



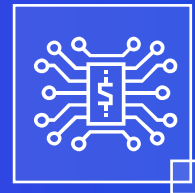
HKTA seminar: Overview and insights into regulatory requirements for RA13



Friday, 10 May 2024

01

Overview of relevant SFC requirements



Senior management of a licensed corporation



Directors of the licensed corporation

- Responsible for **the conduct, operations and financial soundness** of the corporation
- Have **systems and controls in place to supervise** those who act under the delegated decisions.
- **Approve management structure** with clear set-up on the roles, responsibilities, accountability and reporting lines of senior management personnel.
- **Approve appointment of MICs**, and ensure the MICs has acknowledged his or her appointment and responsibility
- Work with senior management (including MICs) to **achieve the objective** of a soundly and efficiently run corporation



Responsible officers (RO)

- Responsible for **directly supervising the business of the type 13 regulated activities**
- Need to be **licensed representatives and participate in the day-to-day management** of the licensed corporations
- **MICs of the Overall Management Oversight function and the Key Business Line function should be ROs** in respect of the regulated activities they oversee



Managers-in-charge (MIC)

- At least one MIC for **managing and making decision for each core functions**:
 - (i) Overall Management Oversight;
 - (ii) Key Business Line;
 - (iii) Operational Control and Review;
 - (iv) Risk Management;
 - (v) Finance and Accounting;
 - (vi) Information Technology;
 - (vii) Compliance;
 - (viii) Anti-Money Laundering and Counter-Terrorist Financing.
- **Report directly to the Board** or MIC who assumes the Overall Management Oversight function
- **Accountable for the performance or achievement of business objectives** set by the Board, or by the MIC who assumes the Overall Management Oversight function

Attributes of a manager-in-charge



Influence

Occupies a position within the corporation which is of sufficient authority to enable the individual to exert a significant influence on the conduct of that Core Function



Resources

Has authority to allocate resources or incur expenditures in connection with the particular department, division or functional unit carrying on that Core Function



Decision-making

Has authority to make decisions (eg, assume business risks within pre-set parameters or limits) for that Core Function



Representation

Has authority to represent the particular department, division or functional unit carrying on that Core Function, eg, in senior management meetings or in meetings with outside parties

Client Money Rules

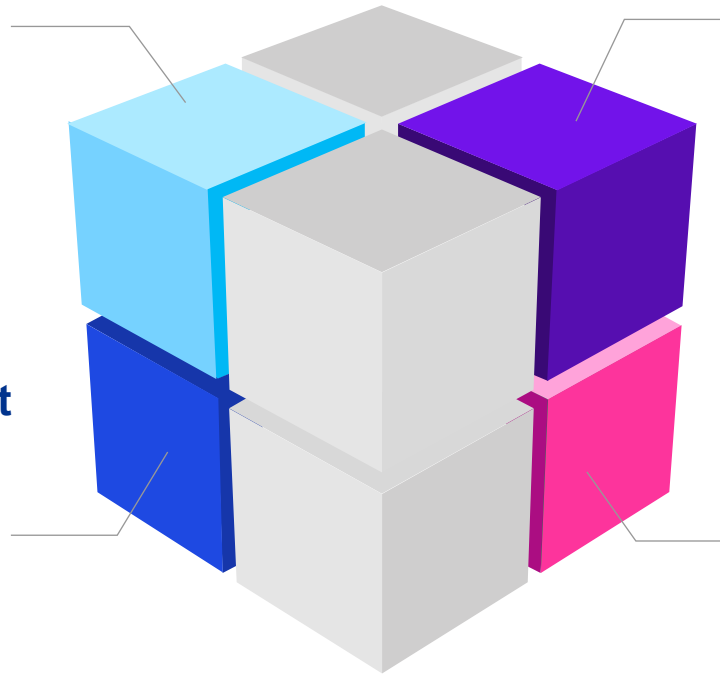
“Scheme money” refers to any client money received or held in Hong Kong in the course of conduct of Type 13 regulated activity 1) by the licensed corporation, or 2) by any corporation in controlling entity relationship with the licensed corporation, that constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions to it whether as capital or income. **All amount of scheme money must be dealt in accordance with the scheme documents of the relevant CIS.**

Set up of segregated accounts

- One or more segregated account designated as a trust account or a client account must be set up for **each relevant CIS** (no need for a separate segregated account for each sub-fund)

Payment into segregated account

- Segregated accounts for holding scheme money must be established with an authorized financial institution, which must **be designated as a trust account or client account** for the relevant CIS.
- Scheme money must be paid into segregated account **within three business days**



Payment out of segregated account

- Meet payment, distribution, redemption, settlement or margin requirements on behalf of the relevant CIS
- Settle proper charges in respect of the relevant CIS
- Settle liability incurred by or on behalf of the relevant CIS
- Subject to conditions, paid in accordance with a written instruction

Reporting of non-compliance

- Should give **written notice to SFC within one business day** when become aware of breach

Client Securities Rules

“**Scheme security**” refers to any client securities that are either 1) listed or traded on a recognized stock market; or 2) interests in a collective CIS authorized by the SFC under section 104 of the SFO, in relation to an intermediary received or held in Hong Kong in the course of conducting Type 13 regulated activities.

Deposit or registration of scheme securities

Scheme securities received are to be:

- **deposited into a segregated trust or client account** established and maintained in Hong Kong with— (i) an authorized financial institution; (ii) an approved custodian; or (iii) another intermediary licensed for dealing in securities, or
- **registered directly in the name of the CIS** or in the name of the associated entity on behalf of the CIS.

Reporting of non-compliance

- Should give **written notice to SFC within one business day** when become aware of breach
- Penalties apply if do not comply without reasonable excuse



Treatment of scheme securities

- Dealing with scheme securities of a CIS **based on written instructions**, where the written instruction does not contravene any provisions of the scheme constitutive documents of the relevant CIS.
- Scheme securities cannot be deposited, transferred, lent, pledged, repledged, unless it is dealt in accordance with the scheme documents of the relevant CIS.

Limitation

- Must take reasonable steps to ensure that scheme securities **are not deposited, transferred, lent, pledged, repledged**.

Schedule 11

Schedule 11 of the Code of Conduct contains requirements surrounding the management of subscription and redemption, and the custody and safekeeping of relevant CIS property:

Subscription and redemption transactions are processed on a timely basis, and carried out in accordance with the provisions of the constitutive documents of the relevant CIS

Where proceeds have been received but orders have not yet been accepted, these proceeds are deposited on a timely basis into segregated or omnibus bank account(s) designated for holding such proceeds

Where orders have been accepted, the subscription proceeds relating to such orders are deposited on a timely basis into a segregated bank account designated as a trust account or client account for holding money which constitutes relevant CIS property

Reconciliation of subscription and redemption is performed and the frequency of reconciliation conducted is consistent with that of subscriptions and redemptions



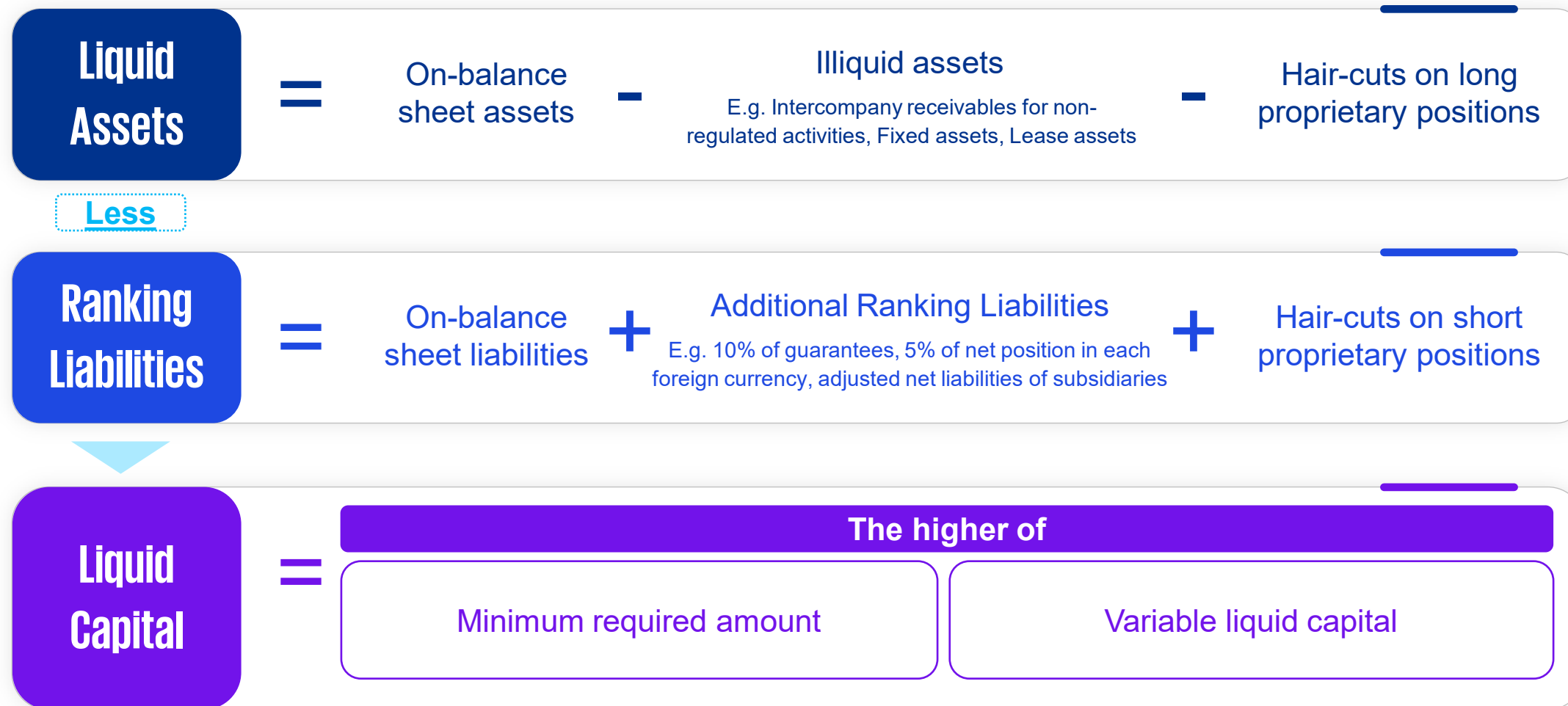
In respect of each relevant CIS, a Depositary should:

- properly register the relevant CIS property in the name of or to the order of the Depositary, unless prohibited by any relevant laws or regulations
- establish and maintain proper segregated bank account(s) designated as a trust account or client account for holding money which constitutes relevant CIS property whether in Hong Kong or overseas, unless prohibited by any relevant laws or regulations
- maintain comprehensive, up-to-date and accurate records of relevant CIS property, including cash and assets that cannot be held in custody
- ensure reconciliation is carried out on a daily basis for cash and on a regular basis for other relevant CIS property
- ensure payments and asset transfers or other dealings of any relevant CIS property on behalf of the relevant CIS are properly authorized in accordance with the constitutive documents of the relevant CIS

Overview of the Capital Requirements



Calculation of Liquid Capital



FRR Submission and Record Keeping Requirements



Notification requirements in relation to FRR

Notification will need to be made to the SFC when certain scenarios or trigger events occur, including but not limited to:

- The LC is unable to maintain or unable to ascertain whether it maintains the
 - minimum paid-up share capital
 - minimum liquid capital requirements

If the liquid capital:

- <120% of the LC's required liquid capital
- < required liquid capital (deficit)
- < 50% of the LC's last return submitted
- any information previously submitted has become false or misleading



Record keeping requirements in relation to FRR

1. Accounting, trading and other records as are sufficient to:
 - ...
 - enable it readily to establish whether it has complied with the FRR
2. Keep those records in such manner as will enable an audit to be conveniently and properly carried out;
3. Make entries in those records in accordance with generally accepted accounting principles

Common Challenges

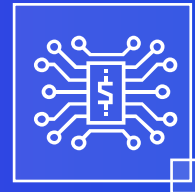


Previous SFC enforcements

1. Failure to maintain minimum required liquid capital
2. Failure to comply with notification requirements
3. Failure to submit FRR returns
4. Providing false / misleading information to SFC in FRR returns
5. Failure to put in place adequate and effective internal controls and procedures to ensure compliance

02

Looking ahead – SFC inspections



Preparation for SFC inspections

01

Opening meeting

- The inspection would be started with an opening meeting
- The SFC will usually be represented by the **full inspection team** as well as licensing or other representatives
- **All Responsible Officers including MIC of Overall Management Oversight** should attend the opening meeting.
- Through the meeting, the SFC understands the intermediary, its people and inherent risks.

02

Document request

General information request includes but not limited to:

- Description of business activities
- Organization chart and governance structure
- Key personnel and their roles and responsibilities
- Financial information
- Governance function meeting minutes
- Compliance manual
- Internal control report issued by Compliance, Internal Audit, and/or an independent auditor
- List of litigations
- Lists of complaints and list of incidents

03

Deep dive into specific area

- Deep dive into specific area through **walkthrough interview(s)**
- Request **additional documents**, and sending follow-up questions

04

Issuance of issues

In 2 to 3 months, the **SFC shares with the intermediary the potential issue(s) identified** during the inspection and **asks for clarification** and discussion before finalizing the issues.

Common challenges for licensed corporations



Delayed responses

Late responses to enquiries raised by the SFC (e.g. extra time to extract data from key systems) have been interpreted as a sign of poor supervision. The SFC takes the view that data should be available to management.



Incomplete information

The SFC is given piecemeal responses to their queries with no overall explanation or context for what occurred.



Incompatible responses

Answers given by different interviewees are inconsistent – especially in respect of roles and responsibilities.



Uncooperative attitude

Institutions have taken a 'legalistic view' on what they are willing to share with the SFC, leaving the regulators to feel that the institution is not cooperative and transparent.



Unprepared for meetings

Answers given to the SFC's questions demonstrate that the interviewees lack control awareness and indicate poor compliance culture (e.g. disorganised responses leading to confusion).



Failure in providing further details

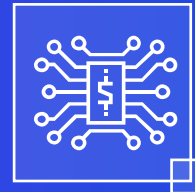
Interviewees are unable to provide further details / background to support conclusions they reached in respect of specific exceptions.

Key Takeaways

- ✓ Ensure sufficient resources to handle requests from the SFC
- ✓ Ensure that the inspection visit is managed by personnel with an appropriate level of seniority
- ✓ Be open and transparent with the SFC
- ✓ Take all the data/information requests from the SFC seriously

03

Looking ahead – Audits



Audit of licensed corporations

The HKICPA, in January 2024, revised Practice Note 820 ('PN820') The Audit of Licensed Corporations and Associated Entities of Intermediaries. Below is a summary of some of the audit/review requirements that licensed corporations will need to take note of:

Audit of Financial Statements

- The auditor's report contains a true and fair audit opinion and states whether the financial statements are in accordance with the records kept under the Securities and Futures (Keeping of Records) Rules and satisfy the requirements of the Securities and Futures (Accounts and Audit) Rules
- Guidance in PN820 covered considerations including requiring auditors to assess internal controls and risk, risks relating to fraud, considerations of laws and regulations, and correspondences with the SFC
- There are also specific application guidance on client assets where regulated entities are specifically required by the SFC to have adequate systems of internal control over client assets

Compliance report by the Auditor

The compliance report will cover:

- whether the required returns made up to the last day of the financial year as set out in AAR have been **correctly compiled from the records of the licensed corporation** or, if not correctly compiled, the nature and extent of the incorrectness
 - This includes performing procedures on the final revised and resubmitted financial returns as referred to in section 3(1)(b) AAR made up to year end date
- whether the regulated entity had **systems of control in place that were adequate to ensure compliance with the SFC's requirements with regard to client assets**
- whether the regulated entity **complied with the Securities and Futures (Keeping of Records) Rules** during the financial year
- whether the regulated entity **complied with the client asset rules** during the financial year
- whether there appears to have been any **contravention of the FRR** by the licensed corporation during the financial year

Audit Questionnaire

- The auditor would normally on a voluntary basis complete an Audit Questionnaire for submission to the SFC, providing information in relation to the completed audit that is not readily available from the audited financial statements
- Audit Questionnaire would be completed based on information obtained during the course of its audit of the financial statements covered by the Audit Questionnaire

What do licensed corporations need to prepare

Beyond the audit of financial statements, licensed corporations will need to be ready for the auditor's review in relation to the requirements surrounding the various requirements, these may include, but not limited to:

FRR returns



- First submitted FRR and any revisions subsequent to first submission, including list of adjustments made
- Mapping of trial balance to completed FRR returns
- Internal working papers to show calculation, aggregation and splitting of balances leading to the completed FRR
- Providing supporting documentation on any assumptions/judgements applied when preparing FRR returns
- Supporting documentation of adjustments applied towards the compilation of the FRR return
- Breakdown of balances in TB to support which balances can/cannot be included in the liquid capital calculations

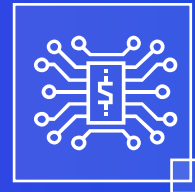
Internal control considerations



- Providing policies and procedures relating to processes identified to be in-scope by your auditors, detailing the process flows and internal controls that are in place to ensure compliance with the relevant SFC regulatory requirements
- Supporting walkthroughs in understanding the processes and internal controls, with samples of internal controls to provide illustration
- Where there were SFC/internal audit findings relating to those processes, provide summary alongside response by management or list of enhancements made or are currently in progress of applying
- Providing control samples for key controls identified to support operating effectiveness assessment by your auditors

Panel discussion

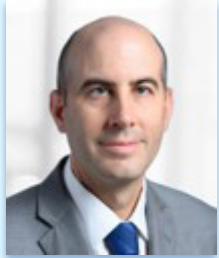
Longhui Loo
KPMG China



Q&A



Contact us



Tom Jenkins

Head of Financial Services
Governance, Risk and
Compliance Service
Hong Kong (SAR)
KPMG China
E: tom.jenkins@kpmg.com
T: +852 2143 8570



Simmy Ko

Partner
Financial Services
Hong Kong (SAR)
KPMG China
E: simmy.ko@kpmg.com
T: +852 2143 8697



Longhui Loo

Director
Governance, Risk and
Compliance Service
Hong Kong (SAR)
KPMG China
E: longhui.loo@kpmg.com
T: +852 3927 4674



Eva Cheng

Director
Financial Services
Hong Kong (SAR)
KPMG China
E: eva.s.cheng@kpmg.com
T: +852 3927 5483



Mandy Chung

Director
Business Development,
Asset Management
Hong Kong (SAR)
KPMG China
E: mandy.chung@kpmg.com
T: +852 2140 2364





Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.



kpmg.com/cn/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2024 KPMG Advisory (Hong Kong) Limited, a Hong Kong (SAR) limited liability company and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in Hong Kong (SAR).

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation..

Document Classification: KPMG Public