

New SFC Type 13 licensing regime: What do you need to know?

Agenda

- 1 Introduction

- 2 RA 13 scope and licensing requirements

- 3 Key regulatory changes and ongoing compliance obligations

- 4 Summary

1 Introduction

Background

A. SFO and SFC

- The Securities and Futures Ordinance (Cap. 571) ("**SFO**") is the primary legislation in Hong Kong regulating the financial industry, and the conduct of regulated activities in Hong Kong is subject to the licensing/registration requirements and other regulations under the SFO
- The Securities and Futures Commission ("**SFC**") is the principal regulatory body under the SFO

B. Current regulatory regime

- Currently, trustees and custodians of public funds in Hong Kong are not subject to any specific SFC licensing regime. The SFC does not have any direct supervisory or enforcement powers over such trustees and custodians *(despite that for SFC authorized funds, there are trustee/custodian related requirements under the relevant product codes (e.g. Code on Unit Trusts and Mutual Funds))*
- Under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), a person who provides a trust or company service as a business in Hong Kong is required to obtain a 'Trust or Company Service Provider License' from the Registrar of Companies
- Public authorities such as the Mandatory Provident Fund Schemes Authority, Hong Kong Monetary Authority and Insurance Authority only have limited or indirect regulatory powers over certain limited scope of trustees and custodians

Background

C. RA 13 regulated activity

- Noting the major overseas regulators in the UK, Singapore and Australia have already put in place direct regulatory handle over entities which provide trustee, custodial or depositary services for public funds since the global financial crisis, the proposed RA 13 regime forms part of the SFC's efforts to develop Hong Kong as an international, full-service asset management center that is comparable with other key international markets
- A new regime to regulate depositaries (i.e. top-level trustees and custodians) of SFC-authorized collective investment schemes ("RA 13")
- Effective date: 2 October 2024 (subject to completion of legislative process)

Timeline

SFC published the:

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

RA 13 regime will come into effect (subject to the completion of the legislative process)

September 2019

SFC launched a consultation to propose a new RA13

February 2022

24 March 2023

Legislative amendments to the SFO and its subsidiary legislations were gazetted

2 October 2024

2 RA 13 scope and licensing requirements

Scope of RA 13 – Key terms

- "Depository", in relation to a relevant CIS, means –
 - a. if the relevant CIS is constituted in the **form of a trust** – the person who is **appointed as a trustee** under the trust deed constituting or governing the relevant CIS; or
 - b. if the relevant CIS is constituted in **any other form** –
 - i. the person who is **appointed as the custodian** (by whatever name called) of the relevant CIS under a written agreement entered into by the person with the relevant CIS; or
 - ii. the person who, under an arrangement made with the relevant CIS, is in fact the custodian of the relevant CIS.
- "Regulated Function", in relation to a **regulated activity carried on as a business** by any person, means any function performed for or on behalf of or by arrangement with the person relating to the **regulated activity, other than work ordinarily performed by an accountant, clerk or cashier.**

Scope of RA 13 – Key terms

- "Relevant CIS" means a collective investment scheme authorized under section 104 of the SFO **other than** any of the following:
 - a. a registered scheme as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("**MPFSO**"), or a constituent fund (as defined by that section 2(1)) of the registered scheme;
 - b. an approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) that is offered only to all or any of the following:
 - i. professional investors;
 - ii. employers as defined by section 2(1) of the MPFSO;
 - iii. pooling agreements as defined by section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426).

Examples of Relevant CIS: mutual funds and units trusts, public open-ended fund companies, pooled retirement funds, retail approved pooled investment funds and real estate investment trust

Scope of RA 13 – Key terms

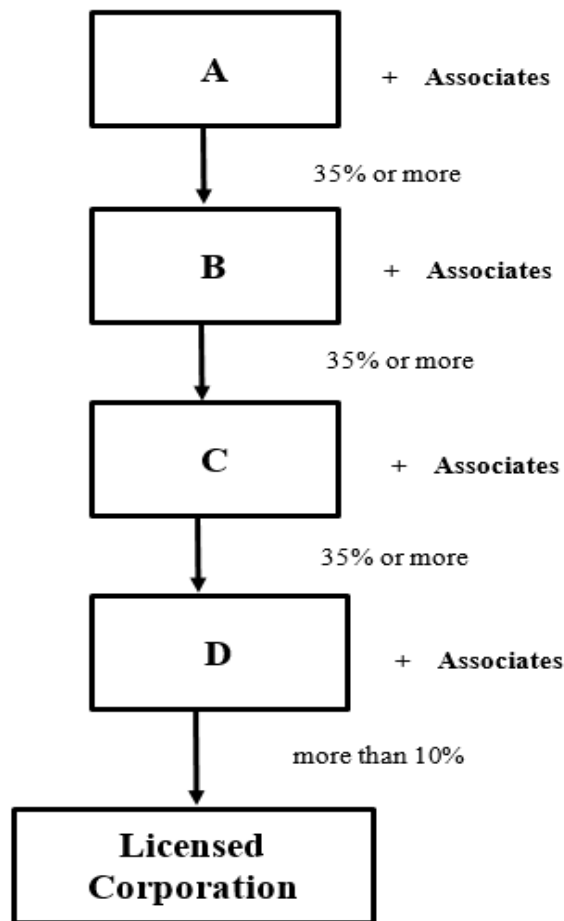
- "Relevant CIS Property", in relation to a relevant CIS, means –
 - a. if the relevant CIS is constituted in the form of a trust – the property held on or subject to trust under the trust deed constituting or governing the relevant CIS; or
 - b. if the relevant CIS is constituted in any other form – the property of the relevant CIS.

Scope of RA 13 – Key terms

- "Substantial shareholder" of a licensed corporation is if a person, either alone or with any of his 'associates' (as defined in SFO) –
 - a. has an interest in shares in the licensed corporation –
 - i. the aggregate number of which shares is equal to more than 10% of the total number of issued shares of the licensed corporation; or
 - ii. which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the licensed corporation; or
 - b. holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the licensed corporation.

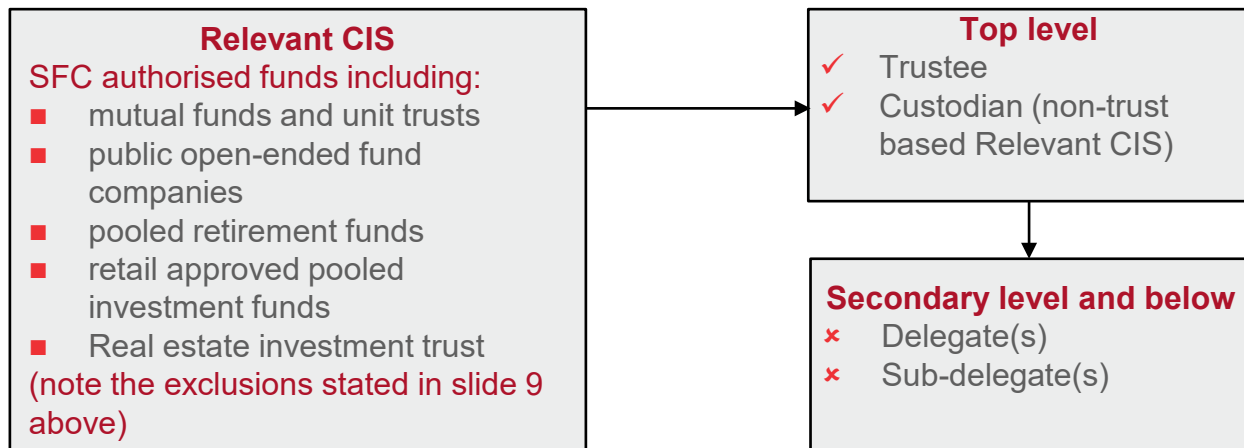
For the purposes of (b) above, a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

Scope of RA 13 – Key terms



Scope of RA 13

- RA 13 captures the "**provision of depositary services for Relevant CISs**", which means the providing of **both** of the following services for one or more Relevant CIS by a Depositary (other than a delegate or subdelegate of the Depositary, irrespective of whether the delegate or subdelegate is appointed by the Depositary) –
 - a. the **custody and safekeeping** of Relevant CIS Property; and
 - b. the **oversight of the Relevant CIS** to ensure that it is operated in accordance with its scheme documents.



Who needs to be licensed / registered for RA 13?

Licensing /
registration of
Depositories



- **Non-banks:** Each corporation (e.g. trust companies) which carries out **RA 13 in Hong Kong** must seek approval from the SFC and become a **Licensed Corporation**.
- **Banks:** Where such corporation is an authorized financial institution under the Banking Ordinance (Cap. 155) ("**BO**"), it shall be registered with the SFC in respect of RA 13 as a **Registered Institution**.

Who needs to be licensed / registered for RA 13?

Licensing /
registration of a
Depository's **staff**



All individuals who conduct Regulated Functions **must** be licensed or registered

- **Non-banks:** Licensed as a **Licensed Individual**.
- **Banks:** Registered as a **Relevant Individual**.

Who needs to be licensed / registered for RA 13?

RA 13 Depositary that performs the custody and safekeeping within the firm and oversight of the Relevant CIS

Generally requires RA 13 license / registration

A. Custody / safekeeping

Staff:

- empowered to **approve instructions or transactions for custody-related purposes** (e.g. approving payments or asset transfers and signing-off cash reconciliation) in respect of a Relevant CIS;
- assuming **oversight duties** over the performance of the above functions

B. Oversight of the Relevant CIS

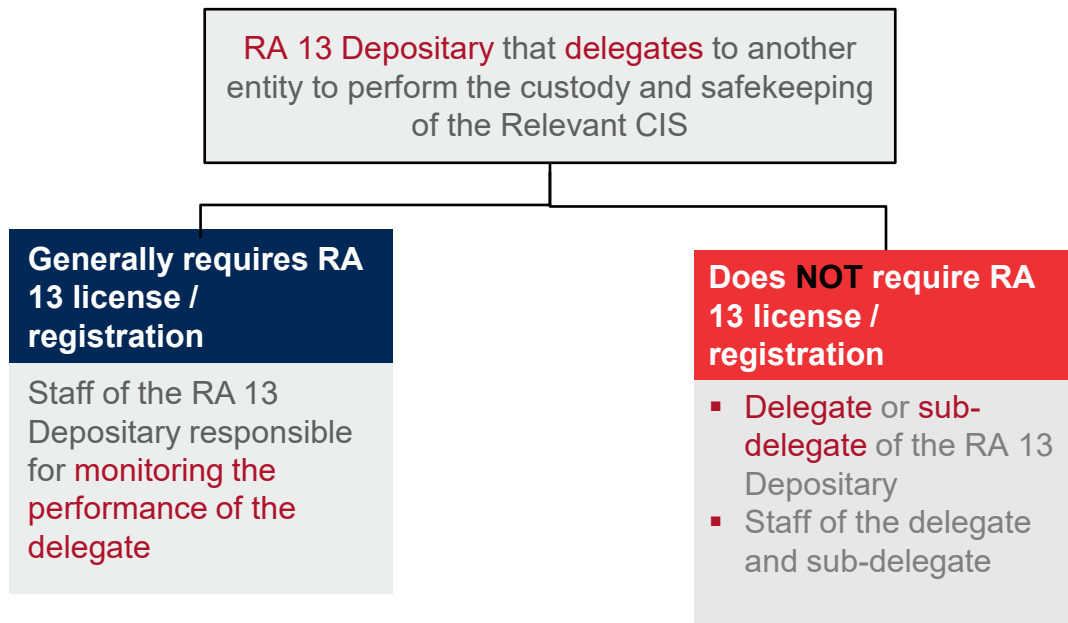
- Staff with **oversight duties over scheme operations** (e.g. compliance with investment and borrowing restrictions, cash flow, fund accounting and valuation of the Relevant CIS)

Generally does NOT require RA 13 license / registration

Staff engaged:

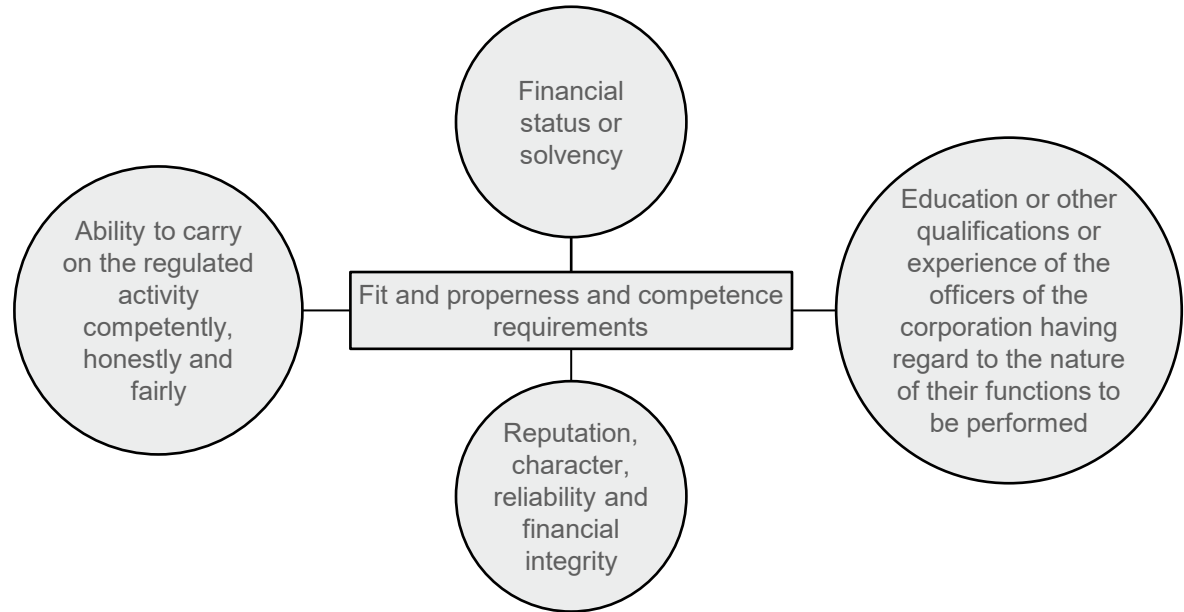
- in custody operations **without** approval powers or oversight duties;
- to provide **other services** the RA 13 Depositary provides (e.g. fund administrator, transfer agent or registrar of Relevant CIS)

Who needs to be licensed / registered for RA 13?



What criteria do you need to meet to become an RA 13 Depositary?

- As part of the licensing/ registration assessment process, the SFC must be satisfied that the applicant is **competent and fit and proper**
- The SFC's "Fit and Proper Guidelines" and "Guidelines on Competence" set out the standards for assessing the fitness and propriety of a person to carry out regulated activities (as summarized in the diagram)



What criteria do you need to meet to become an RA 13 Depositary?

- The table below set out the key basic criteria that the SFC will consider in the licensing/registration process:

Criteria	Details		Applicability
1. Responsible Officers ("RO") and Executive Officers ("EO")	<p>Licensed Corporation</p> <ul style="list-style-type: none"> ■ At least two ROs (at least one of whom must be based in Hong Kong and is available at all times to supervise the RA 13 business) <p><i>Note: If any time an RA 13 Depositary does not have two ROs, then it must stop its RA 13 business</i></p>	<p>Registered Institution</p> <ul style="list-style-type: none"> ■ At least two EOs (at least one of whom must be based in Hong Kong and is available at all times to supervise the RA 13 business) ■ Chief executive ("CE"), alternate chief executive ("ACE") or directors who are directly responsible for the RA 13 business shall be appointed as EOs (at least one EO shall be a CE, ACE, director or section 72B manager under the BO) ■ All EOs must not be one rank lower than the positions stated above 	Licensed Corporation and Registered Institution (" Intermediaries ")
2. Executive directors (" ED ")	<ul style="list-style-type: none"> ■ At least one of the ROs must be an ED ■ Every ED must be approved by the SFC as a RO <p><i>Note: Non-executive directors are not required, but they (if any) must be vetted by the SFC but need not be licensed</i></p>	See above	Intermediaries

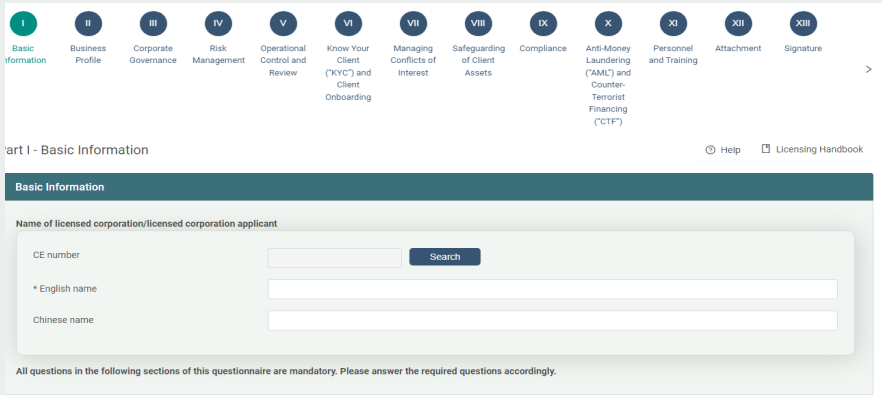
What criteria do you need to meet to become an RA 13 Depository?

Criteria	Details		Applicability
3. Managers-in-Charge ("MIC") or equivalent	<p>Licensed Corporation</p> <ul style="list-style-type: none"> ■ MICs shall be appointed for the below core functions: <ul style="list-style-type: none"> ■ overall management oversight ("OMO"); ■ key business line ("KBL"); ■ operational control and review; ■ risk management; ■ finance and accounting; ■ information technology; ■ compliance; ■ anti-money laundering and counter-terrorist financing <p><i>Note:</i></p> <ul style="list-style-type: none"> ■ One person can be the MIC of one or more core functions ■ One function can have more than one MIC ■ MIC responsible for OMO and KBL functions should be a RO ■ MICs of other core functions are generally not required to be licensed ■ MICs shall be fit and proper with sufficient authority/seniority (must have direct reporting line to either (i) MIC of OMO; or (ii) Board) 	<p>Registered Institution</p> <ul style="list-style-type: none"> ■ At least one individual shall be appointed for the below: <ul style="list-style-type: none"> ■ principally responsible for the overall management of the whole business (CE) ; ■ the carrying on of business which is material to the institution; ■ the maintenance of the accounts or the accounting systems of the institution; ■ the maintenance of systems of control of the institution, including those systems intended to manage the risks of the institution; ■ the maintenance of systems of control of the institution to protect it against involvement in money laundering; ■ the development, operation and maintenance of computer systems for the institution; ■ the conduct of internal audits or inspections of the institution's affairs or business; and ■ the function of ensuring that the institution complies with laws, regulations or guidelines that are applicable to it ■ In terms of seniority, such persons are expected to be CE (including ACE), directors or section 72B managers under the BO 	Intermediaries

What criteria do you need to meet to become an RA 13 Depository?

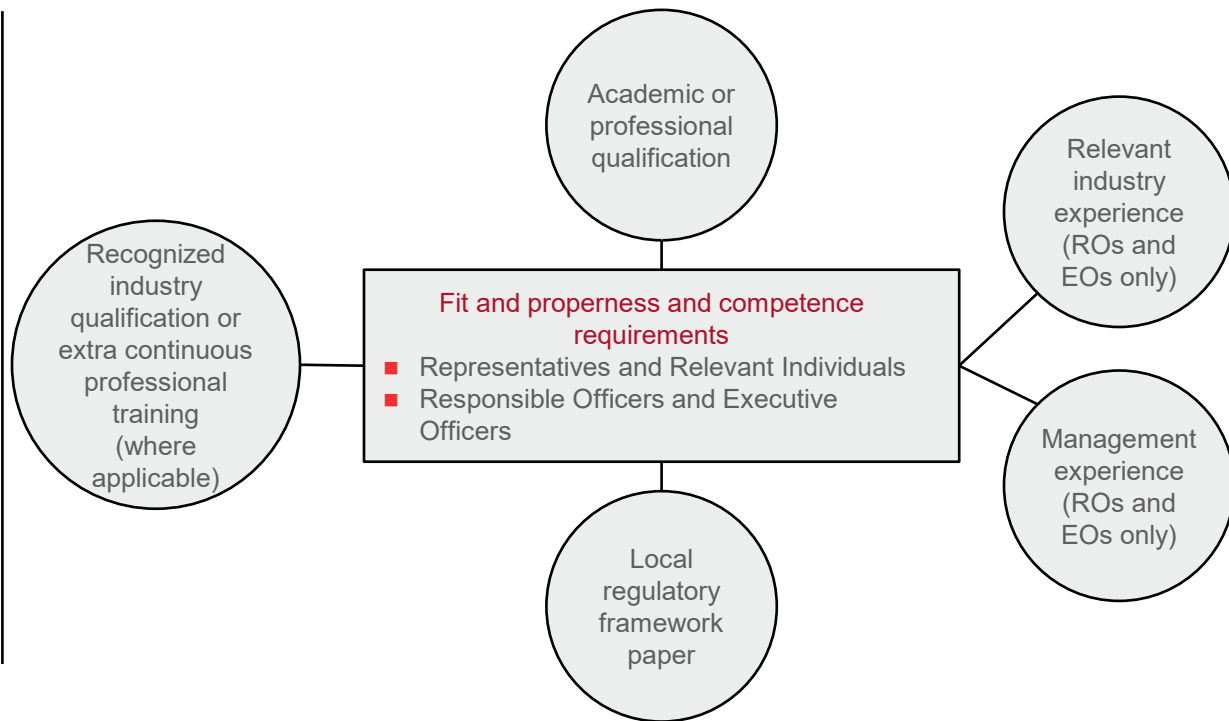
Criteria	Details	Applicability				
4. Shareholders	Each Substantial Shareholder shall be subject to vetting and must be approved by the SFC	Licensed corporation				
5. Financial resources and regulatory capital	<div><div><div>■ Must comply with the financial resources requirements under the Securities and Futures (Financial Resources) Rules (Cap. 571N) at all times</div></div><table><tr><th>Minimum paid-up share capital (HK\$)</th><th>Minimum liquid capital (HK\$)</th></tr><tr><td>\$10,000,000</td><td>Higher of \$3,000,000 and variable required liquid capital</td></tr></table></div>	Minimum paid-up share capital (HK\$)	Minimum liquid capital (HK\$)	\$10,000,000	Higher of \$3,000,000 and variable required liquid capital	Licensed corporation
Minimum paid-up share capital (HK\$)	Minimum liquid capital (HK\$)					
\$10,000,000	Higher of \$3,000,000 and variable required liquid capital					
6. Record keeping	<div><div><div>■ Must comply with the Securities and Futures (Keeping of Records) Rules (Cap. 571O)</div><div>■ (for Licensed Corporations) SFC approval for premises to be used for record keeping</div><div>■ Where an external electronic data storage provider is used, there are additional regulatory requirements (e.g. control measures to properly manage cyber and other operational risks)</div></div></div>	Intermediaries				

What criteria do you need to meet to become an RA 13 Depository?

Criteria	Details	Applicability
7. Internal controls and policies and procedures	<ul style="list-style-type: none">■ The SFC must be satisfied that the intermediary has the proper business structure, good internal control systems, and qualified personnel to ensure the proper management of risks■ Application process requires completion of self-assessment forms on internal controls and policies and procedures (can obtained from WINGS (sfc.hk))■ Questionnaire 1 - General Business Profile and Internal Control Summary■ Questionnaire 2 - Specific Business Profile and Internal Control Summary 	Intermediaries

What are the criteria to become a Licensed Individual / Relevant Individual?

- The fit and proper and competence requirements are set out in the SFC's Fit and Proper Guidelines and Guidelines on Competence



What are the criteria to become a Licensed Individual / Relevant Individual?

- Licensed Representatives / Relevant Individuals of RA 13 Depositories shall comply with the Fit and Proper Guidelines and the Competence Guidelines (as summarized below)

Test of competence for Licensed Individuals / Relevant Individuals					
	Option A	Option B		Option C	
Academic or professional qualification	<ul style="list-style-type: none"> ▪ Degree in the designated fields (i.e. accounting, business administration, economics, finance and law); ▪ Other degree (with passes in at least two courses in the designated fields); or ▪ Professional qualifications 	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 the past 5 years	-	At least 2 years over the past 5 years	
Recognised industry qualification (RIQ) or Extra CPT	-	-	Obtained relevant RIQ or completed relevant Extra CPT	Completed relevant Extra CPT	Obtained relevant RIQ
Local regulatory framework paper	Pass	Pass		Pass	

Recognized industry qualification/local regulatory framework paper		
Regulated activity	Recognized industry qualification	Local regulatory framework paper
13	HKSI LE Papers 7 & new industry paper	HKSI LE Paper 1

What are the criteria to become a Licensed Individual / Relevant Individual?

- ROs and EOs of RA 13 Depositories shall comply with additional competence requirements

Test of competence for RO / EO				
	Option A	Option B	Option C	
Academic or professional qualification	<ul style="list-style-type: none"> Degree in the designated fields (i.e. accounting, business administration, economics, finance and law); Other degree (with passes in at least two courses in the designated fields); or Professional qualifications 	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	
Local regulatory framework paper	Pass	Pass	Pass	

Recognized industry qualification/local regulatory framework paper		
Regulated activity	Recognized industry qualification	Local regulatory framework paper
13	HKSI LE Papers 7 & new industry paper	HKSI LE Paper 1 & new industry paper

What are the criteria to become a Licensed Individual / Relevant Individual?

- The SFC will provide a **grandfathering arrangement** for practitioners when implementing the RA 13 regime
- The competence of staff applying to be ROs, EOs, Licensed Representatives or Relevant Individuals of RA 13 Depositories during the transitional period will be assessed in accordance with (i) the academic qualification, (ii) relevant industry experience and (iii) management experience tests
- Under the grandfathering arrangement, such staff will **not be required to pass the local regulatory framework papers, but will need to complete a course of not less than five hours** on the legal and regulatory framework for RA 13 within 12 months of securing the RA 13 licensing or registration approval

Licensing timeline – Key dates

Depositories currently operating in Hong Kong are expected to submit their licensing or registration applications within four months of the launch of the forms.

Third quarter of 2023 ("Day X")

Electronic licensing forms for RA 13 will be made available on SFC's online system (WINGS).

Within four months of Day X

2 October 2024

Effective date of RA 13 regime.

- If a Depository foresees that it may not be able to meet the expected application timeframe due to exceptional circumstances, it should approach the SFC and/or the HKMA (as the case may be) to discuss as soon as practicable

3 Key regulatory changes and ongoing compliance obligations

Summary of key regulatory changes

Subsidiary legislation	A. Securities and Futures (Financial Resources) Rules ("FRR") (Cap. 571N) B. Securities and Futures (Client Money) Rules ("CMR") (Cap. 571I) C. Securities and Futures (Client Securities) Rules ("CSR") (Cap. 571H) D. Securities and Futures (Keeping of Records) Rules ("KRR") (Cap. 571O) E. Securities and Futures (Accounts and Audit) Rules (Cap. 571P)
Code of Conduct	F. Schedule 11

A. Securities and Futures (Financial Resources) Rules ("FRR") (Cap. 571N)

RA 13

Minimum paid-up share capital (HK\$)	\$10,000,000
Minimum liquid capital (HK\$)	Higher of \$3,000,000 and “variable required liquid capital”
Liquid capital:	Liquid assets less ranking liabilities

A. Securities and Futures (Financial Resources) Rules ("FRR") (Cap. 571N)

RA 13

Liquid assets:

Must include:

- a. Cash which it **beneficially** owns
- b. Money which it **beneficially** owns and holds in an account in its name, or in a segregated account, with an authorised financial institution ("AI") in the form of (i) **demand deposit** or (ii) **time deposit which will mature in 6 months or less**, and the interests accrued thereon

Must NOT include:

- a. **Scheme money** held by the Licensed Corporation:
 - i. in a segregated account with an AI or a bank incorporated outside HK; or
 - ii. in a segregated account with a person approved by the SFC
 - iii. in a relevant CIS account
 - iv. in an amount maintained with an AI or a bank incorporated outside HK which is separate from the own account of the licensed corporation
- b. Any amount held by the Licensed Corporation constituting (i) **subscription proceeds**, (ii) **redemption proceeds** or (iii) **distribution proceeds** in respect of the Relevant CIS in an account which is separate from its own account and designated for holding such proceeds

A. Securities and Futures (Financial Resources) Rules ("FRR") (Cap. 571N)

RA 13

Ranking liabilities:

- The aggregate of the amounts required to be **included** in the Licensed Corporation's ranking liabilities is set out in Division 4 of Part 4 of FRR, which includes but not limited to:
 - any amount of **scheme money** in respect of a Relevant CIS held by the Licensed Corporation
 - any amount held by the Licensed Corporation on behalf of the subscribers/scheme participants of a Relevant CIS constituting **subscription proceeds/redemption proceeds/distribution proceeds**
 - any amount payable to any person which arises from the **carrying on of the RA13 in relation to any obligation incurred solely on behalf of a Relevant CIS**

A. Securities and Futures (Financial Resources) Rules ("FRR") (Cap. 571N)

RA 13

Ranking liabilities:

- The following could be **excluded** from the calculation of ranking liabilities:
 - scheme money held in **designated segregated accounts**
 - money held for the subscribers/scheme participants in accounts which are **separated from the Licensed Corporation's own accounts** and **designated for holding such proceeds**
 - any amount payable to others arising from the conduct of the RA13 in relation to any obligation incurred solely on behalf of a Relevant CIS (which are **payable without recourse to the assets of the Licensed Corporation**)

B. Securities and Futures (Client Money) Rules ("CMR") (Cap. 571I)

Applicability

- Applicable to **scheme money**, where such money constitutes Relevant CIS Property in respect of a Relevant CIS and is **received or held in Hong Kong by an RA 13 Licensed Corporation** or **its associated entities** in the course of or in relation to the conduct of RA 13
- "Associated entity" in this context refers to a company which is in a controlling entity relationship with the RA 13 Depositary; and receives or holds in Hong Kong client assets of the RA 13 Depositary

B. Securities and Futures (Client Money) Rules ("CMR") (Cap. 571I)

New requirements and corresponding provisions

1. Segregated account

- According to section 10B, RA 13 Licensed Corporation must establish and maintain **segregated accounts** (which are designated as trust or client accounts) for the Relevant CIS with AI or any other persons approved by the SFC.
 - Each segregated account must GENERALLY be for only **one Relevant CIS**.
- Where the Relevant CIS consists of **sub-funds**, it is acceptable to have one segregated account for scheme money in respect of that Relevant CIS and all of its sub-fund(s) or separate segregated accounts in respect of that Relevant CIS and each of its sub-funds.
- In the case of a Relevant CIS which is an **open-ended fund company or a Relevant CIS which is constituted in other corporate form**, the relevant CIS account ((i) that is established and maintained by the board of directors of the Relevant CIS and (ii) in respect of which a Licensed Corporation or its associated entity has control) in the name of the Relevant CIS with an AI or other SFC approved persons is also acceptable.

B. Securities and Futures (Client Money) Rules ("CMR") (Cap. 571I)

New requirements and corresponding provisions	
2. Client money: Pay-in	Within 3 business days after a Licensed Corporation or an associated entity of a Licensed Corporation receives any amount of scheme money in respect of a Relevant CIS, the Licensed Corporation or associated entity must pay it into the relevant account
3. Client money: Pay-out	<ul style="list-style-type: none">■ According to section 10C, scheme money may be paid out in accordance with the scheme documents for designated purposes which include the below:<ul style="list-style-type: none">a. meeting payment, distribution, redemption, settlement or margin requirements on behalf of the Relevant CIS;b. settling proper charges due to any person who has provided a service in respect of the Relevant CIS; orc. settling any other liability incurred by or on behalf of the Relevant CIS.■ Scheme money may also be paid according to a written instruction which satisfies the requirements under section 10E.

B. Securities and Futures (Client Money) Rules ("CMR") (Cap. 571I)

New requirements and corresponding provisions	
3. Client money: Pay-out (Con't)	<ul style="list-style-type: none">■ According to section 10E, a written instruction is a written notice that:<ul style="list-style-type: none">a. relates to an amount of scheme money in respect of a Relevant CIS;b. is given to the Licensed Corporation or an associated entity of that Licensed Corporation by or on behalf of the Relevant CIS; andc. directs the Licensed Corporation or the associated entity to deal with the scheme money in a particular manner.■ The giving of the instruction and the dealing of scheme money in the manner as specified in the instruction shall not contravene any provisions of the scheme documents of the Relevant CIS.

C. Securities and Futures (Client Securities) Rules ("CSR") (Cap. 571H)

Applicability

- Applicable to **scheme securities** which are listed or traded on the Hong Kong Stock Exchange or interests in a **collective investment scheme** which are authorized by the SFC, where such securities constitute Relevant CIS property in respect of a Relevant CIS and are received or held in Hong Kong by an RA 13 Depository or its "associated entities" in the course of or in relation to the conduct of RA 13.

New requirements and corresponding provisions

1. Requirements for deposit or registration of scheme securities

- According to section 9B, scheme securities in respect of a Relevant CIS must be
 - a. deposited in **segregated trust or client accounts** established and maintained in Hong Kong by the RA 13 Depository or its associated entity with either (i) AI, (ii) custodian, or (iii) another SFC licensed corporations licensed in respect of Type 1 (dealing in securities) regulated activity; **OR**
 - b. registered in the name of the Relevant CIS / the associated entity on behalf of the Relevant CIS.

C. Securities and Futures (Client Securities) Rules ("CSR") (Cap. 571H)

New requirements and corresponding provisions	
2. Dealing with scheme securities	<ul style="list-style-type: none">■ An intermediary or an associated entity of an intermediary may deal with scheme securities in respect of a relevant CIS that it receives or holds in accordance with:<ul style="list-style-type: none">■ a written instruction to settle an order to sell scheme securities executed on behalf of the relevant CIS; or■ a written instruction to withdraw the scheme securities from an account or to deal with scheme securities that have been registered.■ Written instructions means an instruction that:<ul style="list-style-type: none">■ relates to specified scheme securities relating to a Relevant CIS;■ is given to the intermediary or an associated entity of the intermediary by or on behalf of the relevant CIS; and■ directs the intermediary or the associated entity to deal with the scheme securities in a particular manner.
3. Limitations on treatment of scheme securities	An intermediary in the conduct of RA13 must take reasonable steps to ensure that the scheme securities in respect of a Relevant CIS are not (a) deposited, (b) transferred or (c) pledged etc.

D. Securities and Futures (Keeping of Records) Rules (“KRR”) (Cap. 571O)

Applicability

- Applicable to an RA 13 Depositary or its associate entities and sets out the requirements on keeping of records.

New requirements and corresponding provisions

- Section 3A contains detailed provisions setting out the **record keeping requirements** for an RA 13 Depositary:
 - keeping sufficient accounting, custody and other records to explain and account for all Relevant CIS property in respect of each Relevant CIS for which the depositary provides its depositary services.
- Section 4A sets out the record keeping requirements on associated entities of an RA 13 Depositary which is very similar to section 3A.

E. Securities and Futures (Accounts and Audit) Rules (Cap. 571P)

Applicability

- A Licensed Corporation shall prepare a set of accounts including but not limited to (i) statement of profit or loss and other comprehensive income and (ii) statement of financial position in **each financial year**.
- With respect to the RA13, the return of an **analysis of Relevant CIS Property received or held by the Licensed Corporation** shall be prepared by the Licensed Corporation annually.
- The auditor's report that is required to be submitted shall include a statement by the auditor as to whether, in the auditor's opinion, the Licensed Corporation or the associated entity had systems of control in place that were adequate to ensure compliance with, among others, **CMR**, **CSR** and **KRR**.

F. Schedule 11 to the Code of Conduct

- Schedule 11 sets out additional requirements that apply to RA 13 Depositaries:
 - establish and implement internal control policies and procedures, which may vary from entity to entity taking into account the size of the operation of the firm, the nature and volume of transactions undertaken and the nature of the Relevant CIS Property.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

1

Communication
with management
company

- Report to the management company **actual** and **potential material breaches** of applicable legal and regulatory requirements which may impact such Depositary's carrying on of its regulated activities.
- Implement **rectification and remedial actions**, involve and coordinate with the management company in respect of such breaches or matters reported.
- Notify the management company of **material exceptions to its business continuity plan identified** during regular tests which may have a material adverse impact on the operation of the Relevant CIS or the discharge of the Depositary's obligations.
- Upon the activation of its business continuity plan, promptly communicate with the management company if there is any material change to the extent of services to be provided to the Relevant CIS.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

2

Subscription and redemption

- Have oversight of the **relevant operator(s)** (i.e. other parties involved in the operation of a Relevant CIS, which may include a management company, the board of directors of a Relevant CIS, a transfer agent, administrator and registrar) to ensure that:
 - a. where subscription proceeds are received by the RA 13 Depositary or a relevant operator but the subscription orders relating to these proceeds have **not yet been accepted**, these proceeds are deposited on a timely basis into a **segregated or omnibus bank account**;
 - b. when subscription orders **are 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 holding money which constitutes Relevant CIS Property**;

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

2

Subscription and redemption

- c. **redemption proceeds** are transferred on a timely basis into designated segregated or omnibus bank account(s); and
- d. it has maintained proper documentation and records of the reasons for (i) **suspension of dealings** of units or shares in the Relevant CIS and (ii) any **suspension of calculation of valuation, price or net asset value** of the Relevant CIS, including the consultation process and communication between the RA 13 Depositary and the management company.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

3

Appointment and oversight of delegates or third parties

- Where a delegate or third party is appointed or engaged to carry out any activity that is relevant to the RA 13 Depositary, establish **internal control policies and procedures** to enable it to have proper oversight over such delegate or third party so that it can be **reasonably satisfied** that the delegate or third party is **competent to carry out the relevant activity**.
- Such internal control policies and procedures include those relating to: (i) selection of a delegate or third party; (ii) ongoing monitoring of the delegate or third party; and (iii) appropriate contingency plan in relation to the engagement of delegates or third parties.
- Although a delegate may be engaged, the responsibilities and obligations of an RA 13 Depositary shall **remain with the Depositary**.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositories

4

Record-keeping

- Ensure that its record keeping policies comply with applicable legal and regulatory requirements as well as requirements under the **constitutive documents of the Relevant CIS**.

5

Oversight of the Relevant CIS

- Have oversight of the Relevant CIS to ensure that it is **operated in accordance with the provisions of the constitutive documents of the Relevant CIS**.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

6

Valuation / price /
net asset value
calculation
monitoring

- Have oversight of the relevant operator(s) to ensure that:
 - a. the **methodology adopted** to calculate the net asset value per unit or share is in accordance with the provisions of the constitutive documents of the Relevant CIS;
 - b. the **calculation of the net asset value** of the Relevant CIS, including interest income, dividend income and fee expenses, is accurate;
 - c. the **use of the fair value adjustments for valuing different types of properties of the Relevant CIS** is in accordance with the constitutive documents of the Relevant CIS and the governance structure and the review process for the fair value adjustments established by the management company are appropriate; and
 - d. the relevant operator(s) **maintain proper recording of interest income, dividend income and other corporate actions** in relation to each Relevant CIS.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

6

Valuation / price /
net asset value
calculation
monitoring

- Establish a **clear and comprehensive escalation mechanism** for any error or exception in the pricing of the units or shares in the Relevant CIS. Where there are pricing errors or exceptions, an RA 13 Depositary should:
 - a. inform the management company of the **pricing errors or exceptions** which have come to the attention of the RA 13 Depositary;
 - b. report, or ensure the relevant operator(s) have reported, the pricing errors or exception to the SFC in a timely manner, in accordance with the relevant product code(s) issued by the SFC ("**relevant Product Code(s)**"); and
 - c. work with the management company to ensure that the pricing errors or exceptions are dealt with in accordance with the relevant Product Code(s).

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

7

Distribution
payments

- Have oversight of the relevant operator(s) to ensure that:
 - a. distribution **calculations** are carried out in accordance with the provisions of the constitutive documents of the Relevant CIS; and
 - b. distribution **payments** are timely, complete and accurate.
- An RA 13 Depositary should ensure that distribution proceeds are transferred on a **timely basis** upon instruction.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

8

Cash flow
monitoring

- Implement proper procedures and controls in **opening and maintaining any bank account for the Relevant CIS**; and where any bank account for the Relevant CIS is opened by the management company in the name of the Relevant CIS or the management company itself, the RA 13 Depositary should have oversight to ensure that the **Relevant CIS/management company has implemented proper procedures and controls** in opening any such bank account.
- Identify cash flows which are inconsistent with the operations of the Relevant CIS.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositaries

9

Investment monitoring

- Carry out the instructions of the management company of the Relevant CIS with post-trade verifications in relation to **investment limitations and restrictions**.
- Have oversight of the **relevant operator(s)** to ensure that it has complied with the investment and borrowing limits set out in the offering and constitutive documents of the Relevant CIS and the conditions under which the Relevant CIS was authorized.
- Provide or make available copies of the RA 13 Depositary's reconciled records to the management company or its delegate(s).
- Have oversight of the relevant operator(s) to ensure that transactions are settled, and ensure that exceptions are detected and followed up, all in a timely manner.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositories

10

Custody and
safekeeping

- Assess and manage custody risk with adequate organisational arrangements to minimise the risks of loss of the relevant CIS property
- Segregate the assets relevant CIS property
- Properly register the relevant CIS property in the name of or to the order of the RA 13 depository
- Maintain comprehensive, up-to-date and accurate records of relevant CIS property
- Ensure reconciliation is carried out on a daily basis for cash and on a regular basis for other relevant CIS property
- Ensure any part of the relevant CIS property that is subject to any security interest is held in safe custody in segregated account(s) solely for the purpose of holding such scheme collateral.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositories

11

Connected party transaction

- Ensure that there are proper controls in respect of **connected party transactions** of the Relevant CIS.
- Ensure that the relevant operator(s) have effective controls in place for obtaining the RA13 Depository's prior written consent for transaction(s) between the Relevant CIS and the entities mentioned in the relevant Product Code(s), such transactions are executed at the arm's length and in the best interests of the Relevant CIS, and that the consent is supported by proper documentation of the justifications for the approval of the transaction.

F. Schedule 11 to the Code of Conduct

Additional requirements that apply to RA 13 Depositories

12

Handling different classes of investors fairly

- Have oversight of the relevant operators to ensure that **where a Relevant CIS has multiple classes of units or shares**, investors of different classes of units or shares are **treated fairly**.

13

Professional indemnity insurance

- Maintain **adequate professional indemnity insurance** cover commensurate with its business.

4 Summary

Summary: RA 13 Licensing Regime

- Definitions -
 - **Depository**: Top-level trustees and custodians (excludes delegate(s) and sub-delegate(s) and their respective staff)
 - **Depository services**: Provision of both (i) custody and safekeeping of the Relevant CIS and (ii) oversight of the Relevant CIS
 - **Relevant CIS**: CIS authorized under the SFO (except MPF schemes and constituent funds and non-retail APIFs)

Summary: RA 13 Licensing Regime

■ RA 13 Depositary –

- Legal requirement to have two ROs, but as a contingency, better to have at least three ROs
- MIC(s) of core functions should have clear determination of roles and responsibilities and avoid any conflict of interest
 - One person can be MIC for one or more core functions
 - Multiple persons can be MIC for one core function
- Shareholder information should be assessed to determine the shareholding structure and identify the Substantial Shareholders (which will need to be approved by the SFC)
- Whether or not RA 13 license/registration is required for staff of a Licensed Corporation / Registered Institution should be assessed on a case by case basis

■ RA 13 Licensed Individual / Relevant Individual –

- Under the grandfathering arrangement, only required to complete a course of not less than five hours on the legal and regulatory framework for RA 13 within 12 months of securing the RA 13 licensing/registration approval

Summary: RA 13 Licensing Regime

Securities and Futures (Financial Resources) Rules	Prescribes the calculation of “ required liquid capital ”, “ ranking liabilities ” and “ liquid capital ”
Securities and Futures (Client Money) Rules (Cap. 571I)	<ul style="list-style-type: none">▪ Establish one segregated account for one Relevant CIS▪ Licensed Corporation (or its associated entity) should transfer the scheme money into the relevant account within 3 business days upon the receiving the same▪ Client money can be paid out for designated purposes
Securities and Futures (Client Securities) Rules (Cap. 571H)	<ul style="list-style-type: none">▪ Deposited in segregated trust or client accounts or registered in the name of the Relevant CIS▪ Client securities can be dealt with according to the written instruction
Securities and Futures (Keeping of Records) Rules (Cap. 571O)	<ul style="list-style-type: none">▪ RA 13 and its associated entities share similar level of restrictions▪ Stored physically or electronically?
Securities and Futures (Accounts and Audit) Rules (Cap. 571P)	Auditor is required to express whether the Licensed Corporation has system of control in place to ensure compliance with, among others, CMR, CSR and KRR

Summary: RA 13 Licensing Regime

Schedule 11 to the Code of Conduct

1. Communication with management company
2. Subscription and redemption
3. Appointment and oversight of delegates or third parties
4. Record-keeping
5. Oversight of the Relevant CIS
6. Valuation / price / net asset value calculation monitoring
7. Distribution payments
8. Cash flow monitoring
9. Investment monitoring
10. Custody and safekeeping
11. Connected party transaction
12. Handling different classes of investors fairly
13. Professional indemnity

Summary: RA 13 Licensing Regime

- Next steps –
 - Identify which of your entities will need to be licensed
 - Identify who the ROs, EDs and the MIC(s) will be
 - Consider whether to (i) conduct a gap analysis to identify what changes need to be made to your existing policies and procedures or (ii) prepare a new RA 13 compliance manual
 - Determine how records will be stored (physically or electronically) and whether the existing processes comply with the relevant subsidiary legislation

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Questions?



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