

NEW TYPE 13 REGULATED ACTIVITY FOR CUSTODIANS AND TRUSTEES OF AUTHORIZED FUNDS

FOR HONG KONG TRUSTEE ASSOCIATION

5:30-6:30 P.M., 19 OCTOBER 2020

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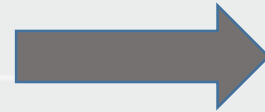
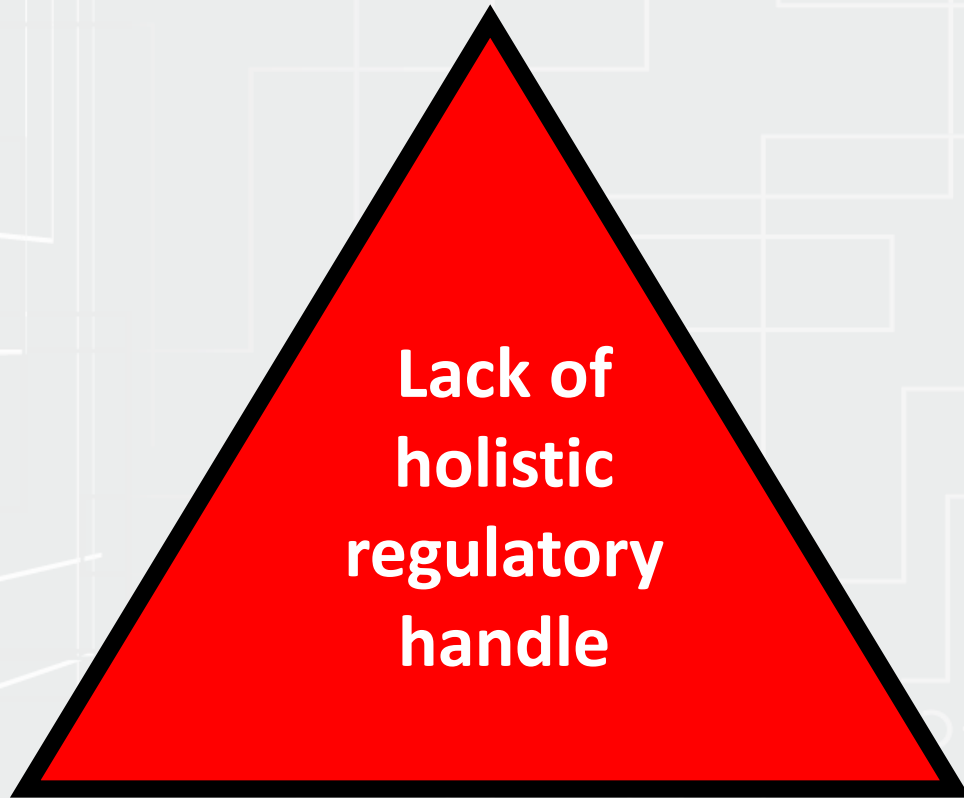
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Background

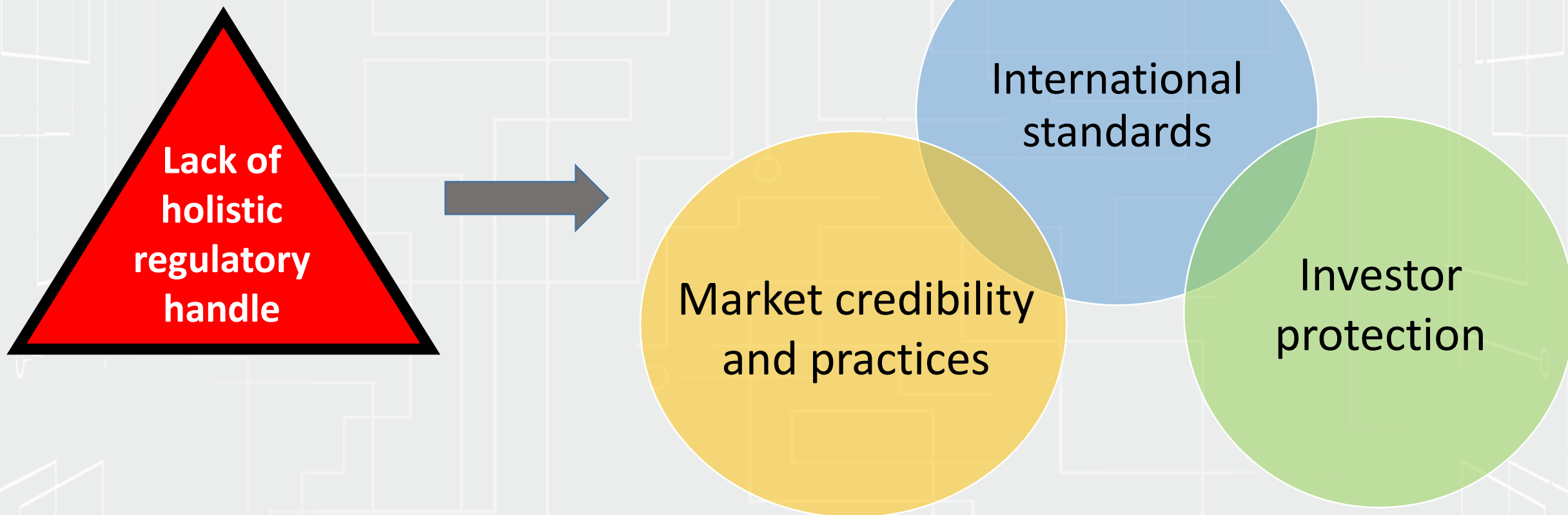
SFC Consultation Paper

Background and objective



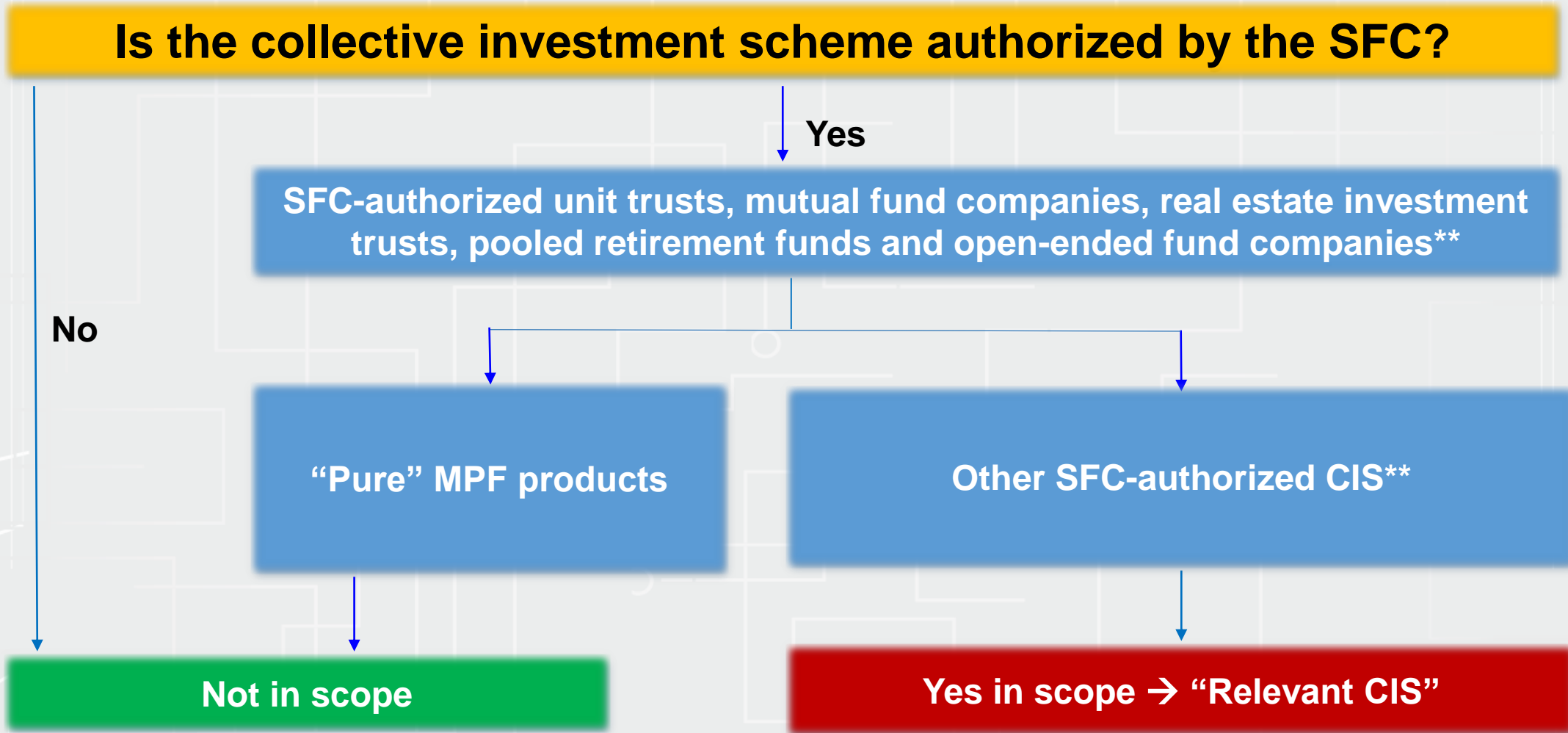
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Background and objective



Proposed Licensing Framework For RA 13

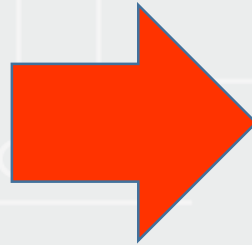
Which type of CIS is in scope?



Who needs to be licensed?

An entity which

- operates in HK
- as the top-level trustee or custodian
- of a Relevant CIS



RA 13 “Depository”

Who needs to be licensed?

Unit trust

Person appointed as the trustee pursuant to the trust deed

Other than unit trust

Person appointed to perform the functions of a custodian pursuant to a written agreement between the person and the CIS

Regulated functions

Custody operations

**Fund accounting
and valuation**

**Monitoring of
investment and
borrowing
restrictions**

**Monitoring of
subscriptions and
redemptions**



Financial resources requirements

Securities and Futures (Financial Resources) Rules:

- Minimum paid-up share capital HK\$10 million* and
- Minimum liquid capital of HK\$3 million#

Professional indemnity insurance

- Maintain professional indemnity insurance to provide adequate coverage for claims for liability arising from breaches of duty in the course of carrying on RA 13 business ^

Regulatory framework

- SFO
- Code of Conduct for Persons Licensed by or Registered with the SFC (**“Code of Conduct”**)
- Management, Supervision, and Internal Control Guidelines for Persons Licensed by or Registered with the SFC
- Applicable Product Codes: UT Code, REIT Code, PRF Code, OFC Code

Code of Conduct

RA 13 depositary is required to comply with the Code of Conduct:

- Main body of the Code of Conduct
- Schedule 11 (new)



REIT Code

UT Code

PRF Code

(OFC Code)*

Code of Conduct – UT Code / PRF Code

1. Delegation
2. ManCo - communication and oversight
3. Operational control & oversight of relevant operators
4. Custody and safeguarding of assets



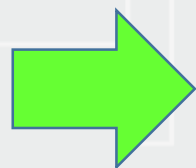
Similarity to Ch. 4.5 and Appendix G in UT Code

1. Delegation

Depository may
delegate their
functions to third
parties



Responsibility may not be
delegated



Exercise reasonable care, skill and
diligence in the selection and
monitoring of delegates

2. Communication and oversight

Communications with ManCo:

- report on actual / possible material breaches & other key issues regarding discharge of functions*

Oversight:

- ManCo has managed in accordance with the constitutive documents#
- “Relevant operators”

3. Oversight of relevant operators

Oversight of relevant operators with respect to:

- Subscription and redemption processes*
- Valuation / price / NAV calculation*
 - Methodology, accuracy, fair value adjustment, escalation mechanism, proper records
- Cash flow*
- Distribution payment – timely, complete, accurate
- Investment – investment and borrowing restrictions, broker list, margin requirements
- Connected party transactions – arm's length, best interest
- Fair treatment for different classes of investors

4. Custody

- Register in the name of or to the order of Depositary
- Segregate assets from ManCo, investment delegate, Depositary, nominee, agent, delegate, other CIS and other clients (unless omnibus client account)
- Verification of ownership
- Payments and asset transfers (or oversight thereof)

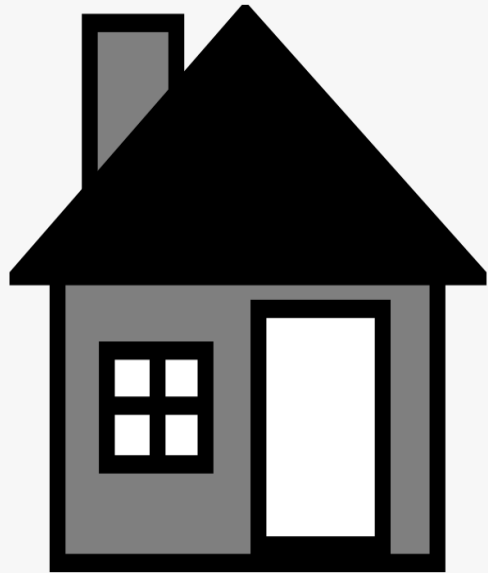
Modifications for Depositary of REIT

- a. Cash flow monitoring and cash reconciliation
→ Depositary to oversee ManCo
- b. Custody and safeguarding of assets
→ Safe custody of all title documents
- c. Connected party transactions
→ Compliance with REIT Code

What a trustee/custodian can do for migrating into the new licensing regime?

Migration

Not regulated



SFC approval process

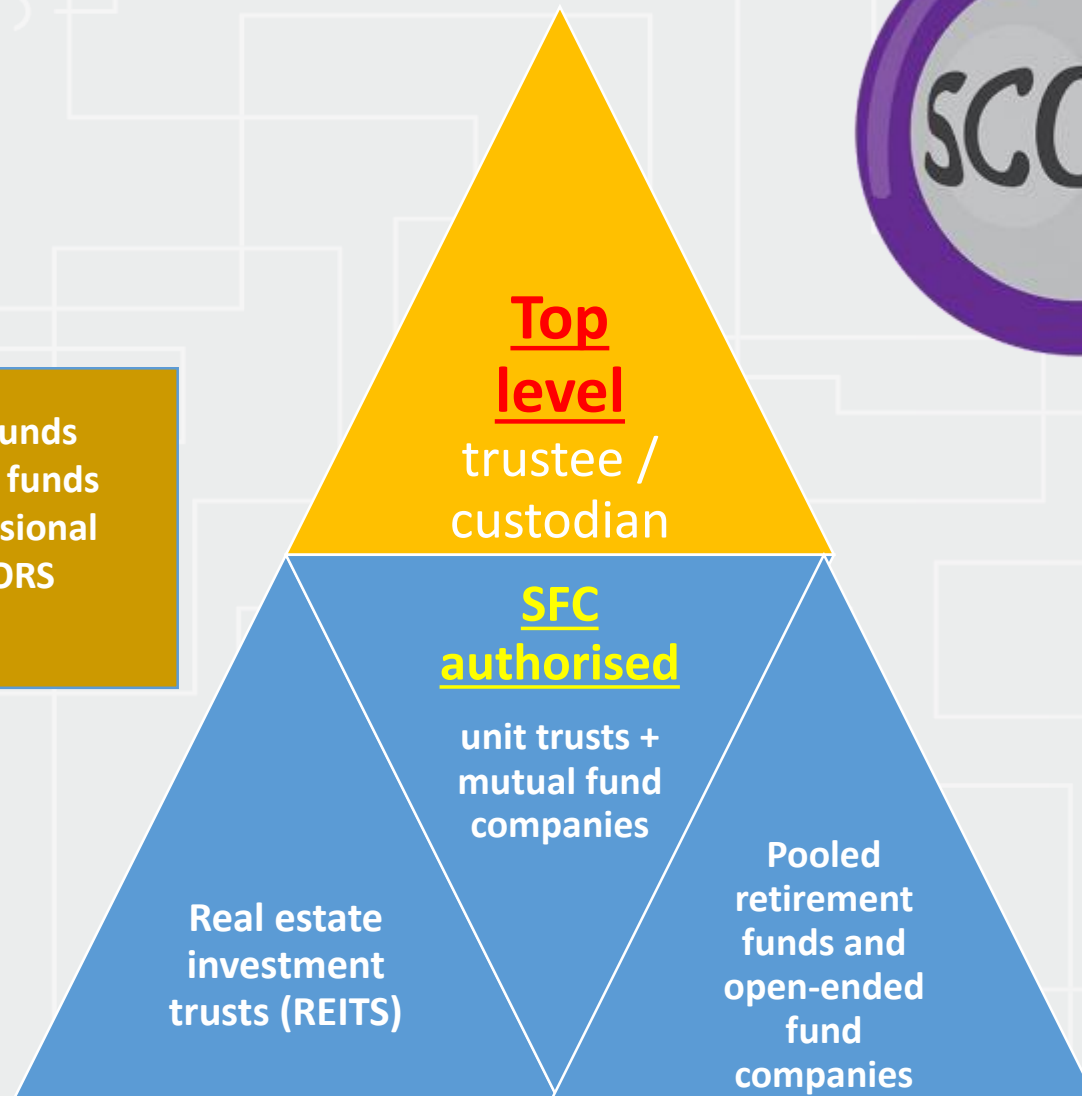
Regulated



Whether your company is (or will be) a trustee / custodian of:



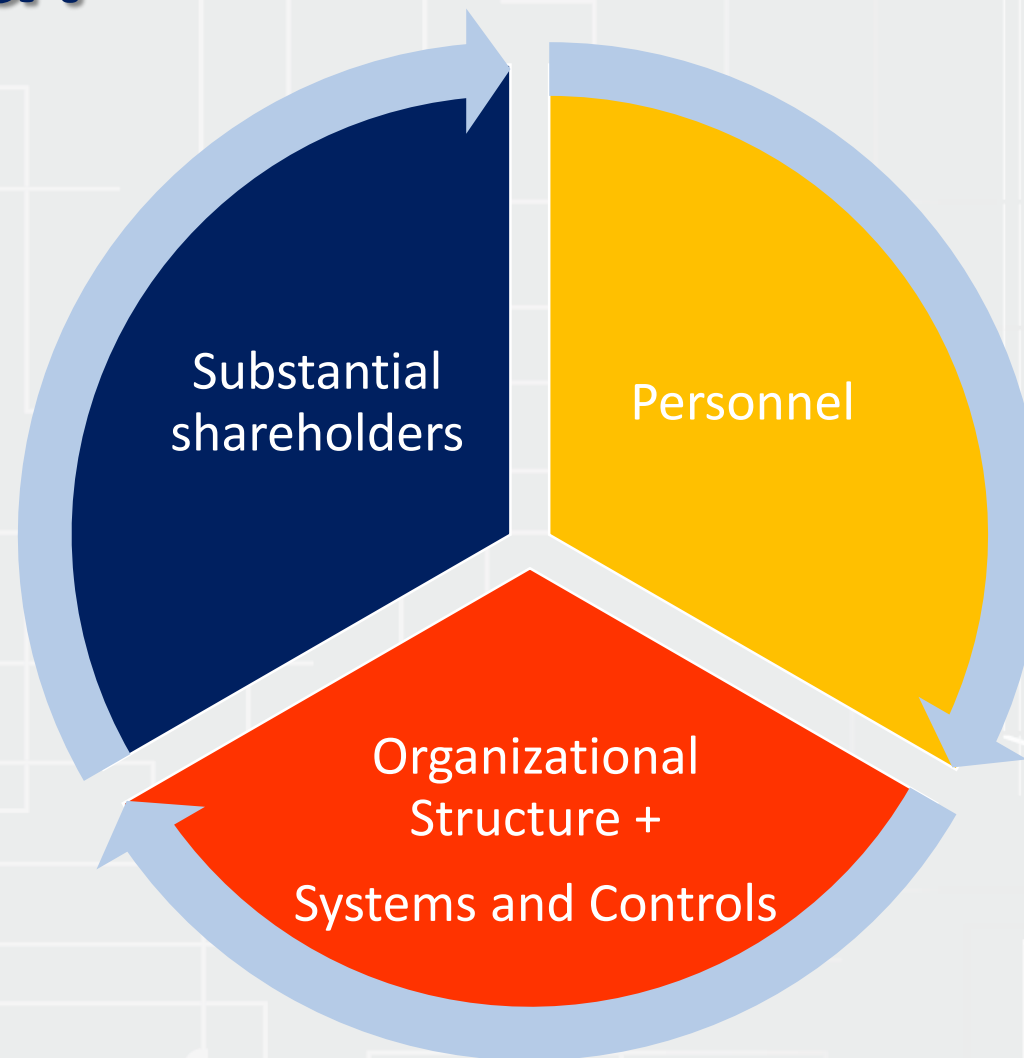
- MPFs (and their constituent funds)
- Approved pooled investment funds (APIFs) offered only to professional investors, employers, MPFs, ORS and pooling arrangements .



In-scope

How this will impact on you?

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Personnel



Who will perform a regulated function?



- Identify at least 2 Responsible Officers (**RO**)
- Others who perform a regulated function can be a Licensed Representative

Personnel: Competence requirements

- Degree in the designated subjects: Accounting, Business Administration, Economics, Finance or Law OR other degree with passes in at least 2 of the designated subjects
- Hong Kong Securities and Investment Institute (**HKSI**) exams: Existing Paper 1 (for Licensed Representative) and possibly new paper (for Responsible Officer)
- Experience: Experience relating to the “regulated function” of RA 13 + People management experience

Grandfathering arrangements

- Not required to pass local regulatory exams, but need to complete a course of not less than 5 hours on legal and regulatory framework of RA 13 within 12 months after obtaining licences.

Licensed Representative

Academic /Professional qualification

Passing of local regulatory exam

Responsible Officer

Academic/Professional qualification

Passing of local regulatory framework exam

At least 3 years out of the past 6 years of experience in relation to the regulated function

At least 2 years of people management experience

Organisational structure



**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 Controls and Review
4. Risk Management
5. Compliance
6. AML and CTF
7. Information Technology
8. Finance and Accounts

8 core functions



Responsible Officer

Overall management oversight

- Responsible for directing and overseeing the effective management of the overall operations of the company on a day-to-day basis
- Developing the company's business and associated objectives, strategies, organizational structure, controls and policies
- Developing and promoting sound corporate governance practices, culture and ethics
- Executing and monitoring the implementation of board-approved business objectives, strategies and plans, and the effectiveness of the organizational structure and controls

Key Business Line

- To oversee and manage the company's regulated activities including supervising relevant staff and monitoring the company's adherence to applicable regulatory requirements in relation to the asset management business
- To supervise the performance of investment activities
- To provide overall direction for the investment functions within company's policies, guidelines and procedures

8 core functions

Operational Control and Review

- Establishing and maintaining adequate and effective systems of controls over the company's operations
- Reviewing the adherence to, and the adequacy and effectiveness of, the company's internal control systems

Risk Management

- Responsible for the identification, assessment, monitoring and reporting of risks arising from the company's operations

Finance and Accounting

- Responsible for ensuring the timely and accurate financial reporting and analyses of the operational results and financial positions of the company

8 core functions

Information Technology

- Responsible for the design, development, operation and maintenance of the computer systems of the company

Compliance

- Setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the company operates
- Monitoring the company's compliance with the established policies and procedures;
- Reporting on compliance matters to the board and senior management

AML and CTF

- Responsible for establishing and maintaining internal control procedures to safeguard the company against involvement in money laundering activities or terrorist financing

Systems and Controls

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**Personnel
training**



What exactly will be required?



Part II: Corporate Governance

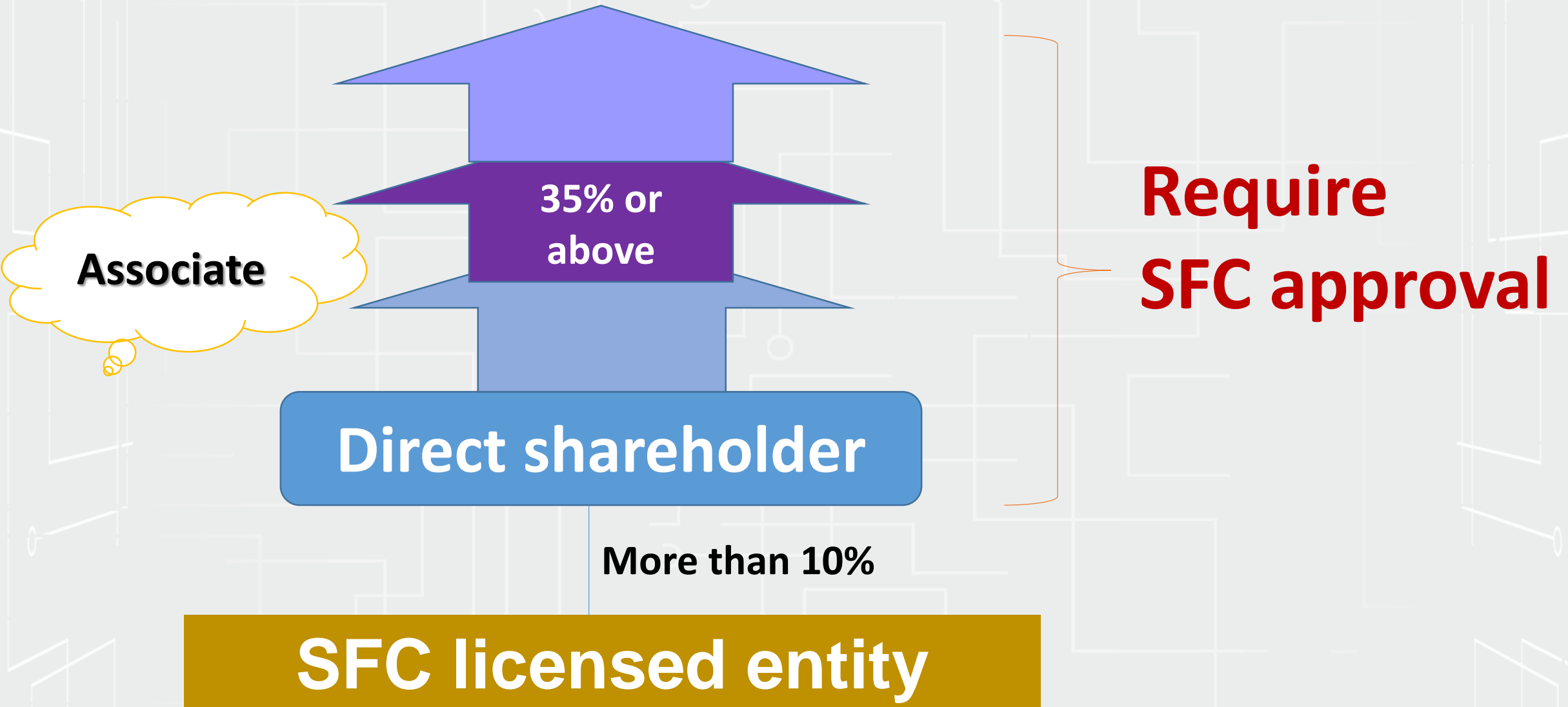
	<u>Yes</u>	<u>No*</u>	<u>N/A#</u>
1 Do you have any written policies and control procedures to ensure that your board of directors			
a) establish a management structure which includes the roles, responsibilities, accountability and reporting lines of your senior management;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) oversee the appointment of your senior management;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) establish systems and controls to supervise your senior management and supervisory staff members who act under the delegated authority by your board of directors;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) establish systems and controls to monitor and regularly evaluate the performance of your senior management in their respective areas of responsibility; and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) establish policies to ensure that the senior management have access to regular training to maintain and enhance their competencies and to keep themselves updated on industry and regulatory developments relevant to their respective areas of responsibility?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 How often will your board of directors evaluate the performance of your senior management in their respective areas of responsibility?			
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What exactly will be required?

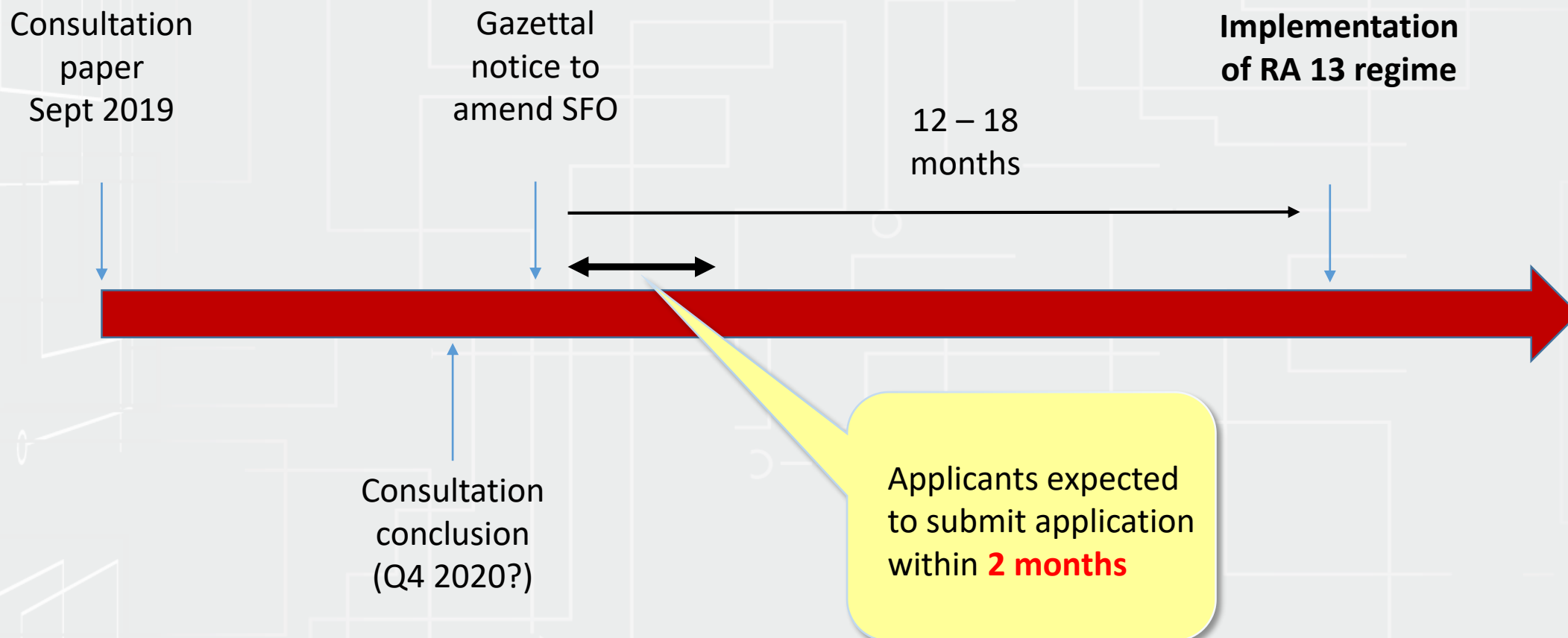
3 Do you have any written policies and control procedures to ensure that your senior management

- | | | | | |
|----|---|--------------------------|--------------------------|--------------------------|
| a) | have a sound understanding of your business activities and their associated risks; | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) | oversee the development and implementation of risk management policies and control procedures to ensure that your risks can be identified, monitored and controlled and that financial and management information is reliable, timely and complete; | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) | establish policies to ensure that your risk management, compliance, operational control and review functions are properly positioned, staffed and resourced and carry out their responsibilities independently, objectively and effectively; and | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) | review and update regularly your risk management measures to ensure that they remain adequate and consistent with your operating environment, and are able to support business expansion? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

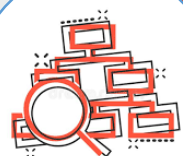
Substantial shareholders



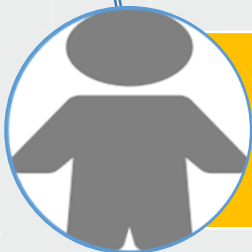
Implementation timeline



Key take-away



Review existing business to confirm whether you are in-scope



Identify who perform a regulated function and so require SFC licences



Build-up compliance infrastructure

Thank you for your participation!

ANY QUESTIONS?

