



Hong Kong Trustees' Association

Webinar on HKMA's Supervisory Policy Manual in relation to regulation and supervision of Trust Business

21 September 2022



Points to note

- **The webinar will start at 5:00 pm.**
- **Please note all the lines will be muted throughout the webinar duration.**
- **If you have questions for the speakers, please submit them via the chat box panel to “All panelists”. Your questions will be raised during the Q&A session, subject to available time.**
- **A Feedback survey will be available at the end of the webinar on WebEx. Please complete the survey, your feedback is important to us.**

With You Today

Speakers



Jeffrey Hau
Partner
Risk Consulting

KPMG China



Nelson Lee
Partner
Financial Services

KPMG China

Key Sectors

- Banking, brokerage and asset management

Key Services

- Regulatory controls and compliance advisory, internal audit, licensing, operational resilience

Key Sectors

- Investment management and asset management

Key Services

- Statutory audit, compliance work and internal controls review and market assessment projects

With You Today

Speakers



Jacqueline Shek
Executive Director
Trust Services

ZEDRA



Lucia Chan
ASP Lead, Senior
Product Manager
*Global Trustee and
Fiduciary Services*

HSBC

- With over 20 years of specialised experience in tax, trust & private wealth structuring and has extensive experience working with families, professional advisers, banks, family offices and trustee companies in setting up, administering, restructuring and defending private trust and charitable arrangements
- Currently heads the Trust Services business of ZEDRA in Hong Kong after being the Global Head of Legal for HSBC's private trust businesses

- Oversees the trustee and fiduciary services across the Asia Pacific Region with thorough understanding of fund industry, the associated market infrastructure and diversified fund structures in different segments
- Leads significant regulatory change projects, ensures company plays a prominent role in market advocacy, drives and shapes the relevant changes which are beneficial to the industry

Agenda

01

HKMA's Supervisory Policy Manual TB-1

02

Supervisory Approach

03

Panel Discussion

04

Q&A Session





01

Regulation and Supervision of Trust Business

HKMA's Supervisory Policy Manual TB-1

Regulation and Supervision of Trust Business

After this section, you will be able to have a clear understanding of:



Objectives of setting up new SPM module



Key timeline



Applicability of the new SPM module



Exemptions



Key requirements under TB-1

Key Updates & Information

Q1

What is TB-1?

- **New SPM module** issued by the HKMA in May 2022
- A **statutory guideline** under the Banking Ordinance, section 7(3)
- Describes the **HKMA's approach to regulating and supervising trust business** and related activities of **authorised institutions** ("AIs")
- To **attract and provide services in asset and wealth management** with the mean to introduce regulatory monitoring and supervision in the trust business, to ensure **protection of client's assets**

Q2

When should I comply with TB-1?

- **As soon as possible** but no later than **1 June 2023**

Applicability

Q3

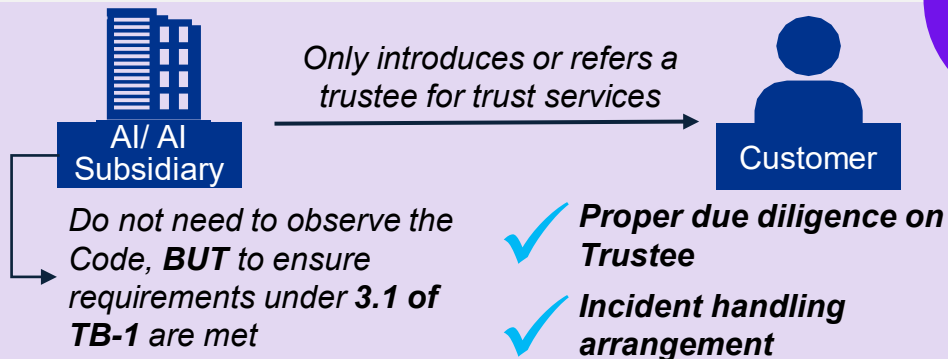
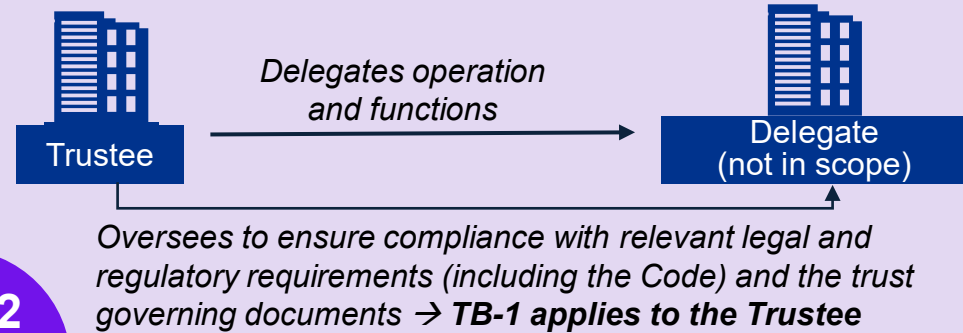
Who are required to comply with TB-1?

- If you fall under **one of the following scenarios**, TB-1 applies to you:

Als or Subsidiaries of locally incorporated Als



Conduct trust business in Hong Kong



- Other Trustee conducting trust business in HK
- Not AI or AI Subsidiary

Recommended to follow for better protection of client assets

Exemptions

Q4

Who are exempted?

➤ If you fall under **one of the following criteria**, TB-1 and the Code do not apply to you:

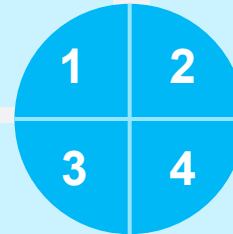
- ✓ Depositories licensed or registered for Type 13 regulated activity (“RA13”) under Schedule 5 to the SFO
- ✓ Trust services provided related to a CIS authorised by the SFC

Trust services provided which relate to:

- ✓ MPF schemes
- ✓ Approved pooled investment fund (APIF) as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation

Trust services provided relate to
ORSO schemes

A trust that is created (or proposed to be created) in connection with **loans and/or the issuance of debentures** and aims to ensure the fulfilment of applicable rights and/or obligations

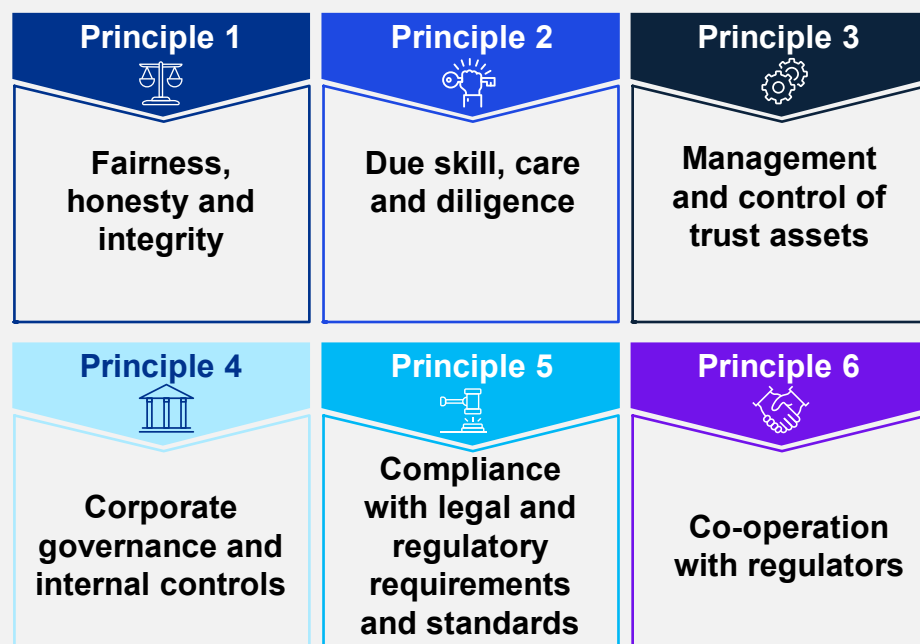


Key Requirements under TB-1

Observing the general principles and practical standards detailed in the Code of Practice for Trust Business

A

Code of Practice for Trust Business



Appointing manager(s) and responsible officer(s)

B

When the trustee is an AI

- Appoint manager(s) in respect of section 72B of the Banking Ordinance (Cap.155)
- Key roles: to be principally responsible (alone or with others) for the conduct of its trust business under different lines of business
- Comply with HKMA's Supervisory Policy Manual CG-2 on Systems of Control for the Appointment of Manager – ensure *fit and proper* and *notification requirements and timeline* to the HKMA

When the trustee is an AI subsidiary

- Appoint responsible officer(s)
- Key roles: to be principally responsible (alone or with others) for the conduct of its trust business under different lines of business
- **Notify** the HKMA in respect of the appointment of the responsible officer **within 14 days**

Extracts of the Code

Principle 1: Fairness, honesty and integrity

A trustee should **act honestly, fairly, and with integrity** in conducting its trust business



Disclosure of information

Where appropriate and permitted, a trustee should

- ✓ ensure that a customer has access to relevant and updated information concerning that trust, and
- ✓ make adequate and accurate disclosure of relevant information to help them make an informed decision



Fees and charges

- ✓ Be open and transparent with customers about fees and charges, e.g. disclosing benefits received associated with the trust service provided from parties, providing adequate notice before introducing any changes in fees and charges







Representations

- ✓ Ensure the representations made, such as invitation and advertisements, are accurate and do not contain false, misleading or deceptive information

Extracts of the Code

Principle 2: Due skill, care and diligence

A trustee, in conducting its trust business, should **act with due skill, care and diligence**, and **in the interests of its customers**. A trustee should ensure that the entity through which trust business is conducted and all relevant **staff are fit and proper** to perform their roles and functions

 Prompt execution	<ul style="list-style-type: none">✓ Obtain <u>sufficient information</u> in order to exercise properly its discretion or other powers✓ Consider and <u>deal effectively in a timely manner with requests</u> from its customers
 Acting in the interests of customers	<ul style="list-style-type: none">✓ <u>Not to take up outside duties or responsibilities</u> (OR maintain proper <u>segregation of decision making</u> and other activities) which may pose undue influence on the trustee's decisions or compromise the trustee's ability to act in the interests of the trust.✓ <u>Act responsibly</u> on any available information considered by the trustee to be relevant and appropriate✓ <u>Exercise power or discretion properly</u> in accordance with the objects and terms set out in the trust governing documents and applicable legal and regulatory requirements.
 Handling conflict of interest	<ul style="list-style-type: none">✓ Consider the circumstances in determining the <u>appropriate actions to handle actual or potential conflicts of interest</u> so that they can be avoided or prevented, and if not possible, at least appropriately managed✓ Deal with connected parties on an <u>arm's length basis and in the interests of the trust, disclosure of connections, and maintaining proper documentation of the justifications</u> for approving a transaction with a connected party
 Fitness and propriety of a trustee and its staff	<ul style="list-style-type: none">✓ Possess and maintain sufficient skills, knowledge and expertise to conduct its trust business✓ Keep records to evidence the <u>competence and on-going professional development</u> of key personnel, relevant staff, and staff engaged in compliance, internal controls, risk management and internal audit functions

Extracts of the Code

Principle 3: Management and control of trust assets

A trustee should **exercise due care** in understanding, managing and controlling all assets held within the trust in full conformity with its fiduciary obligations.



Ownership and entitlement of trust assets

- ✓ Exercise care in safeguarding those assets held on trust within its control. Where physical assets in this respect are held, physical storage should be secure
- ✓ Proper audit trails should be created to evidence the receipt, delivery and other movements of assets



Segregation of trust assets

- ✓ Ensure assets held on trust are clearly identified and segregated from one another and from the assets of the trustee and any delegates or other parties involved in the operations of the trust



Reconciliation of trust assets

- ✓ Regular reconciliation (with review evidence) to be conducted by independent staff of the trustee on the following:
 - client monies
 - other assets held on trust against the trustee or third-party records
 - verification of asset ownership
- ✓ Perform periodic audits for physical assets
- ✓ Establish and implement follow up procedures (including rectification and escalation processes) for any issues or discrepancies identified

Extracts of the Code

Principle 4: Corporate governance and internal controls

A trustee should establish a proper corporate governance structure and implement adequate internal controls and risk management systems to ensure that its trust business is effectively managed.



Corporate governance

- ✓ Establish and maintain robust corporate governance policies and practices
- ✓ Proper oversight of all delegates and other parties



Confidentiality

- ✓ Take all necessary steps to safeguard the confidentiality of trust related and personal information, including formulating internal policies for the collection, use, storage, protection, transmission and destruction of confidential data
- ✓ Implement adequate controls to prevent staff from benefiting in financial or non-financial terms from the improper use of confidential information which may lead to unfair, improper or illegal behaviour



Internal controls on managing and administering the trust

- ✓ Ensure adequate business continuity plan and procedures to handle potential disruptions, failures, and other contingencies for its trust business activities

Extracts of the Code

Principle 5: Compliance with legal and regulatory requirements and standards

A trustee should **comply with relevant legal and regulatory requirements and standards** applicable to the conduct of its trust business activities.



Compliance policies and procedures

- ✓ Establish compliance policy with senior management's approval; such policy should be subject to regular review to ensure adequacy and relevancy
- ✓ Comply with applicable legal and regulatory requirements, regulatory standards, and internal policies and procedures relevant to its trust business



Compliance function and review

- ✓ Set up compliance function comprising staff with relevant knowledge, skills, qualification and experience to execute their duties effectively, and to report to the senior management
- ✓ Compliance function should have unfettered access to all business and supporting units, as well as documentation, records and information necessary to properly discharge its roles and responsibilities
- ✓ Plan and conduct regular independent review of its trust business activities and operations
- ✓ Take appropriate remedial measures to rectify the issues and weaknesses identified and prevent similar occurrences in future. Such action plans and measures should be reviewed and monitored
- ✓ Escalate to senior management and report to regulators any material non-compliance and other relevant matters as appropriate

Extracts of the Code

Principle 6: Co-operation with regulators

A trustee should deal with relevant regulators in an **open and co-operative manner**.



Co-operation with regulators

✓ Communications made by a trustee with relevant regulators should be timely and accurate

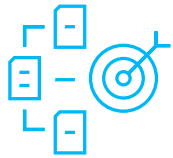
A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are set against a clear blue sky. A semi-transparent purple rectangular overlay covers the middle portion of the image, serving as a background for the text.

02

Supervisory Approach

Supervisory Approach

After this section, you will be able to have a clear understanding of:



**HKMA's
supervisory
approach**



**Relevant
review
approach
conducted by
the HKMA**

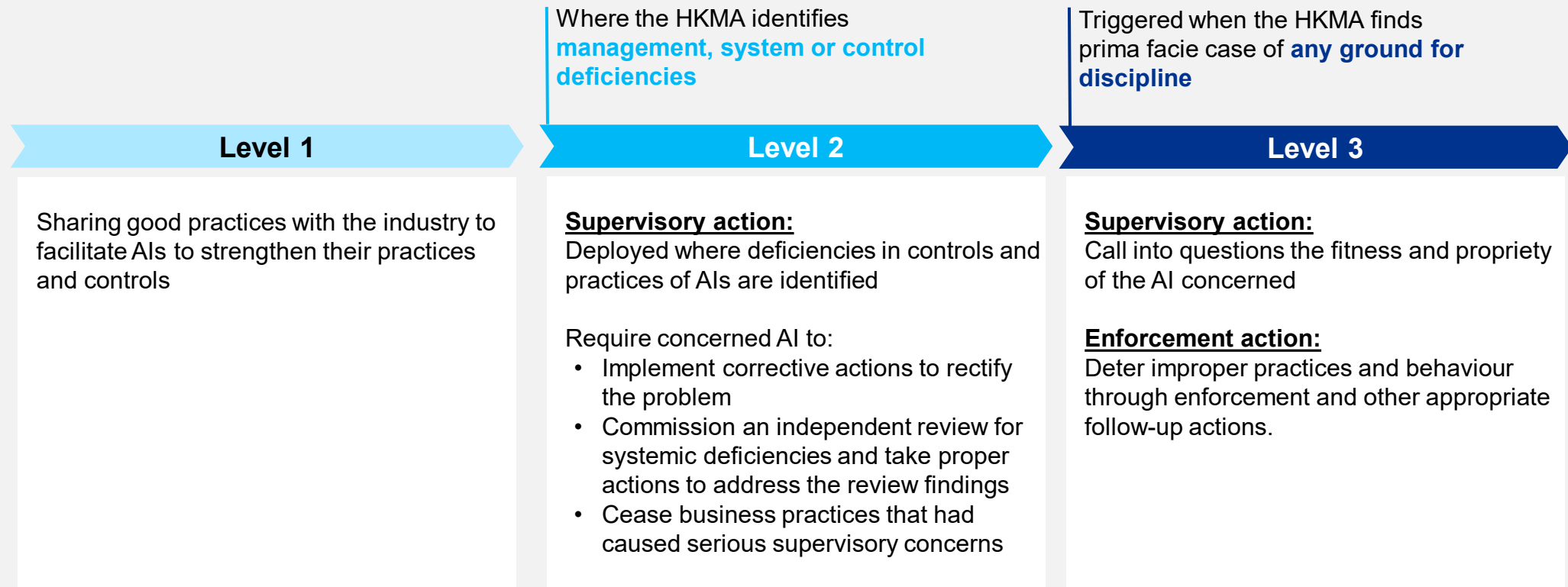


**How the
in-scope
trustee should
respond to the
HKMA's
review**

Supervisory Approach

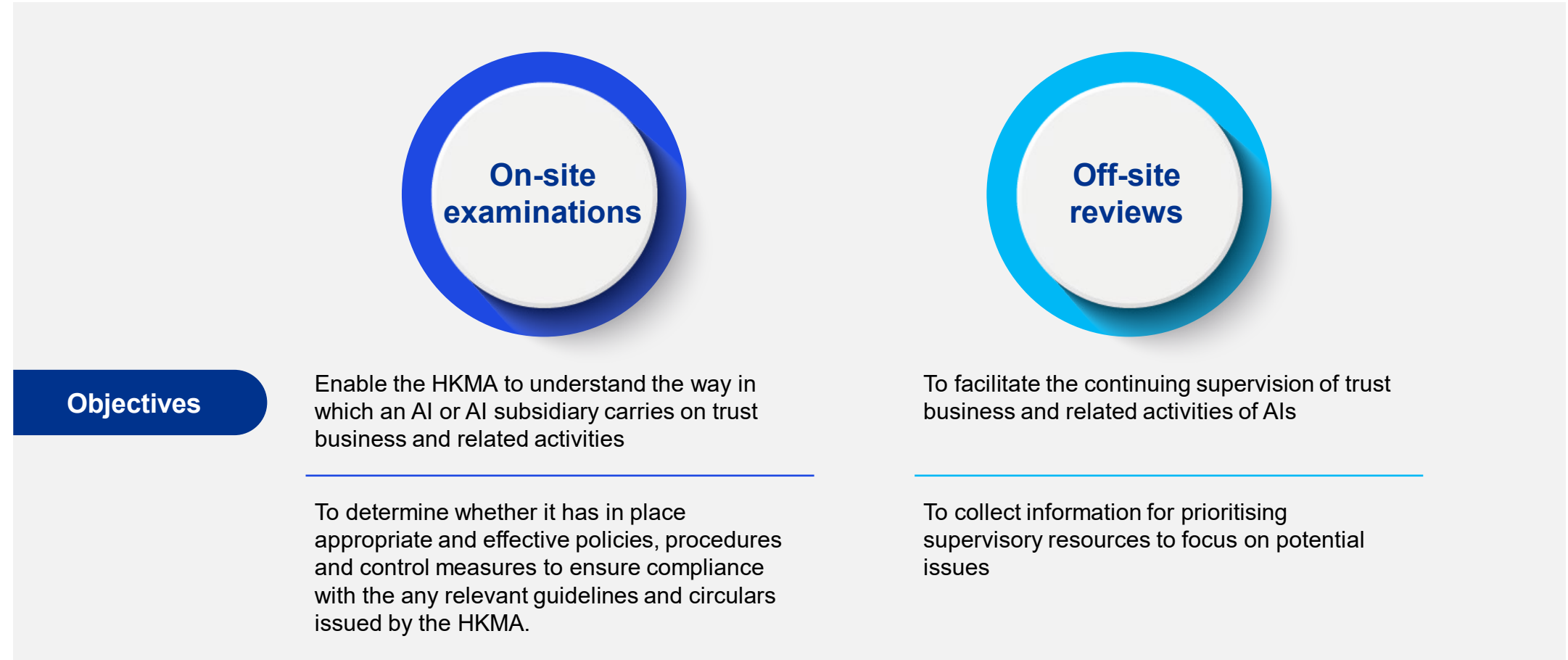
HKMA supervises AIs' compliance with the relevant requirements, in order to provide an appropriate degree of protection to AIs' customers.

The three levels of measures would be considered are:



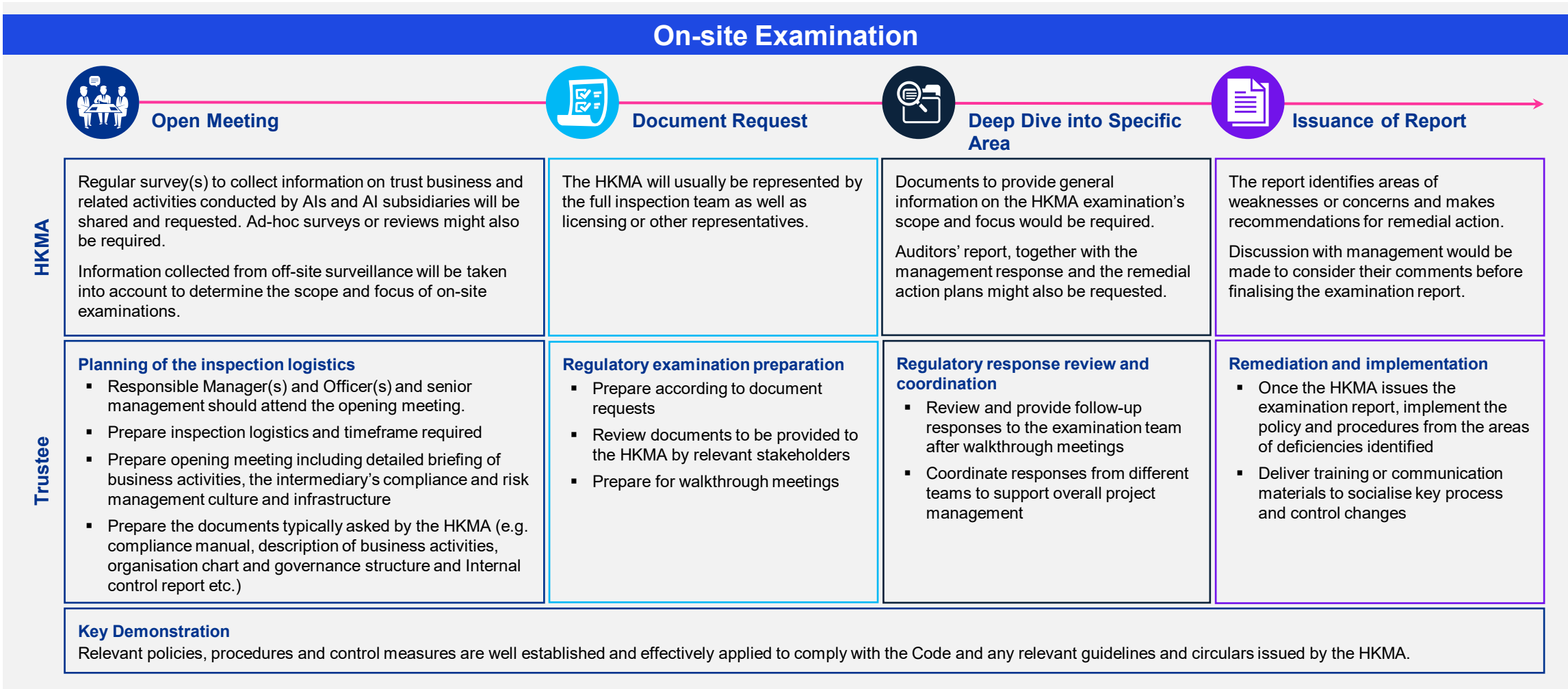
Supervisory Process

The following represents the possible supervisory processes that the HKMA would conduct.



Preparation for Examination

The following presents how the in-scope trustee can prepare for an examination and work with the HKMA through on-site examination.



Panel Discussion



Q&A Session



PLEASE BE REMINDED TO...

- Training materials link included in the e-Reminder
- Fill out the online evaluation, your feedback is important





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