

FREQUENTLY ASKED QUESTIONS
GUIDELINES ON SUBMISSION OF CORPORATE AND CAPITAL MARKET
PRODUCT PROPOSALS & CHAPTER 7A OF THE LICENSING HANDBOOK

21 July 2020

Introduction

1. What is the rationale for the issuance of the *Guidelines on Submission of Corporate and Capital Market Product Proposals (Guidelines)*?

The Guidelines have been introduced to reinforce shared responsibilities among the key stakeholders involved in the submission of proposals to the SC. The Guidelines also identify the party who is eligible to submit corporate and capital market product proposals to the SC (Submitting Party).

The Guidelines set out the conduct requirements for the Submitting Party and other parties involved in the submission of proposals to the SC, such as the applicant/issuer and its directors and promoters, as well as advisers appointed to provide advice or opinion in connection with a submission of proposal to the SC.

2. What is the rationale for the issuance of Chapter 7A of the *Licensing Handbook (Chapter 7A)*?

Chapter 7A sets out the eligibility requirements to be a principal adviser (PA) and a recognised principal adviser (RPA), for the submission of proposals and specific proposals to the SC, respectively.

This chapter applies to holders of Capital Markets Services Licence (CMSL) and registered persons referred to in the Third Column of Part 1, Item 2 of Schedule 4 of the *Capital Markets and Services Act 2007* (CMSA) for the regulated activity of advising on corporate finance.

3. When will the Guidelines and Chapter 7A be effective?

The Guidelines and Chapter 7A will take effect on 1 January 2021 (Effective Date). Prior to the Effective Date, the eligibility requirements for both the approved principal adviser (Approved PA) and Qualified Senior Personnel (QSP) as set out in the *Principal Adviser Guidelines* (PA Guidelines) remain applicable.

From the Effective Date, the term "principal adviser" in other SC's guidelines shall have the meaning assigned to it in Chapter 7A, and the term "approved principal adviser" appearing in other SC's guidelines shall be taken to refer to the RPA.

Concurrent with the coming into effect of the Guidelines and Chapter 7A, the *Guidelines on Due Diligence Conduct for Corporate Proposals* and the PA Guidelines will be disappplied.

4. What are the key changes made in the Guidelines and Chapter 7A?

The Guidelines and Chapter 7A introduce the RPA Framework and Qualified Person (QP) & Senior Officer (SO) regime. Once the Guidelines and Chapter 7A come into effect, this new framework will replace the existing Approved PA Framework and QSP regime.

The key differences between the current regime and new regime for submission of specific proposals are as follows:

	Current Regime	New Regime
	PA Guidelines	The Guidelines and Chapter 7A
Submitting Party	<p>Approved PA must have:</p> <ul style="list-style-type: none"> ▪ at least two QSP working full time; and ▪ SC's approval. 	<p>RPA must have:</p> <ul style="list-style-type: none"> ▪ at least one QP working full time; ▪ written policies and control procedures relating to submission of specific proposals; and ▪ SC's recognition.
Minimum criteria of qualified individual	<p>QSP must have:</p> <ul style="list-style-type: none"> ▪ seven years of relevant corporate finance experience; ▪ Completed three of the following: <ul style="list-style-type: none"> (i) initial public offering (IPO); (ii) reverse takeover offer (RTO); or (iii) regularisation plan undertaken by Practice Note 17 and Guidance Note 3 companies in the five years preceding appointment; and ▪ SC's approval. 	<p>QP must have:</p> <ul style="list-style-type: none"> ▪ seven years of corporate finance experience in the 9 years preceding appointment; and ▪ Completed one of the following: <ul style="list-style-type: none"> (i) IPO on the Main Market or ACE Market; or (ii) RTO that requires SC's approval.
SO	<i>Not applicable.</i>	<p>An individual of higher authority or ranking than the QP or a committee duly constituted.</p> <p>A Submitting Party must assign and identify at least an SO for each specific proposal.</p>

5. What is the rationale of the new RPA Framework?

The new RPA Framework and QP & SO regime is to liberalise the industry and to empower the corporate finance adviser to select its QP from a wider talent pool of qualified corporate finance professional.

To ensure standards are maintained, the appointment of QP must be based on a set of minimum eligibility criteria imposed by the SC. Further, new obligations have been introduced for QP who is assigned to work on the specific proposal.

In addition, an RPA is also required to identify at least an SO for the supervision and management of each specific proposal, including allocation of sufficient persons with appropriate levels of knowledge, skills and experience to each specific proposal, and reviewing of the performance of the QP.

6. Who falls within the scope of Guidelines?

The conduct requirements set out in the Guidelines apply to all parties involved in the preparation of proposals, including the PA, applicant/issuer, directors and promoters of the applicant/issuer, advisers and experts, for the proposals submitted, deposited or registered with the SC under Part VI and Part IIIA (Private Retirement Scheme Industry) of the CMSA, except for the following:

- (a) Proposals set out in Schedule 5 of the CMSA;
- (b) Take-overs, mergers and compulsory acquisitions under Division 2 Part VI of the CMSA;
- (c) Proposals relating to the offering of digital token as set out in the Guidelines on Digital Assets;
- (d) Proposals relating to the offering, marketing and distribution of a permitted foreign fund as set out in Appendices 1, 2 and 3 of the Guidelines for the Offering, Marketing and Distribution of Foreign Funds; and
- (e) Any documents or information submitted or deposited with the SC for reporting purposes.

Application for Recognition

7. Would all current Approved PA and QSP be recognised automatically by the SC?

The existing Approved PA and QSP would not be automatically recognised by the SC. As such, all current Approved PA are required to submit an application for recognition to the SC with the information and documents required in Chapter 7A. The application forms can be retrieved from the SC's website at <https://www.sc.com.my/regulation/licensing/application-kit>

8. Can a CMSL holder or Registered Person for advising on corporate finance that is a PA with no track record act as an RPA?

Any PA (other than a licensed bank and a special scheme broker) that satisfies the requirements in Chapter 7A may submit an application to the SC for recognition as an RPA.

Upon being recognised as an RPA, the name and particulars of the RPA and its QP, including conditions or restrictions imposed (if any), will be admitted into the register of RPA on the SC's website.

9. Can a PA that satisfies the requirements in Chapter 7A submit an application to the SC for recognition prior to the Effective Date?

Applications must be made at least one month prior to the Effective Date. This is to enable the SC to make available the register of RPA on the SC's website from the Effective Date.

For purposes of submission of specific proposals to the SC prior to the Effective Date, the eligibility requirements for both Approved PA and QSP as set out in the PA Guidelines are still applicable.

10. Can an entity holding a temporary licence for advising on corporate finance act as an RPA?

No. Only a PA (other than a licensed bank and a special scheme broker) that satisfies the requirements in Chapter 7A can submit an application to the SC for recognition as an RPA.

11. For the purpose of fulfilling the eligibility criteria of a QP, does completion refer to implementation of such proposal?

Experience gained from proposals which have been approved by the SC (irrespective whether it is implemented by the applicant/issuer) fulfils this eligibility criteria.

12. For the purpose of meeting the minimum eligibility criteria of seven years of direct corporate finance experience of a QP, would IPO/RTO experience acquired from overseas be recognised?

For the purpose of eligibility criteria of a QP, corporate finance experience takes into account the QP's experience in advising on any of the following corporate proposals in Malaysia, Australia, Hong Kong, Singapore or the United Kingdom:

- (a) IPOs;
- (b) Mergers and acquisitions involving listed companies;
- (c) Fundraising exercises through the capital market by listed companies; and
- (d) Restructuring exercises involving listed companies.

In Malaysia, the types of corporate proposals above exclude those relating to listed companies on the LEAP Market of Bursa Securities.

13. Is an individual employed by a PA but based outside Malaysia (e.g. at the regional office) eligible to be appointed as a QP?

Yes. As long as the QP is able to discharge his/her duties and functions required in the Guidelines.

Continuing Obligations as an RPA

14. What is the purpose of the annual declaration and when is the annual declaration expected to be filed with the SC?

The annual declaration from the RPA is an affirmation that the QP continues to comply with the eligibility criteria set out in Chapter 7A. The declaration is required to be filed by the RPA with the SC within seven business days from 1 January of each year.

15. Post recognition, is an RPA required to inform the SC if it appoints additional QP?

For every appointment of a QP post its recognition, an RPA is required to notify the SC by submitting the Declaration by Principal Adviser, which can be retrieved from the SC's website at <https://www.sc.com.my/regulation/licensing/application-kit>

This is to enable the SC to update the information in the register of RPA on the SC's website.

16. What should an RPA do in the event it is unable to maintain the eligibility criteria, or if there is any change in information in the documents or information submitted to the SC?

The RPA is required to notify the SC immediately via email to the Head of Equities Department, followed by a formal letter. This includes instances where any of the QP appointed by the RPA ceases or discontinues his employment (whether terminated, laid-off or retired), or fails to comply with the eligibility criteria as set out in Chapter 7A.

17. What happens if an RPA no longer has any QP under its employment subsequent to the submission of a specific proposal but prior to the SC's decision or implementation of the proposal?

There will not be any automatic grace period granted for compliance with the eligibility criteria. As such, an RPA must ensure that at all times, it has at least one QP under its employment.

In the instance that an RPA no longer has any QP under its employment, the RPA is firstly required to inform the SC immediately via email to the Head of Equities Department, followed by a formal letter. The RPA is also required to immediately appoint a new QP to handle the existing engagement.

Submission of Specific Proposals

18. Is an RPA allowed to appoint more than one SO and more than one QP for submission of a specific proposal?

Yes. Pursuant to the Guidelines, an RPA must appoint at least one SO for every submission of specific proposal made to the SC based on the experience and expertise required for the particular submission to the SC.

The SO must be an individual of higher authority or ranking than the QP, or a committee formed by individuals from different core functions of the RPA, as long as the functions of an SO are fulfilled.

An RPA is also allowed to appoint more than one QP for each submission of specific proposal. Where more than one SO or more than one QP is appointed for each submission of specific proposal, all SO and QP are jointly and severally responsible for that particular submission of specific proposal.

19. Can the SO and QP be the same person?

No. The SO must be an individual of higher authority or ranking than the QP, or a committee formed by individuals from different core functions of the RPA, as long as the functions of an SO are fulfilled.

An RPA must identify at least one SO and at least one QP for each submission of specific proposal. The SO and the QP identified must be included in the cover letter of the specific proposal to the SC.

20. If the SO is a committee, can the committee comprise of departments from different expertise within the RPA?

Yes. The RPA has the discretion to decide on the composition of the SO, as long as the functions required of an SO in the Guidelines are fulfilled.

21. If there are joint RPA for a particular specific proposal, does each RPA requires its own QP and SO?

Yes. Each RPA must have its designated QP and SO respectively to be responsible for the supervision and management of the specific proposal. All the RPA, QP and SO are jointly and severally responsible for the specific proposal.