



香港信託人公會
Hong Kong Trustees' Association

HONG KONG TRUSTEES' ASSOCIATION

SEMINAR ON

HKMA Code of Practice

16 May 2024

HKMA's Code of Practice

16 May 2024

HKMA's Code of Practice and Principles for Trust Business

HKMA's code and principles for trust business

Sources








HKMA's Code of
Practice for
Trustee Business
("**Code**")



HKMA's Supervisory Policy
Manual Module TB-1
"Regulation and Supervision
of Trust Business"
("**SPM Module TB-1**")

Applicability of SPM Module TB-1 and Code

Applicable		All HKMA-authorized institutions ("AIs") (whether incorporated in or outside Hong Kong) which conduct trust business in Hong Kong → SPM Module TB-1 and Code apply directly
		Hong Kong-incorporated AIs' subsidiaries which conduct trust business in Hong Kong → indirect application (i.e., AI must ensure subsidiary's compliance with Code)
		AIs that merely introduce or refer a trustee to its customers for the provision of trust services (only paragraph 3 of SPM Module TB-1 applies to the AI)
Not Applicable		Trustees other than AIs or subsidiaries of a Hong Kong-incorporated AI conducting trust business in Hong Kong (are not required but encouraged to comply with the Code)
		Trustees who delegate their operations or functions to another person → not required to comply with the Code but should exercise proper oversight of their delegates

SPM Module TB-1 and the Code



Key Terms

- "Trust" means an obligation imposed on a person to hold or control and administer assets for the benefit of others (i.e., the beneficiaries) or for a specified purpose (e.g., charitable purpose, wills or estate planning)

SPM Module TB-1 and the Code



Key Terms

- **"Trust business"** means the provision of one or more of the following services by way of business:
 - i. **Setting up** a trust;
 - ii. Acting as a **trustee** (or a party by whatever name called performing a trustee's functions) for a trust;
 - iii. **Managing the assets** held on trust (see Note 1 below);
 - iv. **Administration services** for a trust (examples of relevant activities to be taken into account include keeping or preparation of accounting records, custody of trust assets, payment of expenses or remuneration out of a trust, etc.) (see Note 2 below); and
 - v. Eventual **transfer of trust assets** to beneficiaries.



Note 1: This does not include investment management of trust assets by a licensed or registered person for Type 9 regulated activity under Schedule 5 to the SFO.

Note 2: For Collective Investment Schemes ("**CIS**") (as defined in the SFO), the provision of "administration services for a trust" does not cover an activity the exercise of which is the responsibility of the management company of the CIS.

Exempted trust activities



Depositories licensed or registered for Type 13 regulated activity (acting as a depository) ("**RA13**") under Schedule 5 to the SFO ("**RA13 Depositories**")

- **RA13 Depositories** will be **exempted** from the Code, insofar as their **trust services relate to an SFC-authorized CIS** and form part of the regulated functions for RA13.
- The RA13 regime was not yet implemented when the Code took effect, but the exemption **also applies during the interim period** before its implementation.
- The RA regime to come into operation in October 2024.

Exempted trust activities



Trustees, insofar as their trust services relate to the following:

- A registered scheme or its constituent fund as defined in the **Mandatory Provident Fund Schemes Ordinance** (Cap. 485) ("**MPF schemes**")
- Occupational retirement schemes as defined in the **Occupational Retirement Schemes Ordinance** (Cap. 426) ("**ORSO**") ("**ORSO schemes**")
- An **approved pooled investment fund** as defined in the **Mandatory Provident Fund Schemes (General) Regulation** (Cap. 485A) ("**APIF**") which is (or is intended to be) offered only to
 - (A) MPF schemes;
 - (B) ORSO schemes;
 - (C) pooling agreements as defined in section 2(4) of the ORSO; or
 - (D) other APIFs which are (or are intended to be) offered only to one of the products listed in (A) to (C).

Exempted trust activities



A person when acting in the **capacity of a trustee**, where that part of its trust business relates specifically to a **trust** that is **created** (or proposed to be created) **in connection with loans and/or the issuance of debentures** (which include debt securities such as notes or bonds) and aims to ensure the **fulfilment of applicable rights and/or obligations between the creditors and debtors** (borrowers and lenders)

- In other words, a person acting as **security trustee in a syndicated loan transaction** (or as bond or note trustee in a bond or note issue), when acting in that capacity, is exempted from the Code requirements.

Requirements imposed by SPM Module TB-1



Conduct requirements for trustees

General principles under the Code – Principles 1 to 6

1

**Fairness, honesty
and integrity**



- Ensure actions comply with **relevant requirements and standards** applicable to it and/or its staff. The higher standards should prevail
- Act with **integrity** and should **not engage in conduct** which involves **fraud or dishonesty** or which otherwise **reflects adversely on**, or compromises, its honesty, trustworthiness or integrity
- Subject to its duties and obligations under the trust governing documents, the **trustee should not attempt to avoid its responsibilities** under the Code and other applicable requirement and standards
- Take reasonable steps to ensure **invitations, advertisement and other representations** are **accurate** and **not contain false, misleading or deceptive information**

Conduct requirements for trustees

General principles under the Code

1

Fairness, honesty and integrity (cont'd)



- Act **fairly and objectively** when dealing with customer, which includes:
 - Acting in accordance with **objects of a trust** and within parameters set out in the trust documents
 - **Treating customer fairly** at all stages of the relationship while having regard to its legal and fiduciary obligations, including:
 - Ensuring that **trust-related fees and charges** are **fair** and **reasonable** and being open and transparent about fees and charges
 - Ensuring the **customer has access to relevant and updated information** concerning the trust and making adequate and accurate disclosure of relevant information to **help customers make informed decisions** before entering into any contract or agreement
 - **Providing advice** to customers where required and appropriate
 - **Exercising independent professional judgment** in performing its duties

Conduct requirements for trustees

General principles under the Code

2

**Due skill, care
and diligence**



- Exercise discretion or other powers properly
 - Consider and deal with requests from customers effectively and timely
- Act in the interest of its customers (i.e., in good faith with proper purpose and with due skill, care and diligence) and generally not to take up outside duties or responsibilities which compromise its ability to act as a trustee
 - Where such duties or responsibilities arise because the trustee conducts its business in a wider organization, the trustee should ensure that decision-making and other activities are properly segregated
 - Trustees should also have a full and up-to-date understanding of the trust governing documents, act with due care and attention when exercising their powers and discretions under the trust, and seek proper legal or other professional advice where necessary

Conduct requirements for trustees

General principles under the Code

2

Due skill, care and diligence (cont'd)



- Avoid, prevent or manage any potential or actual conflict of interest by the following actions:
 - Adequate segregation of duties
 - Establishing appropriate internal rules of confidentiality (including information boundaries such as physical separation of certain departments or data segregation)
 - Identifying relationships or other situations where potential conflicts may arise and setting out possible preventive measures
 - Disclosing interests or conflicts to customers and other impacted trust parties and, if appropriate, seeking written consent from relevant parties
 - Advising customers to seek independent professional advice
 - Implementing proper controls to ensure that the trustee deals with connected parties on an arm's length basis and in the interests of the trust

Conduct requirements for trustees

General principles under the Code

2

Due skill, care and diligence (cont'd)



- Ensure trustee and its personnel have and **maintain sufficient skill, knowledge and expertise** in conducting its trust business, it should also ensure that:
 - Key personnel and relevant staff are **fit and proper** for their roles and responsibilities
 - **Individuals principally responsible** for the trust business and relevant staff are expected to take **not less than 10 hours of trust-related continuous professional training in each calendar year**, of which at least 2 hours should be on ethics and compliance
 - **Appropriate policies, procedures** and for **assessing qualifications, knowledge, skills, expertise and soundness of judgment of staff** are implemented, and adequate supervision of and training to staff is provided
 - **Keep records** to **evidence the competence and on-going professional development** of key personnel, relevant staff and staff engaged in compliance, internal controls, risk management and internal audit functions, which should **be retained for at least 3 years**

Conduct requirements for trustees

General principles under the Code

3

Management and control of trust assets



- Exercise care and **implement adequate procedures** to safeguard trust assets against loss, theft, fraud and other misappropriation
- **Maintain proper records** to evidence good title and registration where available and to ensure they are available for distribution as required by the terms of the trust
- **Trust assets** should be **identified clearly and segregated** from each other and from assets belonging to the trustee and other parties involved in operating trust
- **Conduct regular reconciliation** of client monies and other trust assets against its records
 - **Verify asset ownership** from time to time
 - **Take remedial measures** in respect of any discrepancies or issues identified in the process

Conduct requirements for trustees

General principles under the Code

4

Corporate governance and internal controls



- Maintain **robust corporate governance policies**, practices and processes, effective delegation and outsourcing, internal controls on managing and administering the trust, and **proper risk management** that is commensurate with the nature, scale and complexity of the trust business
- Ultimate responsibility for the **operation and conduct of a trust business** lies with the trustee's **board of directors** or (if the trustee is not a corporate entity) other relevant governing body, whereas the **day-to-day running** of the trust business is the responsibility of the trustee's **senior management**
 - Implement process to ensure its **senior management can obtain updates** and **appraise the affairs of the trust business** in a timely manner, and that the responsibilities and reporting lines are clearly identified for proper management.
- Establish adequate policies, procedures and control measure for **selection, appointment, monitoring, assessment and supervision of delegates** / service providers

Conduct requirements for trustees

General principles under the Code

4

Corporate governance and internal controls (cont'd)



- For delegation/outsourcing: Establish adequate policies, procedures and control measure for **selection, appointment, monitoring, assessment and supervision of delegates / service providers**
 - Setting **specific selection criteria** and performing due diligence of a delegate or service provider prior to appointment
 - Executing an **agreement** specifying the type and level of service to be provided
 - Implementing **controls to monitor performance** of the delegates on a continuous basis
- Implement policies, procedures and controls in relation to **confidentiality**, including the **collection, use and transmission of trust related information** and the collection, use, storage, protection, transmission and destruction of personal data
 - All **trust related information and personal data** collected by the trustee or obtained from persons related to the trust should be **held in strict confidence** and should **not be disclosed to third parties**, unless required or permitted by applicable legal or regulatory requirements and the trust governing documents

Conduct requirements for trustees

General principles under the Code

4

Corporate governance and internal controls (cont'd)



- Internal controls: Implement adequate procedures and controls, including managing, administrating and overseeing the operation of the trust
 - Adequate **business continuity plan** and procedures to **handle potential disruptions, failures and other contingencies** (including an appropriate contingency plan for the engagement of delegates and other parties)
- Proper **risk management**
 - Implement an **effective risk management framework** and adequate procedures and internal controls to manage risks, handle and **monitor customer's complaints** and maintain adequate records of compliance with the Code
 - Maintain **professional indemnity insurance** with sufficient coverage that is commensurate with the nature and scale of its trust business

Conduct requirements for trustees

General principles under the Code

5

Compliance with legal and regulatory requirements and standards



- Implementing an **adequate compliance policy**, and adequate procedures and internal controls to ensure compliance with relevant legal and regulatory requirements and standards for conducting its trust business
- Senior management establishing a **properly staffed and qualified compliance function** which is sufficiently **independent of business functions**, reports to senior management directly and has unfettered access to all business and supporting units and relevant documentation, records and information
- Trustee establishing a **compliance program** for planning and conducting regular independent reviews of its trust business activities and operations
- Implementing **effective systems and controls** to identify, manage and remedy any conduct issues, control deficiencies and non-compliance of the Code and other standards governing the trust business

Conduct requirements for trustees

General principles under the Code

6

Co-operation with regulators



- Ensure **communications with relevant regulators** are **timely** and **accurate**
- Cooperate with the regulators when it has identified a material non-compliance of the Code

Appointment of managers and responsible officers

AI

- One or more "manager(s)" to be **principally responsible** for the conduct of trust business and follow the **fit and proper requirements**, in respect of its trust business
- Comply with SPM Module CG-2 on Systems of Control for the Appointment of Managers ("**SPM Module CG-2**")
- SPM Module CG-2 specifies the fit and proper criteria for managers, **how the AI should ensure their fitness and propriety to be a manager**, and manager-related notifications to the HKMA

Subsidiary of Hong Kong-incorporated AI

- One or more "responsible officer(s)" to be **principally responsible** for the conduct of its trust business
- **Notify HKMA** of appointment, cessation or change
- **Hong Kong-incorporated AI is responsible** for ensuring compliance by the subsidiary



Note: HKMA notifications must generally be made in writing and within 14 days of the appointment, cessation or change of a manager / responsible officer.

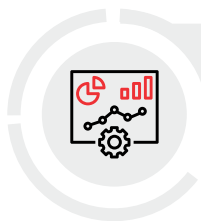
Introduction or referral of trustees



Applies when the AI (or the subsidiary) makes a recommendation or receives (or is to receive) remuneration during the introduction or referral, regardless of where the trustee provides the trust services

- Perform **proper due diligence** on the trustee to be introduced or referred
 - Consider **whether the trustee complies with the Code or comparable requirements** and various other factors (e.g., the trustee's track record, reputation and standing, etc.)
- Consider **implications to customer protection in relevant foreign jurisdictions** if the trustee to be introduced operates outside Hong Kong
- Put in place proper arrangements to **handle incidents including disruption of services** and data leakage
 - **Notifying impacted customers** and safeguarding customer interests

Notification and reporting requirements



SPM Module TB-1 also imposes notification and reporting requirements on AIs and subsidiaries of Hong Kong-incorporated AIs, which carry on trustee business in Hong Kong

- Promptly inform the HKMA of any significant change of business plans, material non-compliance with any legal or regulatory requirements, major incidents and any other matters that may have a material impact on the trustee's fitness and propriety
 - This may include a major dispute or litigation involving the trust parties
- Notify the HKMA of any rectification and remedial action plan
 - Done as soon as reasonably practicable and within any prescribed timeline
- Implement policies to ensure compliance with notification and reporting obligations

Supervision by the HKMA

Supervisory approach

- **On-site examination** to allow HKMA to understand how an AI or (where applicable) AI subsidiary **carries on its trust business** and to determine **whether it has implemented appropriate and effective policies**, procedures and control measures to **ensure compliance** with the Code and relevant HKMA guidelines and circulars
 - During an on-site examination, the HKMA may also ask to **see auditors' reports**, together with the **management response** and (if deficiencies were identified) **remedial action plans**
- **Off-site surveillance** including regular surveys, ad-hoc surveys and reviews to collect information on trust related activities



Note: Where the collected information reveals weaknesses or deficiencies, the HKMA will follow up as necessary on remedial measures.

Supervision by the HKMA

Supervisory approach

Risk-based supervisory approach that are appropriate and proportionate to the risks posed by the AI's trust related activities to the public, generally **three levels** of supervisory actions

1. **Sharing good practices** with the industry to assist them in strengthening their practices and controls
2. **Requiring the relevant AI to implement corrective actions** if the HKMA identifies deficiencies in AIs' controls and practices
 - If **deficiencies are systemic**, more **rigorous** action may be required
 - E.g., the AI may be instructed to commission an **independent review** and take appropriate action to address the review findings. **Business practices** that have caused serious supervisory concerns may need to be **ceased**
3. Triggered where the HKMA **finds a prima facie case for disciplinary action**. At this level, the **fitness and propriety** of the relevant AI and whether it continues to satisfy the **minimum criteria for authorization** under the Banking Ordinance may **be called into question**

List of trustees



HKMA maintains and publishes a list of trustee consisting of AIs and subsidiaries of Hong Kong-incorporated AIs which carry on trust business in Hong Kong

- Other **affiliates of an AI** (including subsidiaries of an overseas-incorporated AI) may also request to be included on the list, if they **provide a declaration on compliance with the Code** both initially and annually
- Contain **basic particulars** of the trustees at the entity level
- Trustees named on the list should **notify the HKMA within 7 business days of the suspension or cessation** of their trust business, or of any subsequent change of relevant information
- HKMA **does not guarantee the performance or creditworthiness** of the trustees on the list, but it may **exclude or permanently or temporarily remove particulars** of a trustee from the list if it considers appropriate

Questions

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