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 views.

ASIFMA agrees with the proposal to change the determination of the required number of CPT hours to a “per individual” basis, as it is in line with other regulated industries and would eliminate the burden required for an individual to keep track of the hours he/she has or has not taken for a particular competency group. At the same time, it would also reduce the amount of resources for the LC to ensure staff’s CPT compliance.

However, ASIFMA wishes to flag that the proposed changes in the CPT Guidelines are, overall, complicated and do not result in a simplification of the CPT obligation. Since there are different minimum CPT hours and ad-hoc requirements for different scenarios (e.g., LRs/Rels versus ROs/EOs, composition of the CPT hours, additional requirements for those who are new to HK, etc.), ASIFMA anticipates an increased compliance burden in tracking and monitoring the fulfilment of these CPT requirements, compared with the current regime.

Referring to paragraph 19(a) of the SFC consultation paper, it is stated that one of the proposed enhancements to the CPT Guidelines is “(a) to simplify the basis for the determination of the CPT obligation by requiring each individual practitioner to take a specific number of CPT hours annually”. ASIFMA members would like to put forward the following key recommendations:

- (a) LRs/Rels and ROs/EOs should fulfil the annual minimum of 10-hour CPT requirement (i.e., at least 2 hours on ethics/compliance; and 8 hours on industry related topics based on the list provided in paragraph 7 of Appendix C (Revised Guidelines on Continuous Professional Training) of the SFC consultation paper instead of topics directly relevant to one’s RA type(s)). As practitioners already have daily exposure to the knowledge of their own RA type(s), this would provide more flexibility for them to take courses concerning their own RA type(s), and/or broaden their overall industry knowledge by taking courses in other areas of the financial industry.
- (b) The additional 2-hour CPT requirement on regulatory compliance for ROs and EOs should be counted towards the annual minimum 10-hour CPT requirement given that they are senior management of the financial institution who have years of relevant experiences and regulatory

knowledge in the industry. Furthermore, the industry requests SFC's further elaboration regarding the specific 2-hour CPT requirement on "regulatory compliance" for ROs and EOs:

- Would it be required to be relevant to the RA type(s) that the RO/EO is licensed?
- Would the topics relating to "regulatory compliance" be the same as the topics relating to "compliance" as stated in paragraph 5.4 of Appendix C (Revised Guidelines on Continuous Professional Training) of the SFC consultation paper? If not, would there be any examples?

(c) ASIFMA agrees with SFC that without having to attribute CPT courses to different RA competency groups, it would significantly simplify the CPT system and eliminate confusions. However, it must be implemented in conjunction with suggestions similar to the ones made in above response (a) to Q12 so as to achieve a simplified, clear and flexible way to obtain industry updates and knowledge from a wider pool of financial topics.

(d) New industry entrants' one-off 2-hour CPT requirement on ethics to be fulfilled within the first 12 months could lead to complexity, whether they are new industry entrants or transferees from non-LC/RI/AI. This requirement could be simplified by treating them the same as all licencees, by taking 1 CPT hour on ethics which can be counted towards the individual requirement irrespective of what time of the year they first entered the industry or joined the principal. Considering that ethics is an essential topic, it should not be subject to pro-rata counting system.

In particular, ASIFMA members would appreciate clarification from SFC as to whether itinerant professionals are exempted from the annual minimum CPT as well as the ethics/compliance CPT requirements?

(e) ASIFMA agrees with the requirement to apply a minimum of 2.5 CPT hours per annum for each of the Code on Takeovers and the Sponsor, but it is suggested that SFC should count them towards the 8-hour CPT requirement on industry related topics (referring to the above response (a) to Q12).

Q13. Do you agree with the proposal concerning minimum requirements for individuals? Please provide reasons to support your views.

As mentioned in the response to Q12 above, ASIFMA is generally supportive of the proposal concerning the minimum 10-hour CPT requirement for LRs and Rels, but it is suggested that SFC should count the additional 2-hour CPT requirement on regulatory compliance for ROs and EOs towards the annual minimum 10-hour CPT requirement, given that ROs and EOs are senior management of a financial institution who are expected to have many years of relevant experiences and regulatory knowledge in the industry. Otherwise, it would give rise to an administrative burden in terms of monitoring and tracking.

Please refer to the above response (a) and (b) to Q12 for details.

What support would SFC offer to help the industry achieve the increased number of CPT hours? Would SFC work with bodies such as HKSI to offer additional CPT eligible courses?

Q14. 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 views.

ASIFMA is concerned that the new requirement would impose an administrative burden on larger LCs during the implementation to ensure that individual practitioners are completing sufficient CPT hours, and at the same time the topics of the trainings are relevant to their RA types on an individual basis. Given that the proportion of time and effort that each individual practitioner spends on each RA type may vary, ASIFMA would be grateful if SFC could provide guidance/FAQs on this (e.g., how to determine the allocation of CPT hours that the individual practitioners should fulfil, examples of relevant topics for each RA type, etc.). For example, as RAs 1 and 4 share the same competence requirements, would the same logic apply to the revised framework where one CPT topic can be deemed relevant to two RA types?

In addition, would it contradict the purpose of eliminating “RA competence groups” to “per individual” as set out in Q12 if the individual practitioners need to attend CPT hours on topics directly relevant to their RA(s)?

Q15. Do you agree with the proposed requirements concerning CPT on ethics and compliance? Please provide reasons to support your views.

ASIFMA appreciates that the proposed requirements concerning CPT on ethics and compliance generally help licensees to increase their awareness of ethics matters, as well as keep them abreast of the latest regulatory updates and knowledge. However, referring to paragraph 5.3 of the SFC consultation paper, out of the total 10 CPT hours for LR/ReIs and total 12 CPT hours for ROs/EOs, ASIFMA members would welcome clarification as to how LCs should apply the pro-rata mechanism to the below required CPT hours per individual basis:

- (i) 5 CPT hours directly relevant to the RA(s) for which the individual is licensed;
- (ii) 2 CPT hours on ethics/compliance (or 2 CPT hours on ethics for new licensee); and
- (iii) 2.5 CPT hours on sponsor/TC advisory only if the licensee engages with sponsor/Codes on takeovers work.

For example, if an individual is licensed as an LR on 1 December, the LR is only required to complete 1 CPT hours on a pro rata basis for the remaining calendar year. Would SFC mandate minimum hours on ethics training to be completed by 31 December? Would it be required 1 or 2 CPT hours on ethics training by 31 December?

ASIFMA would also appreciate clarification from SFC as to whether the licensee can take courses that are not directly related to the RA which he/she is licensed (e.g., RA 1 licensee takes a course related to RA 9) for the remaining required CPT hours, after counting the above (i) and (ii) mandatory CPT hours during that year?

Q16. Do you agree with the proposed timeframe for implementation? Please provide reasons to support your views.

ASIFMA would suggest that SFC implement the revised Competence Guidelines and CPT Guidelines at least 12 months after the publication so that it can provide sufficient time for the industry to understand the new framework, revamp the relevant internal procedures and existing IT systems (for tracking staff CPT), as well as enhance the new process in order to comply with the new requirements. Extensive internal communications would also be required to inform internal stakeholders of the key enhancements to the competency framework, and discuss changes of the procedures.

Other Comments:

- According to paragraph 5.3.9(a) of [SFC Licensing Handbook](#), it is stated that the existing itinerant professional exemption only cover the regulated activities to professional investors (“PIs”) as *“defined under the SFO”*. Likewise, the current [SFC consent form](#) for itinerant professionals provided that the term PI is as *“defined in Part 1 of Schedule 1 to the SFO but does not include any person of a class which is prescribed by Securities and Futures (Professional Investor) Rules”*. However, referring to the paragraph 4.4.3.6 (LRP Conditional Exemption 5) of the Appendix A (Revised Guidelines on Competence) of the SFC consultation paper, it is stated that the PIs are *“defined in the SFO and its subsidiary legislation”*. In light of the above, the industry would appreciate clarification from SFC on the PI definition under the licensing condition of itinerant professional.
- ASIFMA members would like to highlight that staff in overseas offices who are non-Hong Kong residents have been facing challenges in taking the required licensing examinations in Hong Kong due to the recent travel restrictions arising from the global COVID-19 pandemic. According to the Hong Kong Government’s [COVID-19 thematic webpage](#), it is stated under “Restrictions on Entering Hong Kong” that with effect from 25 March 2020 until further notice:
 - All non-Hong Kong residents coming from overseas countries and regions by ‘plane will be denied entry to Hong Kong; and
 - Non-Hong Kong residents coming from the Mainland, Macao and Taiwan will be denied entry to Hong Kong if they have been to any overseas countries and regions in the past 14 days.

Despite the fact that the industry has successfully applied for the extension of taking the licensing examinations required by SFC for the overseas staff, there is still uncertainty whether similar extensions will be granted by SFC going forward. Based on the feedback received from ASIFMA members, SFC has recently directed the industry to HKSI Institute for examinations to be taken overseas. In this regard, ASIFMA members are concerned that:

- Candidates who wish to sit for the examinations abroad would need to pay the examination fees, costs of the examination venue and invigilation services as well as any out-of-pocket expenses (e.g., courier costs). In this case, the examination fee per session for each candidate would be 10 times higher than the normal examination fee (e.g., it might cost around HK\$15,500 in the case of taking an LE Paper 2, based on the current scale); and
- All the necessary arrangements for conducting examinations abroad would need to be in place. For instance, HKSI Institute should be able to identify and collaborate successfully with the relevant overseas professional body in the proposed geographical location to administer and conduct the examinations abroad.

In light of the above, the industry is of the view that it would neither be feasible nor cost-effective for overseas staff-members to take the licensing examinations based on the existing arrangements. ASIFMA understands the arrangements of the licensing examinations do not completely rest with SFC, so the industry would like to take this opportunity to implore SFC to liaise with HKSI Institute to enhance existing arrangements for licensing examinations. For example, HKSI Institute might consider working with similar overseas institutes in major financial districts which offer designated paper-based examination (“PBE”) and computer-based examination (“CBE”) centres in other locations, such as New York City, San Francisco, London, Tokyo, Shanghai and Shenzhen.