



香港信託人公會
Hong Kong Trustees' Association

HONG KONG TRUSTEES' ASSOCIATION

SEMINAR ON

Key Insights for Type 13 Licensing and Post-Licensing Requirements

12 June 2024



香港信託人公會
Hong Kong Trustees' Association

SPEAKERS

Mr. Eric Ho, Director of Licensing, Intermediaries,
Securities and Futures Commission

Ms. Isabella Wong, Partner, Financial Services, Deacons

Mr. Bernard Ho, Director - Curriculum & Examinations,
Hong Kong Securities and Investment Institute



香港信託人公會
Hong Kong Trustees' Association

AGENDA

5:30pm – 5:35pm

Opening Remarks – Ms. Christy Cheng, HKTA

5:35pm – 6:10pm

Presentation - Mr. Eric Ho, Director of Licensing,
Intermediaries, Securities and Futures Commission

6:10pm – 6:40pm

Ms. Isabella Wong, Partner, Financial Services, Deacons

6:40pm – 6:50pm

Mr. Bernard Ho, Director - Curriculum &
Examinations,
Hong Kong Securities and Investment Institute
Q&As

6:50pm – 7:00pm

7:00pm – 7:03pm

Closing Remarks - Ms. Christy Cheng, HKTA



Type 13 regulated activity (RA 13)

– Licensing Highlight for Transitional Arrangements

12 June 2024

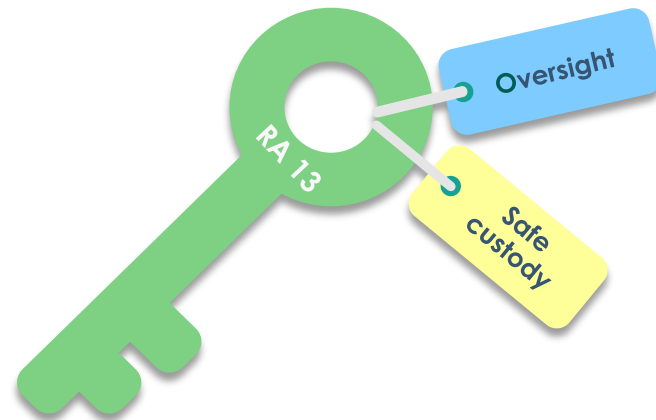
Eric Ho, Director
Licensing Department, Intermediaries

Agenda

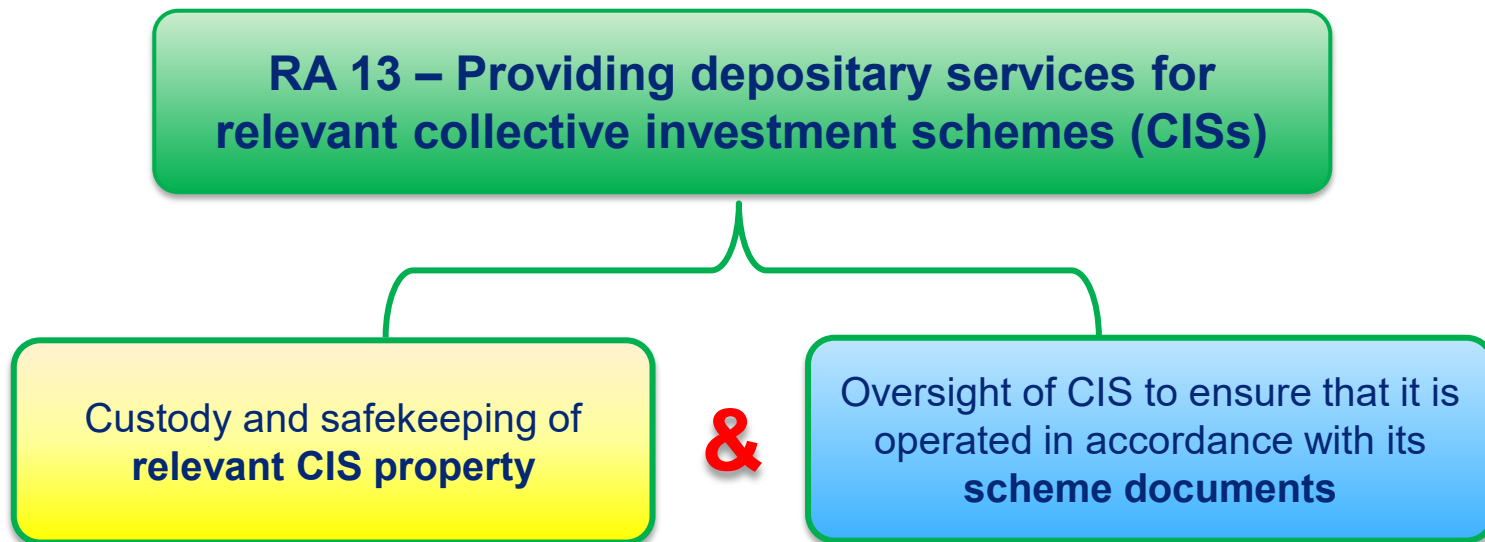
1. Quick recap for RA 13
2. Milestones
3. Transitional arrangements for pre-existing depositaries
4. New entrants seeking to become depositaries before RA 13 commencement

1

Quick recap for RA 13

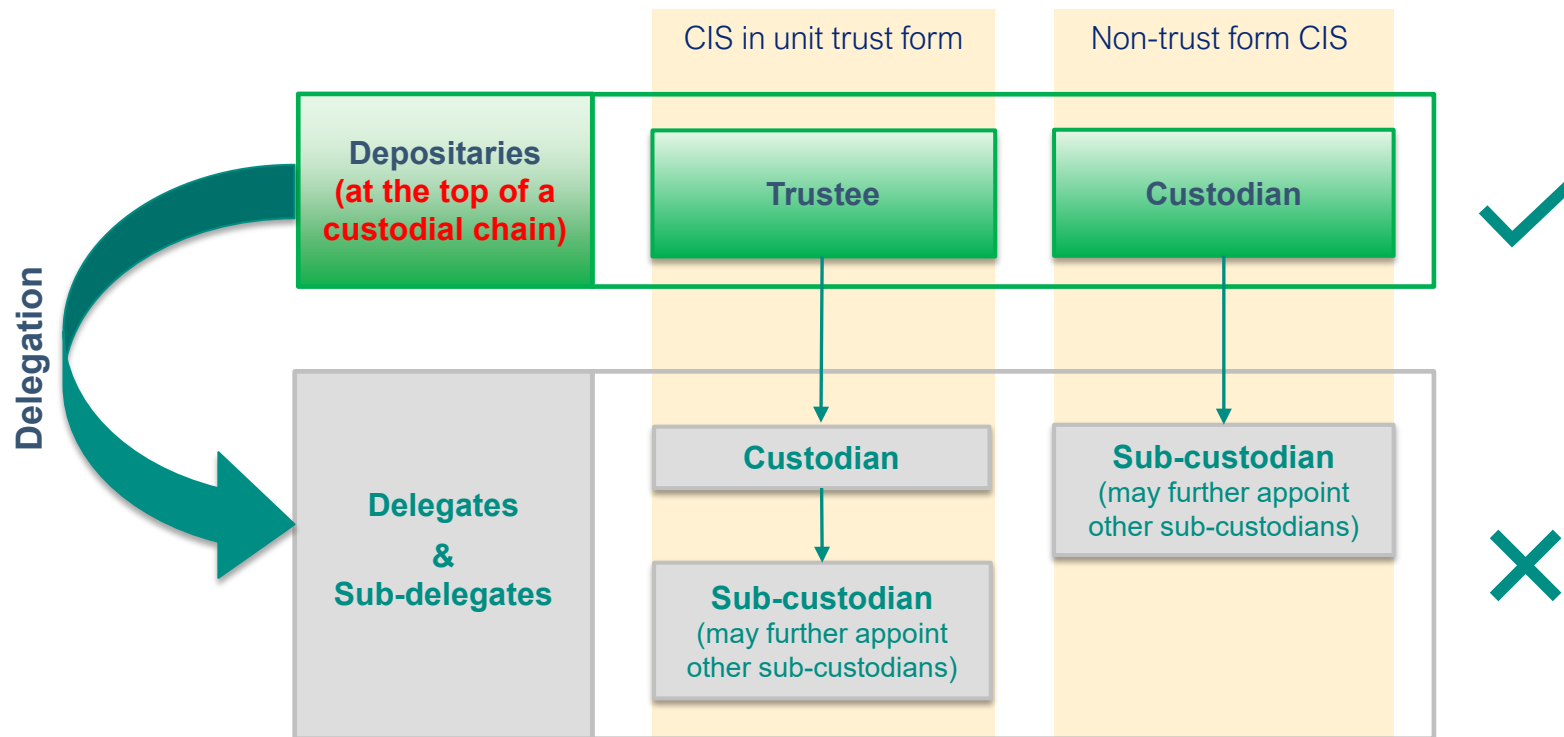


Key functions of depositaries



- RA 13 defined in Schedule 5 to the Securities and Futures Ordinance (SFO)

Which entities are captured



Relevant CISs

Include
all SFC-authorized
CISs

- Unit trusts, including retail approved pooled investment funds (APIFs)
- Public OFCs
- REITs
- Pooled retirement funds



Except

- MPF schemes
- Constituent funds of MPF schemes
- Non-retail APIFs



Individuals to be licensed or registered for RA 13



Custody and safekeeping of relevant CIS property

- Staff assuming oversight duties over the performance of the custody function; and
- Staff empowered to approve instructions or transactions for custody-related purposes (e.g. approving payments or asset transfers, signing-off cash reconciliation), where applicable



Oversight of the operation of relevant CISs

- Staff assuming oversight duties to ensure the CIS operates in accordance with scheme documents
- Encompass the monitoring of various operations, e.g. compliance with investment and borrowing restrictions, cash flow, fund accounting and valuation, and the issue, repurchase, redemption and cancellation of the CIS units or shares

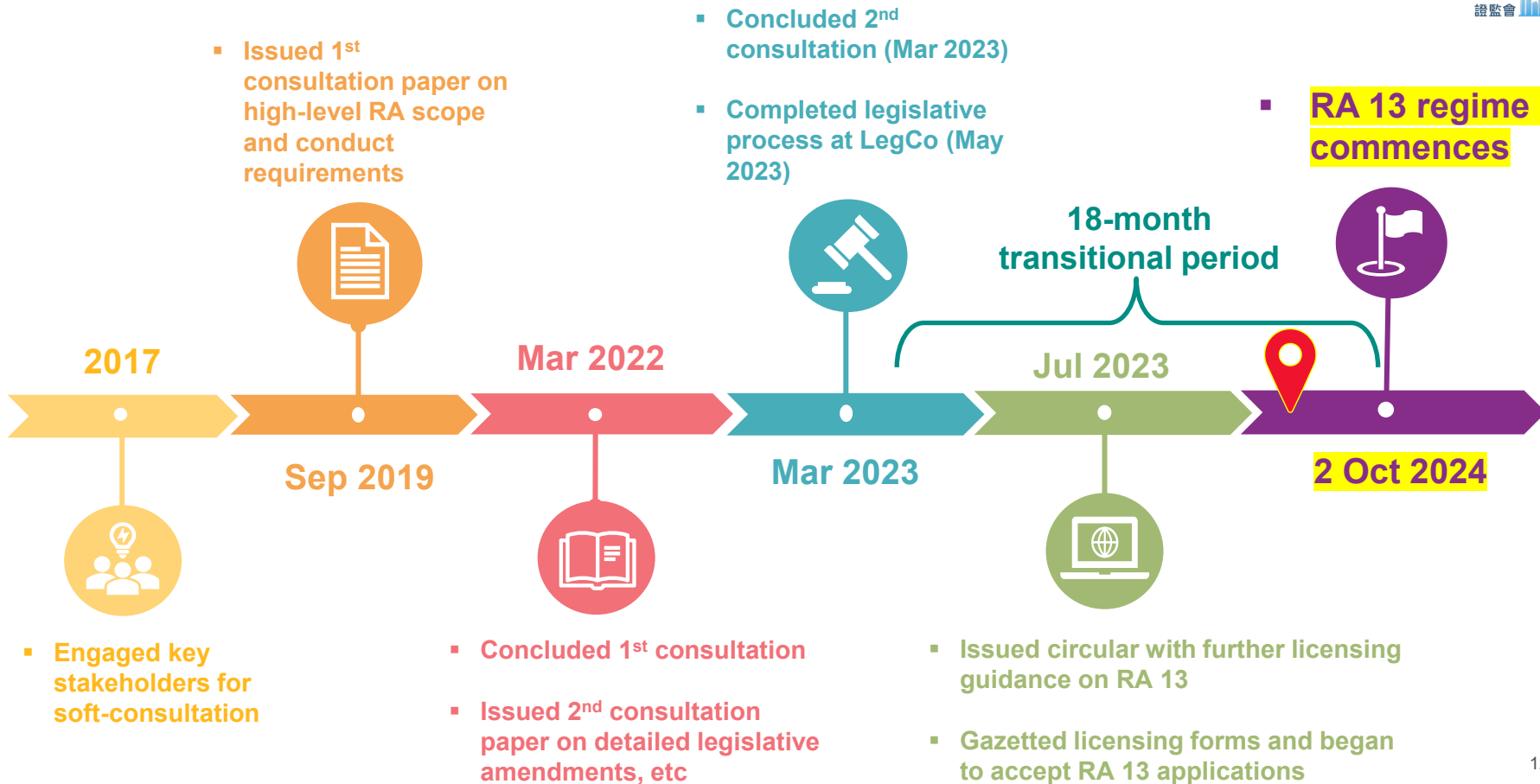




2

Milestones

Milestones

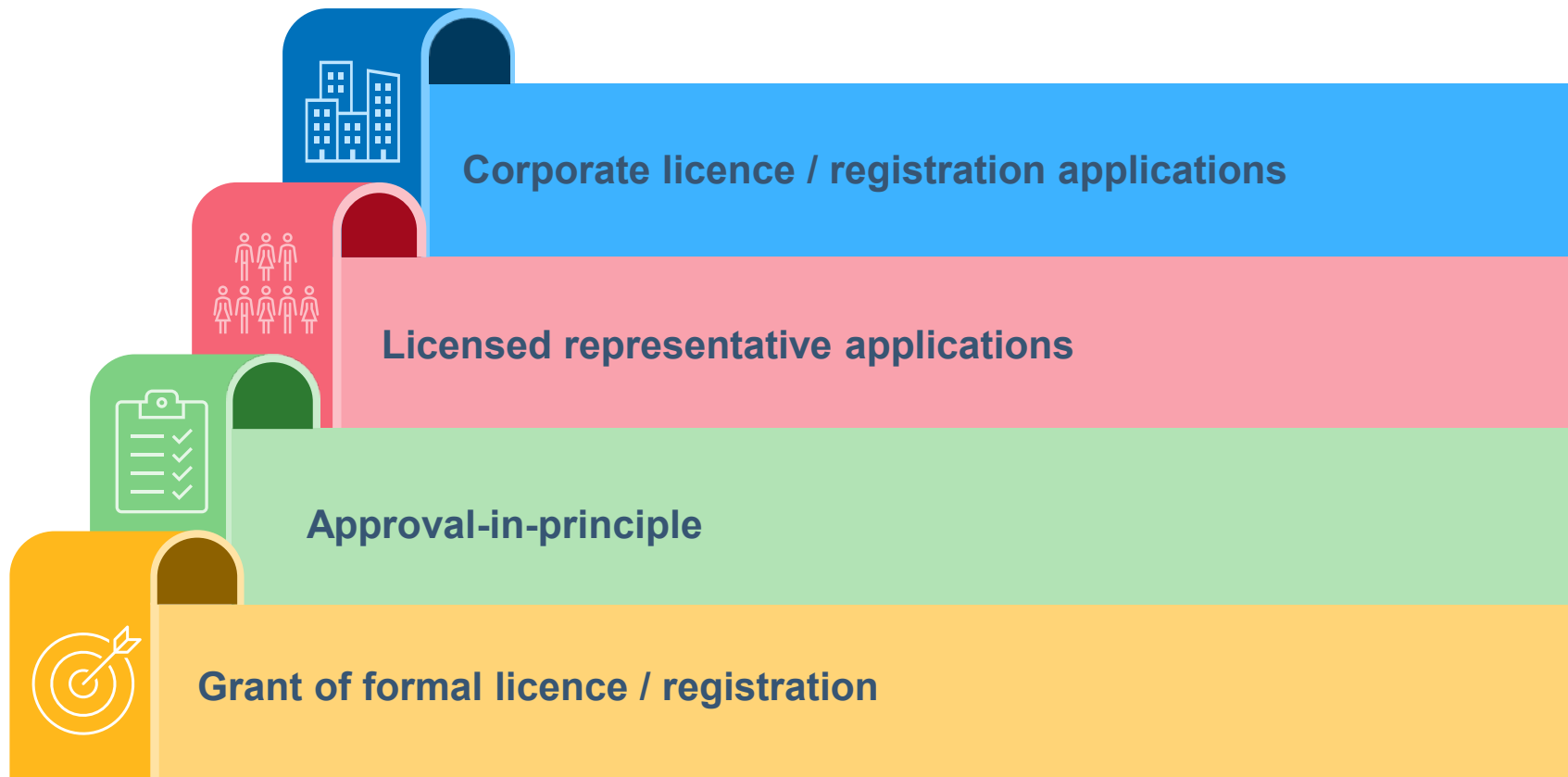




3

Transitional arrangements for pre-existing depositaries

Transitional arrangements for pre-existing depositaries (1)



Transitional arrangements for pre-existing depositaries (2)



Corporate licence / registration applications

- Applications submitted in Q4 2023
- WINGS – SFC online submission & communication portal
- General fit and proper criteria
- Assessment focus for corporates
- Pointers for RA 13 corporate applicants



Licensed representative applications



Approval-in-principle



Grant of formal licence / registration

Online submissions on WINGS

- All licence and registration applications, notifications and regulatory filings are required to be submitted online via **WINGS**
- Key features include:



Web-based and
validation rules-
embedded
licensing forms
(Smart Forms)



Designated two-
way **secured**
electronic
communication
channel (WINGS
Mail)



Paperless licensing
process via
electronic signing
& **payment**
functions



A companion
mobile app,
WINGS Mobile,
offers key features
of the website
version

- Refer to the video, user guides and online demo clips on the SFC website (<https://wings.sfc.hk/>) to understand more about the features of WINGS

WINGS Mobile App

- Support the following core functions on a mobile device

WINGS Mail

Communicate with the SFC

Payment

Pay related charges

Information Profile

View the latest licensing profile

Submission Tracking

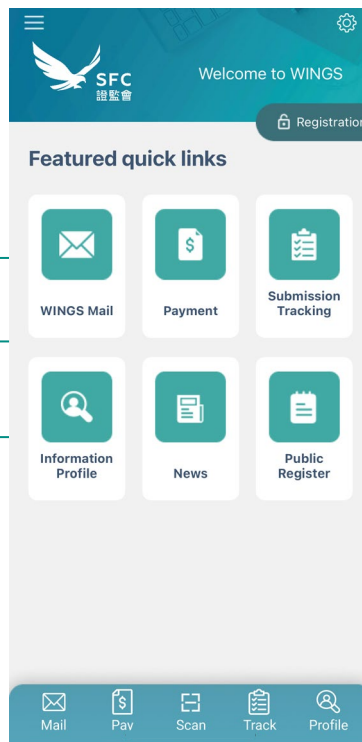
Monitor the progress of all submission(s)

News

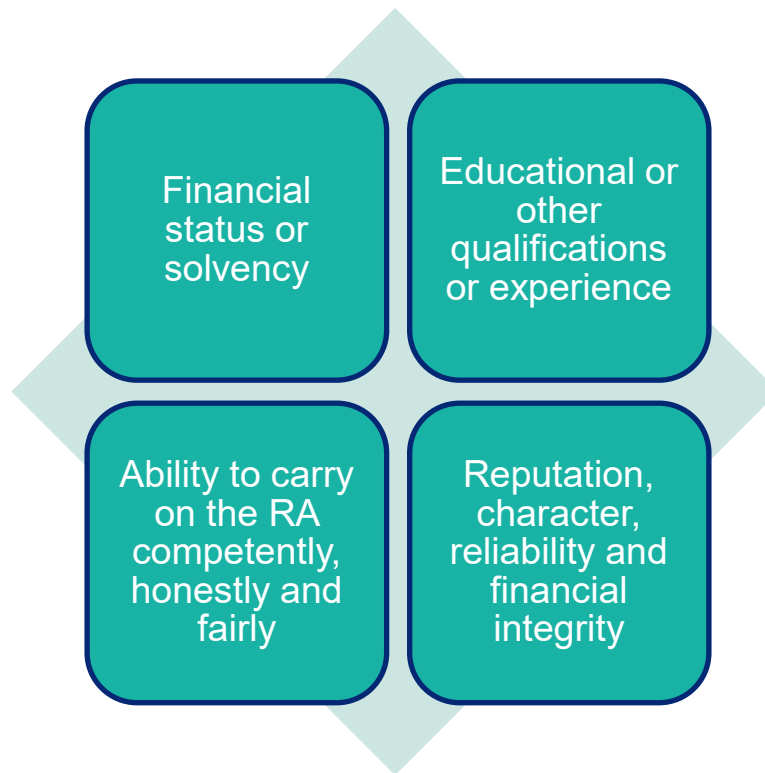
View all the news releases issued by the SFC

Public Register

View the public register of licensees and registered institutions



General fit and proper criteria



- Refer to section 129 of the SFO, SFC's Fit and Proper Guidelines, Guidelines on Competence and Licensing Handbook

Assessment focus for corporates



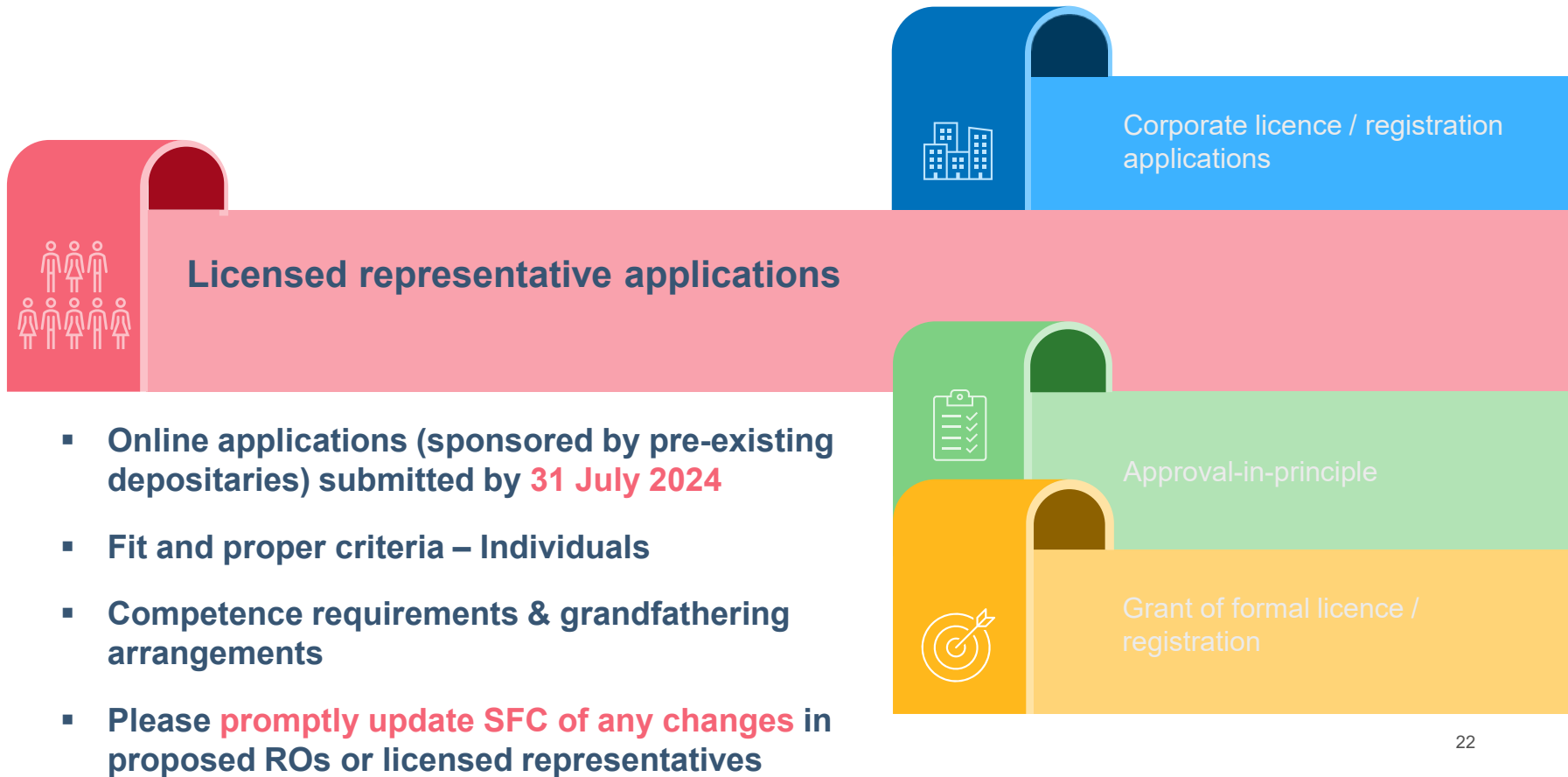
Pointers for RA 13 corporate applicants (1)

- Proposed RA 13 services should cover both oversight and custody obligations in respect of each relevant CIS that the applicant will act as depositary
- Any other services (e.g. fund administration) provided to relevant CISs by the applicant or its group affiliates, and measures to ensure effective oversight
- Delegation / outsourcing arrangements, related due diligence and ongoing monitoring
- Oversight of scheme operations, in particular monitoring of investment restrictions and valuation
- Adequate resources (capital, manpower and system) commensurate with business scale and product features

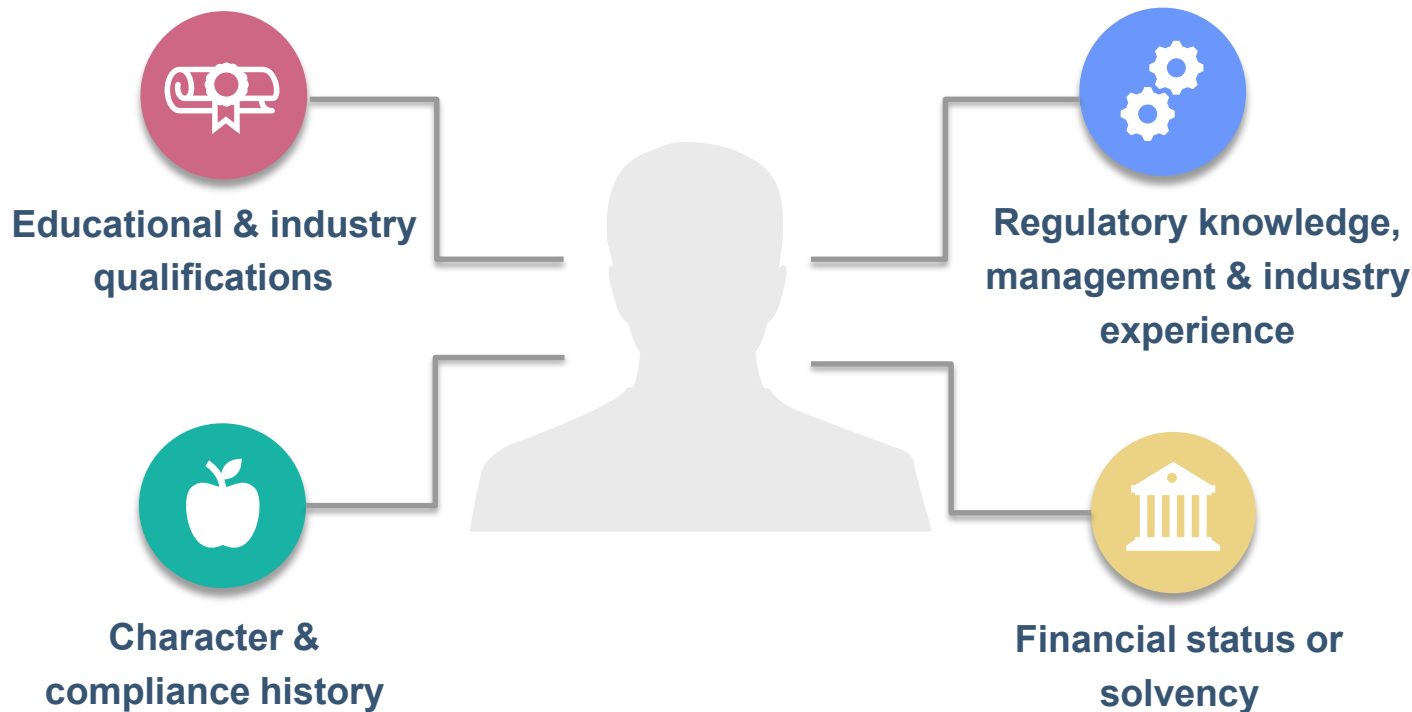
Pointers for RA 13 corporate applicants (2)

- Organisation structure, depicting all MICs, RA 13 business units, non-RA 13 business units (if any) of the applicant
- Measures to manage or prevent conflicts of interest, e.g. between RA 13 business and other business (if any) of the applicant
- Business continuity, e.g. maintaining sufficient number of ROs and financial resources on an on-going basis, measures to deal with potential operation disruption of delegates
- Depositary experience in public funds (local or overseas) recognized

Transitional arrangements for pre-existing depositaries (3)



Fit and Proper Criteria – Individuals



Competence requirements for ROs

	Option A	Option B	Option C	
Academic or professional qualifications	Degree in the designated fields*; other degree (with passes in at least two courses in the designated fields); or professional qualifications <i>*Refer to accounting, business administration, economics, finance and law.</i>	Other degree (without passes in two courses in the designated fields)	Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent	
Relevant industry experience	At least 3 years over past 6 years	At least 3 years over past 6 years	At least 3 years over past 6 years	At least 5 years over past 8 years
Recognised Industry Qualification (RIQ) or Extra CPT	—	Obtained relevant RIQ or completed relevant Extra CPT	Obtained relevant RIQ	Completed relevant Extra CPT
Management experience	2 years	2 years	2 years	2 years
Local regulatory framework paper (LRP)	Conditional exemption under grandfathering arrangements			

- Refer to Guidelines on Competence (Paragraph 4.2) for details

Competence requirements for Licensed Representatives

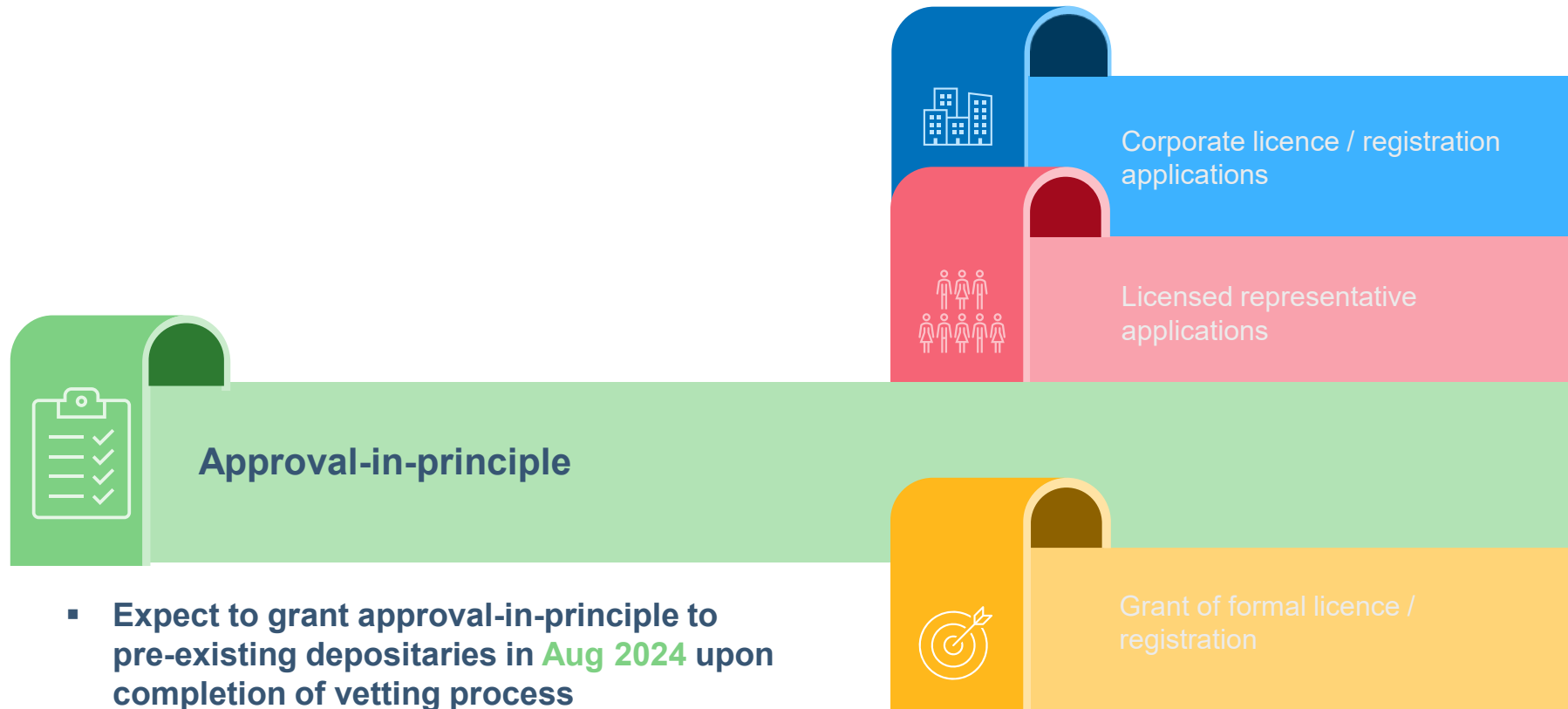
	Option A	Option B		Option C	
Academic or professional qualifications	Degree in the designated fields*; other degree (with passes in at least two courses in the designated fields); or professional qualifications <i>*Refer to accounting, business administration, economics, finance and law.</i>	Other degree (without passes in two courses in the designated fields)		Attained Level 2 in either English or Chinese as well as in Mathematics in the HKDSE or equivalent	
Relevant industry experience	—	At least 2 years over past 5 years	—	At least 2 years over past 5 years	—
RIQ or Extra CPT	—	—	Obtained relevant RIQ or completed relevant Extra CPT	Completed relevant Extra CPT	Obtained relevant RIQ
LRP	Conditional exemption under grandfathering arrangements				

- Refer to Guidelines on Competence (Paragraph 4.3) for details

Grandfathering arrangements: LRP exemption

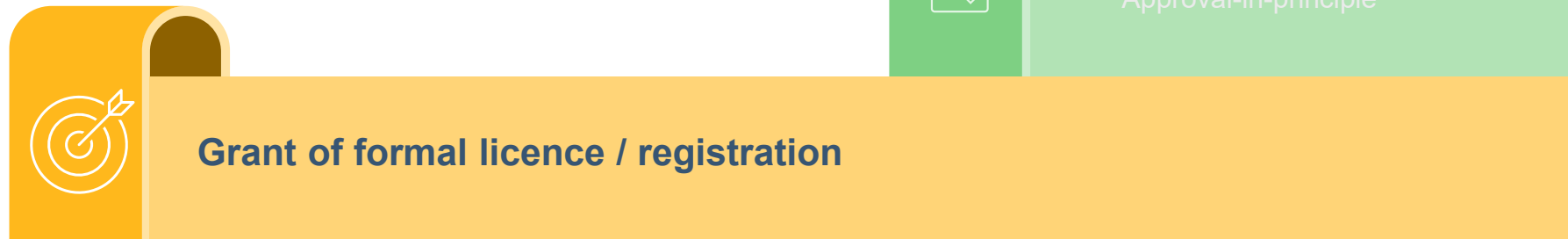
- Applicable to **individual practitioners**, who seek to become RA 13 ROs or licensed representatives of pre-existing depositaries and whose licence applications are submitted to SFC **before 2 October 2024** for migrating to the new regime
- **Condition:** Attend additional 5 hours training on regulatory knowledge relating to RA 13 within 12 months immediately before or after licensing or registration
- No experience requirement for the purpose of this LRP exemption
- Same exemption for individual practitioners seeking to become Executive Officers or relevant individuals of pre-existing depositaries, which are banks

Transitional arrangements for pre-existing depositaries (4)



Transitional arrangements for pre-existing depositaries (5)

- Grant formal licence / registration with effect from **2 Oct 2024** to RA 13 firms and individuals
- Approval notification through WINGS Mail
- Printed licence / registration certificate will be dispatched to RA 13 firms by post
- No printed licence to licensed individuals
- Licensing status (firms & individuals) will be updated to online Public Register on or around 3 Oct 2024



4

New entrants seeking to become depositaries before RA 13 commencement

New entrants seeking to become depositaries before RA 13 commencement

- Follow **existing requirements** under applicable SFC's Product Codes
- Approval (if granted) will have to come together with authorization of a related CIS for public offering
- Submit RA 13 licensing application for SFC's review **in tandem** with product (CIS) authorization application
- **Approach SFC at an early stage to discuss** business plan and intended timeframe
- Make prior consultation with HKMA if the interested firm is an authorized institution (e.g. licensed bank) currently under HKMA's supervision

A large, stylized teal bird graphic, possibly a phoenix, is positioned on the left side of the slide. The bird is depicted in profile, facing right, with its wings spread upwards and outwards. The design is composed of smooth, flowing curves, giving it a sense of movement and grace. The color is a muted teal or seafoam green.

Thank you.

www.sfc.hk

Post-Licensing Regulatory Requirements for Type 13 licensees

Isabella Wong, Partner, Financial Services Practice Group

12 June 2024



Hints from the SFC's consultation conclusions



Consultation Conclusions on the Proposed Regulatory Regime for Depositories of SFC-authorized Collective Investment Schemes

and

Further Consultation on Proposed Amendments to Subsidiary Legislation and SFC Codes and Guidelines to Implement the Regulatory Regime for Depositories of SFC-authorized Collective Investment Schemes

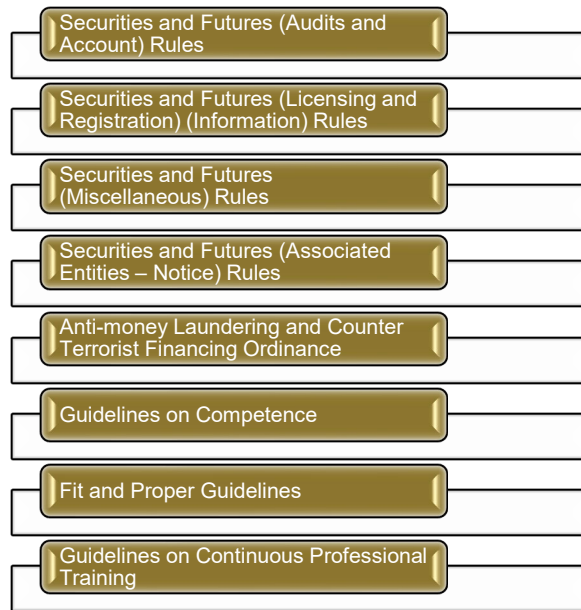
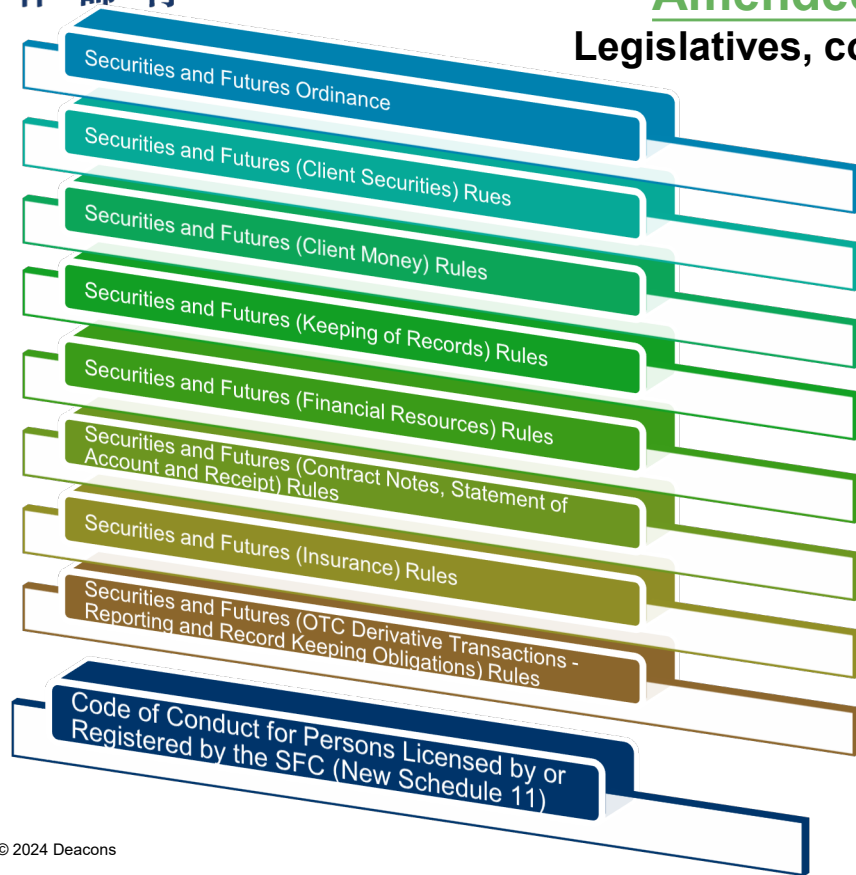
February 2022

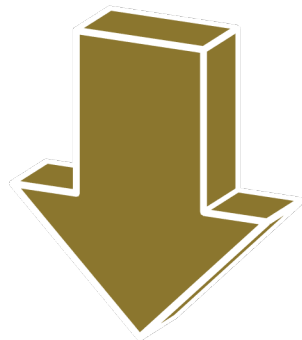


Consultation Conclusions on Proposed Amendments to Subsidiary Legislation and SFC Codes and Guidelines to Implement the Regulatory Regime for Depositories of SFC-authorized Collective Investment Schemes

March 2023

Amended vs existing
Legislatives, codes and guidelines





**Generally
applicable
to all SFC
licensees**

Examples:

- Corporate governance structure and senior management responsibility
- Record-keeping
- Financial resources compliance
- Regulatory reporting
- Continuous professional training



Examples:

- Communications with ManCo of relevant CISs
- Oversight of delegates
- Valuation /NAV/price/ cash flow /investment monitoring
- Custody and safekeeping of scheme properties
- Professional indemnity insurance

**Additional
for /
Specific to
Type 13
licensees**



General requirements about people

Corporate governance structure and senior management responsibility

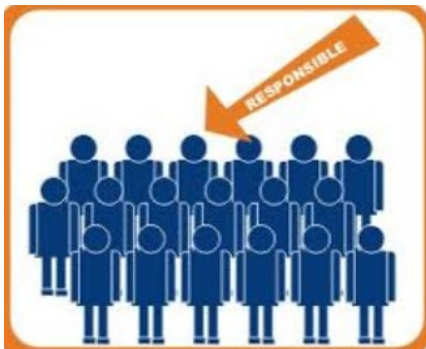
“bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm”

“Ultimately responsible for the adequacy and effectiveness of the internal control system implemented”



General requirements about people

Manager-in-charge (MIC) regime



**Circular to Licensed Corporations Regarding
Measures for Augmenting the Accountability of
Senior Management**

Issued on 16 December 2016

8 core functions

1. Overall Management Oversight
2. Key Business Line
3. Operational Control and Review
4. Risk Management
5. Compliance
6. AML and CTF
7. Information Technology
8. Finance and Accounting

General requirements about people

Key roles and responsibilities of senior management

Has the ultimate responsibility for conduct, operations and financial soundness of the corporation

Works with senior management (including MICs) to achieve the objective of a soundly and efficiently run corporation, and senior management is accountable to the Board

Any member of the Board (whether executive or non-executive role) has a duty to exercise independent judgement in relation to the exercise and delegation of the Board's powers

Retains responsibility for delegated decisions and to supervise those who act under the delegated authority

Establish, document and maintain an effective management and organisational structure

Management structure of a licensed corporation (including its appointment of MICs) should be approved by the Board

Ensure that each of the MICs has acknowledged his or her appointment as MIC and the particular Core Function(s) for which he or she is principally responsible.

General requirements about people

Continuous training for licensed individuals

	Minimum number of annual CPT hours to be completed	Breakdown of minimum annual CPT hours
Licensed representative	10 hours	5 hours: RA13-specific
		3 hours: other relevant topics
		2 hours: ethics or compliance
Responsible officer	12 hours	5 hours: RA13-specific
		2 hours: regulatory compliance
		3 hours: other relevant topics
		2 hours: ethics or compliance

Specific to Type 13 regulated activity?

*“providing **depository** services for a relevant CIS”*

Under this definition, reference should be made to two core functions of a depository:

1) **custody** and
safekeeping of scheme
property

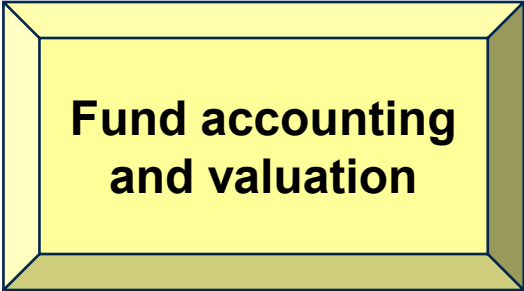


2) **oversight** of the
operation of the relevant
CIS to ensure its
operations comply with
constitutive documents


Core regulated functions



**Custody
operations**



**Fund accounting
and valuation**



**Monitoring of
investment and
borrowing
restrictions**



**Monitoring of
subscriptions
and redemptions**

Custody

Scheme properties



deposited in safe custody in a segregated account an authorized financial institution; or any other person approved by the SFC.

• Pay to segregated account or in accordance to written instruction within 3 business days
• Handle in accordance with the scheme constitutive documents



deposited in safe custody in a segregated account with
(i) an authorized financial institution; (ii) an approved custodian; or (iii) another intermediary licensed for dealing in securities; **and** registered in the name of the relevant CIS; or the associated entity on behalf of the relevant CIS

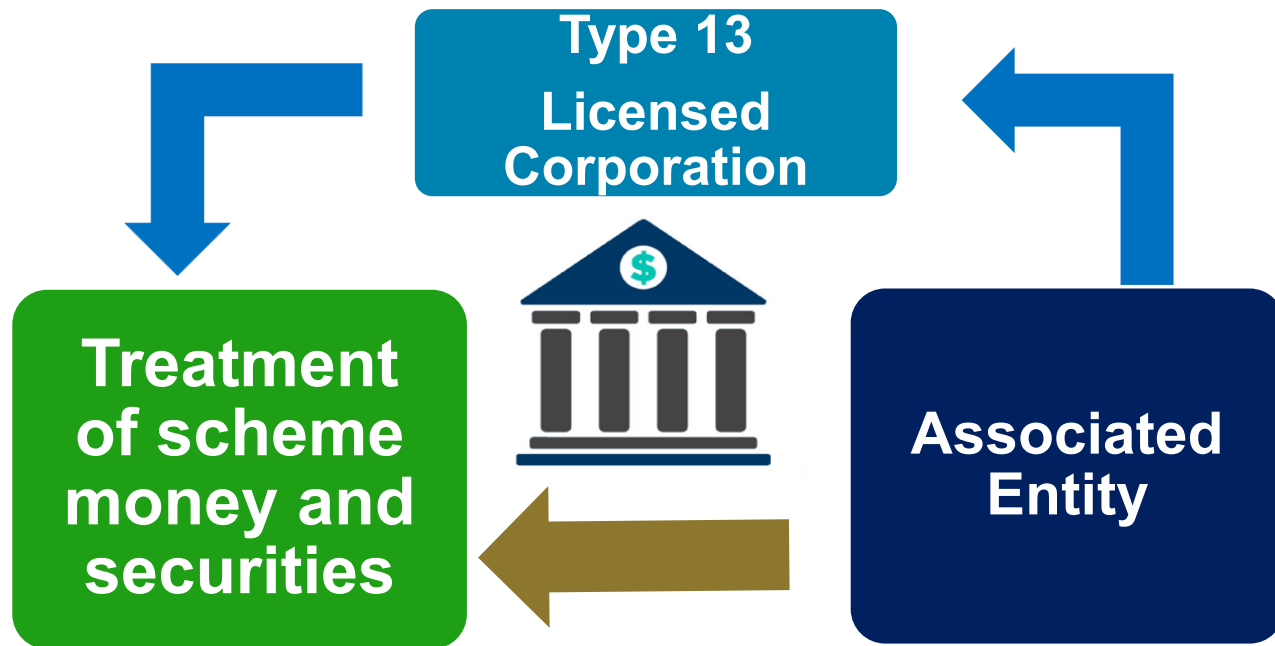
Custody

Requirements under Schedule 11 to the Code of Conduct

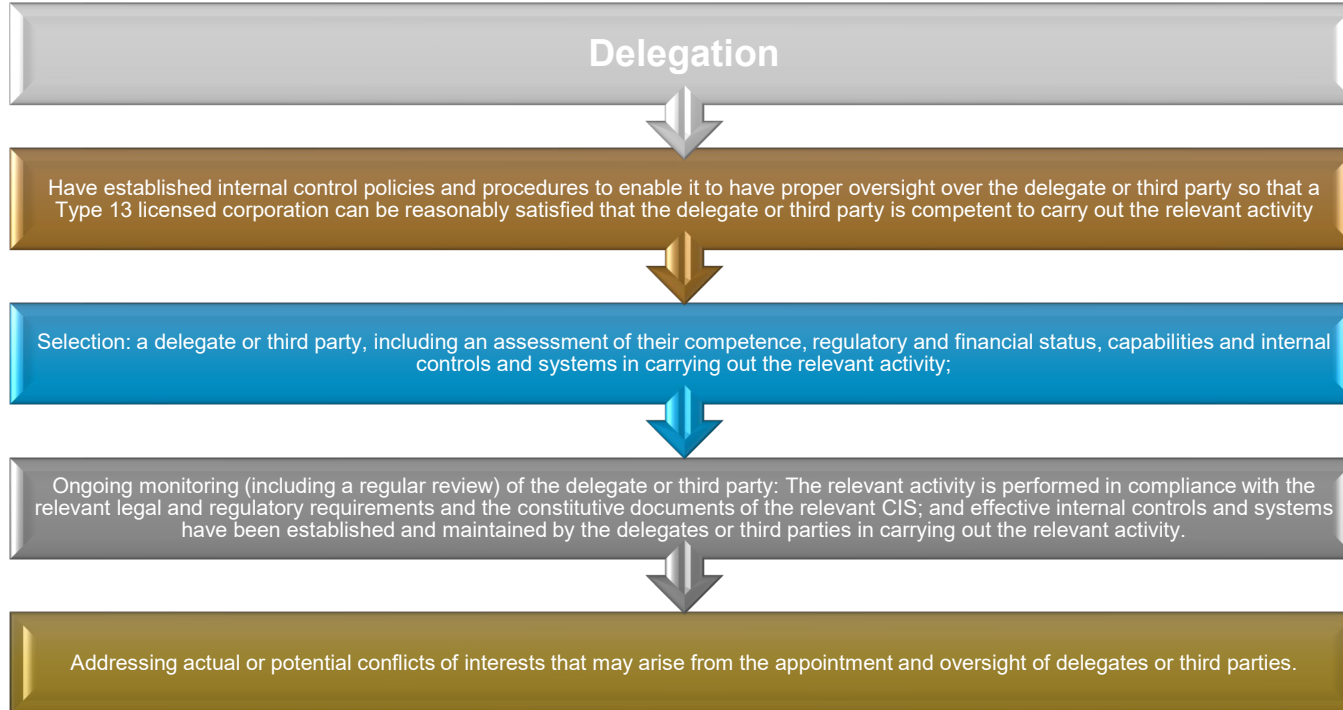
Custody and safekeeping of relevant CIS property

- Mitigate custody risk of loss
- Unless property is kept with omnibus account(s) designated as trust or client account, Depositary should ensure property are recorded with frequent reconciliations, segregate each relevant CIS property from the property of:
 - i. Management company; investment delegate and connect persons;
 - ii. Depositary and any nominees, agents or delegates; and
 - iii. Other relevant CIS and clients of the Depositary and nominees, agents or delegates
- Register the property in name of the LC properly
- Safekeep the property properly
- Establish and maintain proper segregated bank account(s) designated as trust account or client account for holding money
- Conduct verification of ownership of the property
- Maintain up to date records of the property (including cash and assets that cannot be held in custody)
- Ensure safe custody of security interest for the purpose of holding scheme collateral
- Ensure payment and asset transfers or other dealings of CIS property are properly authorized

Custody



Custody

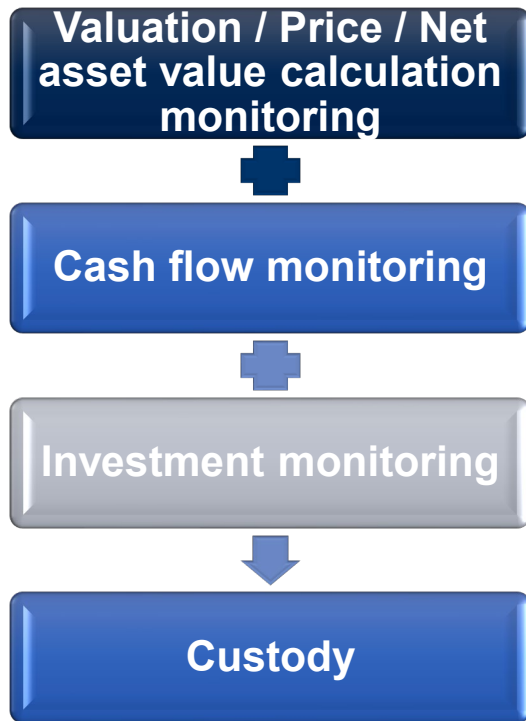


Custody of virtual assets

- Spot VA ETFs
- Trustee/custodian only delegates its functions to:
 1. SFC-licensed VATP; and
 2. An Authorised Institution
- Rules to comply with:
 1. Segregation of VA holdings;
 2. Store most VA holdings in cold wallet; and
 3. Seeds and private keys are
 - (i) stored in Hong Kong;
 - (ii) restricted to authorized personnel;
 - (iii) resistant to speculation or collusion; and
 - (iv) backed up to mitigate single point failure.



Monitoring



Monitoring

Requirements under Schedule 11 to the Code of Conduct

Valuation / Price / Net asset value calculation monitoring

- Method of calculation of NAV per unit or share aligns with constitutive documents
- Accurate calculation of:
 - NAV
 - interest income
 - dividend income
 - fee expenses
- Impose appropriate governance to oversee the use of fair value adjustments
- Clear escalation mechanism for error or exception in pricing of the units or shares:
 - i. inform management company;
 - ii. report (or ensure the relevant operator has reported the errors or exceptions) to SFC in timely manner
 - iii. work with management company to ensure pricing error or exception are dealt with

Monitoring

Requirements under Schedule 11 to the Code of Conduct

Cash flow monitoring	<ul style="list-style-type: none">• Implement procedures and control in opening and maintaining any bank account• Identify abnormal cash flows
Investment monitoring	<ul style="list-style-type: none">• Post-trade verifications to investment limitations and restrictions (upon request)• Ensure compliance on investment and borrowing limits (relevant operators)• Provide reconciled record and transactions executed to ManCo on a regular basis; follow up on discrepancies• Ensure transactions are settled (detect exceptions and follow up)• Ensure counterparties of all transactions are on the authorized list• Comply with margin requirements• Ensure relevant operators review daily mark-to-market value on collateral and reconciliation of reports provided by counterparties

Monitoring

Requirements under Schedule 11 to the Code of Conduct

Cash flow monitoring and cash reconciliation	<ul style="list-style-type: none">• ManCo has obligation to manage the cash flow• LC to ensure:<ul style="list-style-type: none">i. proper policy and controlii. regular monitoring by ManCo
Custody and safekeeping of relevant CIS property	<ul style="list-style-type: none">• All assets are properly held for the benefit of unitholders (including title documents of real estate owned by the REIT)• For SPVs, LC to ensure:<ul style="list-style-type: none">i. assets are segregated and held in safe custodyii. effective oversight and control over the assets on an on-going basis

Monitoring: Subscription and Redemption



Ensure transactions are processed on timely basis



Orders carried out according to constitutive documents



Subscription proceeds / orders are deposited in timely manner



Redemption proceeds are transferred in timely manner



Frequent reconciliation of subscription and redemption is performed



Maintained proper documentation and records for:

(i) suspension of dealing

(ii) suspension of calculation of valuation, price or net value

Other key requirements

Frequent communication between management company and LC

To follow up on:

- Material breaches of legal and regulatory requirements
- Matters that affect ability to discharge functions or obligations
- Issues found by regular testing
- Change of service scope provided to relevant CIS

Record keeping and oversight of relevant CIS

- Ensure record keeping policies and operation procedures comply with constitutive document

Financial Resources



FRR rules

- HK\$10m min. amount of **paid-up share capital**;
- HK\$3m min. amount of required **liquid capital**
- **Monthly** FRR returns submission
- *Excluded liabilities:*
 - (i) *any amount of scheme money held by a LC for Type 13 RA in segregated accounts*
 - (ii) *any amount held by LC for Type 13 RA on behalf of subscribers / unit*



Account and audit

- A set of accounts prepared in accordance with GAAP:
 - FRR returns
 - BRMQ
 - Statement of profit or loss and other comprehensive income
 - Statement of financial position
- Confirmation of compliance that:
 - Each returns are correctly complied from the records
 - LC has systems of control in place to comply with (a) client money rules (b) client securities rules.

Thank you for your participation!

Isabella Wong
Partner, Financial Services Practice Group
Deacons

Email: isabellahm.wong@deacons.com
Direct line: +852 2825 9577



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New Licensing Examinations relating to RA 13

12 June 2024

	Local Regulatory Paper (LRP)	Required Industry Qualifications (RIQ*)
Licensed Representatives	LE Paper 1	LE Paper 7 & 19
Responsible Officers	LE Paper 1 & 18	LE Paper 7 & 19

** Exemption is subject to academic or professional qualifications as outlined in the SFCs Guidelines on Competence*

LE Paper 1 – Fundamentals of Securities and Futures Regulation

LE Paper 7 – Financial Markets

LE Paper 18

Regulation of Providing
Depositary Services

- General regulatory framework
- SFC sub-legislations, general codes and guidelines
- RA 13 specific rules and regulations

LE Paper 19

Depositary Services for
Collective Investment Schemes

- Fund industry overview
- Product knowledge
- Depositary's role and practice, essential knowledge and skills, and relevant risks

Enrolment Starts: Mid-July 2024 (tentative)

First Examination: Late August 2024

**Examinations Syllabuses and Learning Outcomes will be provided in due course*



40 MCQS



**ENGLISH &
CHINESE**



60 MINS



70%



MONTHLY
SUBJECT TO REVIEW



LE PAPER 18

Study notes

LE PAPER 19

Study notes and a two-hour eSeminar

Sample practice tests will be available on the HKSI Institute website

Individual practitioners engaged by an existing depositary to provide depositary services are exempted from taking the LRP for RA 13 given that:

- license applications, sponsored by an existing depositary, are submitted to SFC before 2 October 2024
- a training course of not less than five hours on the legal and regulatory framework for RA 13 conducted by a continuous professional training (CPT) provider 12 months immediately before or after being licensed or registered (additional to the normal CPT requirements)

Grandfathering Training at HKSI Institute

- Five-CPT eCourse, three-part training programme
- Accessible anytime, anywhere, with a 90-calendar day access period
- Course fee:
 - HKSI Institute and HKTA members: HKD 1,500
 - Non-members: HKD 3,000



- **LE Papers 18 and 19 Examination**

Examination



exam@hksi.org

- **Grandfathering Training**

eCourse



education@hksi.org

- **Licensing**

- Please visit SFC website www.sfc.hk

PLEASE BE REMINDED TO...

- Fill out the online evaluation, your feedback is important
- Training material will be emailed to you after the seminar

