



## PUBLIC CONSULTATION PAPER

NO. 1/2017

### ENHANCED FRAMEWORK FOR PRINCIPAL ADVISERS

The Securities Commission Malaysia (SC) invites your comments to this consultation paper.

Comments are due by 30 April 2017 and should be sent to:

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## Glossary of Terms

Approved PA	a Principal Adviser approved by the SC which have fulfilled the requirements in Chapter 3 of the Guidelines and is eligible to submit Specific Corporate Proposals to the SC
Approved List	the list of Approved PAs
Bursa Securities	Bursa Malaysia Securities Bhd
CMSA	the <i>Capital Markets and Services Act 2007</i>
CMSL	a Capital Markets Services Licence granted under section 61 of the CMSA
CMSRL	a Capital Markets Services Representative's Licence granted under section 61 of the CMSA
IPO	initial public offering
Principal Adviser	a CMSL holder for the regulated activity of advising on corporate finance responsible for making applications of corporate proposals to the SC
Specific Corporate Proposals	IPO on Bursa Securities, transfer of listing to the Main Market of Bursa Securities, secondary listing of foreign corporations on Bursa Securities or a significant acquisition that requires the SC's approval under section 212 of the CMSA

## 1. Introduction

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- 1.1 In 2009, Securities Commission Malaysia (SC) issued the *Principal Adviser Guidelines* (Guidelines). The Guidelines, among other things, introduced a framework that allows only holders of a CMSL for advising on corporate finance (corporate finance adviser) on the Approved List (Approved PA) to make applications of Specific Corporate Proposals to the SC.
- 1.2 Under this framework, to be admitted to the Approved List, a corporate finance adviser must satisfy the requirement of having at least two qualified and competent individuals (Qualified Senior Personnel or QSP). A QSP must possess the requisite expertise and experience to ensure that applications made to the SC meet all the requirements of the SC.
- 1.3 Although the Guidelines have been in place for seven years, we note that there are still applications that do not meet the expected standards. Therefore, this consultation paper seeks to—
  - (a) discuss our proposals to address this concern; and
  - (b) solicit feedback on our recommendations.

## 2. Overview of the Current Framework

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- 2.1 We have analysed the applications for Specific Corporate Proposals received post the issuance of the Guidelines in 2009 including taking into account the number of applications that have been rejected or returned, and enforcement actions taken by the SC relating to these applications. Some notable shortfalls include applications that reflected insufficient conduct of due diligence resulting in misleading or false statements, inaccuracies or omissions, and failure to address conflicts of interest. We also found many Approved PAs applying a “box ticking” approach to the due diligence exercises.
- 2.2 To address these concerns, the SC conducted a Survey on Qualified Senior Personnel and Corporate Proposals in April 2016 (QSP Survey) involving 14 Approved PAs (the respondents) to understand the prevailing practices and solicit feedback.

2.3 While promoting higher standards of applications is the key objective of our review, we noted from the feedback received that consideration should also be given to widening the existing pool of QSP.

2.4 The table below provides a summary of our proposals:

	<b>Proposals</b>
<b>Proposal 1</b>	To specify and provide clarity on the roles and responsibilities of Qualified Senior Personnel
<b>Proposal 2</b>	To provide clarity on the existing and new responsibilities of Approved Principal Advisers
<b>Proposal 3</b>	To widen the pool of Qualified Senior Personnel

### 3. Proposals

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<b>Proposal 1</b>	To specify and provide clarity on the roles and responsibilities of Qualified Senior Personnel
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3.1 From our survey and engagements with industry, we understand that there are various prevailing practices in how QSP and Approved PAs perform their roles and functions in putting together applications to the SC. However, we note that these practices differ from one entity to another. In our QSP Survey, only 29% of the respondents supported the proposal that the QSP's role should be defined in the Guidelines. The other respondents were of the view that the QSP's role should be determined by the Approved PAs themselves.

3.2 However, adopting the majority view will result in inconsistencies in the practices and quality of the QSP's deliverables. Thus, we propose to streamline these practices in the Guidelines.

3.3 Given their experience and expertise, QSP should take on a more proactive role in supervising and leading their teams in the preparation of applications to the SC. We, therefore, propose that QSP should be required to–

- (a) determine the scope and extent of due diligence required for a Specific Corporate Proposal in its entirety;
- (b) critically assess the information being reviewed especially in detecting any material omission, inconsistencies or information that may impact the accuracy of the statements made in the application;
- (c) make key decisions on the accuracy and completeness of the application, including enlarging the scope of work in the due diligence exercise should the QSP becomes aware of any new information or development that would require a variation to the scope of work;
- (d) ensure that the terms of reference of the other advisers meet the scope and quality of the due diligence required for the said application;
- (e) ensure that the other advisers have the necessary competence, expertise and resources required to undertake their work;
- (f) identify key risks related to the application and undertake adequate measures to address the risks;
- (g) ensure that the application meets the relevant requirements of the SC including the Bursa Securities Listing Requirements;
- (h) ensure corporate governance issues or conflict of interests situations are highlighted and addressed in the application; and
- (i) continuously be responsible for the Specific Corporate Proposal that the QSP signs-off until completion of the proposal.

3.4 While the current Guidelines do not specifically require a QSP to sign-off applications made to the SC, we note that some Approved PAs have adopted this practice as part of their standard operating procedure. In addition, the QSP Survey shows that 85% of the current Approved PAs agreed that a QSP should be made to sign-off on the application before it is submitted to the SC for approval.

3.5 Therefore, we are of the view that the practice of requiring a QSP to sign-off Specific Corporate Proposals should be adopted by all Approved PAs. This sign-off is important as it signifies a conscious acknowledgement by the QSP that he/she is satisfied that the application has met all regulatory requirements imposed by the SC.

**Issues for Consultation (Proposal 1):**

Question 1: Do you agree with the proposed practices discussed in Paragraph 3.3? Please provide the reasons for your views.

Question 2: Is there any other responsibility that should be imposed on the QSP? Please provide the reasons for your suggestions.

Question 3: Do you agree that the QSP should be required to sign-off applications of Specific Corporate Proposals to the SC? Please provide the reasons for your views.

Question 4: If your answer to Question 3 is NO, which of the following persons in the Approved PA listed below should be required to sign-off applications made to the SC?

- (a) Board of Directors
- (b) Chief Executive Officer
- (c) Head of Compliance
- (d) Others (please specify)

Please provide the reasons for your suggestions.

<b>Proposal 2</b>	To provide clarity on the existing and new responsibilities of Approved Principal Advisers
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3.6 We are proposing to clarify the existing practices and impose new responsibilities on an Approved PA<sup>1</sup>. One of the questions asked in the QSP Survey relates to the role of the board of directors (Board), the CEO, Head of Compliance and Head of Corporate Finance in ensuring that applications to the SC meet the expected standards. From the feedback received and analysis of the responses, the following additional responsibilities on the Approved PA are proposed:

<sup>1</sup> The Guidelines currently imposes some obligations on the Approved PA. These include the requirement that an Approved PA must have sufficient internal controls and procedures to ensure that the requirements of these Guidelines are complied with and the obligation to maintain an up-to-date record of all engagements undertaken are for at least five years. Other requirements concerning Approved PAs are specified in the *Guidelines on Due Diligence Conduct for Corporate Proposals*.

- (a) To ensure that at least one QSP is assigned to each team working on a Specific Corporate Proposal and the QSP must monitor and supervise the team until completion of the proposal;
- (b) To ensure that the Board is apprised of the status of Specific Corporate Proposals submitted to the SC, including instances when the application has been withdrawn, not approved or returned by the SC; and
- (c) To proactively address any concerns raised or actions taken by the SC.

3.7 Further, the SC is also proposing to mandate the following:

- (a) Approved PA to provide sufficient and appropriate training to all personnel carrying out the regulated activity for advising on corporate finance, particularly QSP. The nature, extent and frequency of the training shall be determined by the respective Approved PA;
- (b) Approved PA to ensure that they have sufficient competent personnel at all times. To satisfy this requirement, the respective Approved PA must be able to demonstrate that they have a sufficient number of competent personnel taking into account its business model and level of activities; and
- (c) Approved PA to continuously review the policies and procedures to address any inadequacies and gaps present. This is to ensure that the Approved PA continuously improve their services and maintain high standards and quality of practices in their corporate finance advisory work.

3.8 Given that the Board is the governing body of the Approved PA, the Board is responsible for the conduct of the Approved PA and it must ensure that the Approved PA complies with all the requirements in the Guidelines.

**Issues for Consultation (Proposal 2):**

Question 5: Do you agree with the additional responsibilities proposed to be imposed on an Approved PA as discussed above in Paragraph 3.6? Please provide the reasons for your views.

Question 6: Is there any other responsibility that should be imposed on an Approved PA other than those discussed above in Paragraph 3.6? If YES, please provide your suggestions and the reasons for them.



<b>Proposal 3</b>	To widen the pool of Qualified Senior Personnel
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3.9 Based on the QSP Survey, 79% of the respondents agreed that they face challenges in increasing the number of QSP in their firms.

3.10 Some of the reasons provided by the respondents include:

- (a) Limited pool of QSP in the corporate finance industry;
- (b) Limited number of individuals who meet the eligibility criteria for QSP; and
- (c) Reduction in the number of IPOs and reverse take-overs in the recent years.

3.11 Under the current Guidelines, in order to qualify as a QSP, an individual has to satisfy the SC that, among others, the individual has played a substantial role<sup>2</sup> in a supervisory or managerial capacity in the team responsible for advising at least three of any of the following proposals:

- (a) IPOs,
- (b) Significant acquisitions; or
- (c) Regularisation plans undertaken by PN17 or GN3 companies.

(the three proposals above will hereinafter be collectively referred to as “Relevant Submissions”).

3.12 The results of the QSP Survey also indicates that there is an industry perception that—

- (a) only a team leader will be recognised by the SC as the individual who has played a substantial role in the Relevant Submissions;
- (b) although there may be other team members who have played a substantial role in a supervisory or managerial capacity, in the preparation of the Relevant Submissions, such team members would not be recognised by the SC.

3.13 Given the aforesaid perception, the respondents had suggested for the SC to consider recognising other members of the team as a person who has played a “substantial role” under the Guidelines.

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<sup>2</sup> The supervisory or managerial role includes, among others, the planning of due diligence scope of work, identification of issues and assessment of critical areas.

New eligibility criteria to qualify as QSP

3.14 Based on the feedback received, the SC is proposing to introduce the following:

- (a) Enabling lawyers or reporting accountants to apply to be registered as a QSP if they are employed on a full-time basis by an Approved PA;
- (b) Allowing foreign corporate advisers who are employed on a full-time basis by an Approved PA to be registered as a QSP; and
- (c) A new eligibility criteria for QSP.

3.15 The proposed new eligibility criteria<sup>3</sup> are set out in the table below:

<b>Criteria to qualify as a QSP</b>	<b>Corporate Finance Advisers (Local and Foreign)</b>	<b>Lawyers or Reporting Accountants</b>
<b>Number of years of relevant corporate finance experience<sup>4</sup></b>	7	7 (where they would have played a substantial role in their capacity as due diligence lawyer or reporting accountant)
<b>Requirement for CMSRL for advising on corporate finance and attached to a CMSL (Principal)</b>	√	√
<b>Number of Relevant Submissions (in Malaysia) where the person has played a substantial role<sup>5</sup> in the <u>seven years</u> immediately preceding the individual's application to the SC</b>	1	1 (in their capacity as a holder of a CMSRL for advising on corporate finance who is attached to an Approved PA)
<b>Number of Relevant Submissions (in Malaysia or overseas) where the person has participated actively in the <u>seven years</u> immediately preceding the individual's application to the SC</b>	2	3 (in their capacity as due diligence lawyer or reporting accountant)

<sup>3</sup> For avoidance of doubt, the criteria set out in the table should not be read disjunctively and therefore, all criteria must be satisfied by the applicant.

<sup>4</sup> Relevant corporate finance experience refers to advice given for any of the following proposals:

- IPOs;
- Mergers and acquisitions involving listed companies;
- Fundraising exercised through the capital market by listed companies; and / or
- Restructuring exercises.

<sup>5</sup> This would include a requirement to co-sign at least one relevant application with a QSP.

*Note: Refer to Appendix to see the current eligibility criteria.*

3.16 Given the uncertainty on what constitutes “substantial role” and “participated actively” for the purposes of qualifying as a QSP, we are proposing to define these terms in the Guidelines. The proposed definition is as follows:

(i) “Substantial role”

3.17 A person would be regarded as having played a substantial role in the application team for the preparation of a Relevant Submission if the individual was involved in a supervisory or managerial capacity. In determining whether an individual has played a “substantial role” in the application team, the SC will, among others, give due consideration to whether the individual–

- (a) was responsible for determining the scope, review, and sign-off of significant documents and information to the SC;
- (b) was responsible in advising the applicant on SC’s requirements including compliance with SC’s guidelines, supervision of the Relevant Submission exercise, including due diligence and implementation of the proposal;
- (c) made key decisions with regards to the due diligence work carried out including determining the scope and extent of the due diligence exercise;
- (d) made a critical assessment of the results of the due diligence;
- (e) was responsible in assessing key risks involved and have provided advice on how the risks may impact the applicant and application; and
- (f) was responsible for proposing measures to address or mitigate key risks identified in paragraph (e).

(ii) “Participated actively”

3.18 A person would be regarded as having “participated actively” in the application team in respect of a Relevant Submission if the individual has contributed significantly in the overall work carried out. In determining whether an individual has “participated actively” in the application team, the SC will, among others, give due consideration to whether the individual–

- (a) was involved in the decision-making process with regards to due diligence work such as determining the scope and extent of the due diligence exercise;

- (b) had advised the applicant on SC's requirements including compliance with SC's guidelines, supervision of the Relevant Submissions exercise, including due diligence and implementation of the proposal;
- (c) had assisted in assessing the key risks involved and advised on how the risks impact the applicant and application; and
- (d) was involved in proposing measures to address or mitigate key risks identified in paragraph (c).

### **Issues for Consultation (Proposal 3):**

Question 7: Do you agree with the proposed new eligibility criteria for QSP?

Question 8: Is there any other factor that should be considered by SC in deciding whether an individual has played a "substantial role"? Please provide the reasons for your suggestions.

Question 9: Is there any other factor that should be considered by SC in deciding whether an individual has "participated actively"? Please provide the reasons for your suggestions.

Question 10: Should QSP include individuals who have "participated actively" in Relevant Submissions in their capacity as due diligence lawyers or reporting accountants? Please provide the reasons for your views.

## **4. Complementary Pillars of the New Framework**

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4.1 The new framework for Principal Advisers will be complemented with an enhanced monitoring and enforcement framework. The monitoring framework would include the Approved PAs and QSP having to observe some reporting requirements to SC. Apart from this; SC will also monitor the QSP to ensure that the QSP has been continuously involved in the preparation of the Specific Corporate Proposals. In this regard, it is proposed that a QSP must be able to demonstrate involvement in at least one Specific Corporate Proposal within each cycle of three years following his/her registration as a QSP.

**Illustration A:**

Mr. A was registered as a QSP on 15 May 2016. He has not signed-off any Specific Corporate Proposal until 15 May 2019. This would mean that Mr. A's name will be removed from the register of QSP after 15 May 2019 as he has not met the requirement on continuous obligation.

**Illustration B:**

Mr. B was registered as a QSP on 15 May 2016. He submitted a Specific Corporate Proposal on 23 April 2018. On 15 May 2019, Mr. B's name will remain in the register of QSP for another cycle of three years.

Within the three years from 15 May 2019, Mr. B must submit a Specific Corporate Proposal to SC, failing which, his name will be removed after 15 May 2022 as he has not met the requirement on continuous obligation.

- 4.2 As with the current framework, SC will maintain a register of eligible QSP. Compliance with the requirements of the Guidelines will determine the fit and properness of a QSP to continue being registered with the SC. Persistent breach of the Guidelines may result in the QSP being de-registered for a period of time or permanently, depending on the seriousness of the breach.

**5. Transitional Arrangement to the New Framework**

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- 5.1 All registered QSP under the current framework will continue to be deemed as a registered QSP for the purposes of the new framework and therefore, shall not be required to re-submit an application to SC.

## Appendix – Current Eligibility Criteria for Qualified Senior Personnel

- (i) Holds a CMSRL for advising on corporate finance.
  
- (ii) Possesses seven years of relevant corporate finance experience. Relevant corporate finance experience refers to providing advice on any of the following corporate proposals:
  - (a) IPOs;
  - (b) Mergers and acquisitions involving listed companies;
  - (c) Fundraising exercises through the capital market by listed companies; and/or
  - (d) Restructuring exercises.
  
- (iii) In the five years, immediately preceding the senior personnel being designated Qualified Senior Personnel, the personnel must have played a substantial role in the engagement team responsible for advising in at least three of the following proposals:
  - (a) IPOs;
  - (b) Significant acquisitions; or
  - (c) Regularisation plans undertaken by PN17 and GN3 companies.

The definition of having played a substantial role in advising the proposals above is with regards to the individual concerned being involved in a supervisory or managerial capacity in the preparation of the proposals.