

27 July 2023

Circular on licensing and registration of depositaries of SFC-authorised collective investment schemes and related transitional arrangements

1. Starting from 2 October 2024, trustees and custodians (ie, depositaries) of SFC-authorised collective investment schemes (CISs), unless exempted, will be required to be licensed by or registered with the Securities and Futures Commission (SFC) for Type 13 regulated activity (RA 13) under the Securities and Futures Ordinance (SFO).
2. This circular provides licensing guidance in relation to RA 13, including transitional arrangements for depositaries currently operating in Hong Kong and their representatives.

A. Who needs to be licensed or registered?

Corporate practitioners

3. Under Schedule 5 to the SFO as amended¹, RA 13 refers to “providing depositary services for relevant CISs”. Generally speaking, upon commencement of the new regime, any depositary of an SFC-authorised CIS which is at the top of the custodial chain is required to be licensed or registered for RA 13 in order to provide depositary services (see paragraph 4) for the CIS in Hong Kong, unless the CIS² is:
 - (a) a registered mandatory provident fund scheme³ or a constituent fund of such scheme; or
 - (b) an approved pooled investment fund⁴, which is not offered to retail investors.

¹ On 24 March 2023, the SFC released [consultation conclusions](#) on proposed amendments to subsidiary legislation and SFC codes and guidelines to implement the regulatory regime for depositaries of SFC-authorised CISs. The amendment to Schedule 5 to the SFO was published in the [Government Gazette](#) on that date. The required legislative process for introducing RA 13 into the SFO was completed on 17 May 2023. The amendments will take effect on 2 October 2024.

² Please refer to the definition of “relevant CIS” in the amended Schedule 5 to the SFO for details.

³ Please refer to the definition of “registered scheme” under section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

⁴ Defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)

4. Depositary services refer to both of the following key functions carried out by a depositary:
 - (a) the custody and safekeeping of relevant CIS property⁵; and
 - (b) the oversight of a relevant CIS to ensure that it is operated in accordance with its scheme documents⁶.
5. As RA 13 captures only top-level depositaries operating in Hong Kong, services provided by entities acting as their delegates or sub-delegates do not fall within the licensing scope, regardless of whether the entities operate within or outside Hong Kong.
6. The new regime does not restrict a depositary, which is licensed or registered for RA 13, from conducting other business activities such as acting as a trustee of family trusts or private investment funds. However, it should put in place adequate and effective internal controls to maintain confidentiality and manage actual or potential conflicts of interest.

Individual practitioners

7. As general guidance and with reference to the two key functions of a depositary mentioned in paragraph 4 above, the following staff members of the depositary should be licensed or registered for RA 13 as the depositary's representatives:
 - (a) staff members assuming oversight duties to ensure that a relevant CIS is operated in accordance with its scheme documents. Such duties encompass the monitoring of various operational aspects of the scheme, including, but not limited to, custody of scheme property, compliance with investment and borrowing restrictions, cash flow, fund accounting and valuation, and issuance, repurchase, redemption and cancellation of the CIS units or shares; and
 - (b) staff members who are empowered to approve instructions or transactions for custody-related purposes (eg, approving payments or asset transfers, signing-off cash reconciliation), if the depositary carries out all or part of the custody operations in respect of a relevant CIS by itself.

⁵ As defined in the amended Schedule 5 to the SFO, "relevant CIS property" refers to (a) the property held on or subject to a trust under the trust deed constituting or governing the relevant CIS if the relevant CIS is constituted in the form of a trust; or (b) the property of the relevant CIS if the relevant CIS is constituted in any other form.

⁶ As defined in the amended Schedule 5 to the SFO, "scheme documents", in relation to a relevant CIS, refer to (a) the trust deed constituting or governing the relevant CIS if such CIS is constituted in a form of a trust; (b) the documents governing the formation or constitution of the relevant CIS if such CIS is constituted in any other form; or (c) other documents setting out the requirements relating to (i) the custody and safekeeping of any relevant CIS property; or (ii) the oversight of the operations of the relevant CIS.

8. Some depositaries also act as the fund administrator or transfer agent for CISs. Providing fund administration or transfer agency services, in themselves, does not constitute RA 13. Therefore, if a depositary of a CIS also acts as the fund administrator or transfer agent for that CIS, its staff members who are only involved in providing those services are generally not required to be licensed or registered for RA 13.

B. Highlights of the regulatory requirements for RA 13 depositaries

9. Since the RA 13 regime is built on the current regulatory framework under the SFO, the licensing and registration requirements under Part V of the SFO and most of the SFC's existing licensing publications, including the Fit and Proper Guidelines and the Guidelines on Competence, also apply to depositaries and their representatives.
10. A depositary should satisfy the SFC that it has the ability to comply with all relevant regulatory requirements. For example:
- (a) A depositary licensed for RA 13 is required at all times to maintain paid-up share capital of not less than \$10,000,000 and liquid capital which is not less than the required liquid capital⁷ as defined under the amended Securities and Futures (Financial Resources) Rules (FRR)⁸;
 - (b) A depositary is required to ensure compliance with the requirements set out in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct), in particular the new Schedule 11⁹ to the Code of Conduct which sets out additional requirements for RA 13 depositaries.
11. A depositary licensed for RA 13 has to submit monthly financial returns (FRR form) under the FRR and other periodic statutory returns required under the SFO. A draft version of the revised FRR form¹⁰ for the RA 13 regime is included in the Appendix to this circular. Industry practitioners should take note of the FRR form and enhance their systems where necessary. The final version of the FRR form, which will be used for reporting periods starting on or after 2 October 2024, will be published in the Government Gazette in due course.

⁷ Required liquid capital means an amount equals to the higher of the minimum amount of required liquid capital (ie, \$3,000,000 for a corporation licensed for RA 13) and variable required liquid capital as defined in section 2 of the FRR.

⁸ The amendment to the FRR was published in the [Government Gazette](#) on 24 March 2023.

⁹ The final form of the Schedule 11 to the Code of Conduct is set out in Appendix C to the [consultation conclusions](#) published on 24 March 2023.

¹⁰ The revised FRR form may be subject to non-substantive amendments before publishing in the Government Gazette.

C. Opening of application window for RA 13 and transitional arrangements

Timeline for existing depositaries and their representatives to submit applications

12. The SFC is currently accepting RA 13 licence and registration applications via [WINGS](#), its online submission platform. The licensing forms are available on WINGS and the [SFC's website](#). To ensure a smooth transition, firms which provide depositary services for relevant CISs in Hong Kong are required to submit their corporate licence or registration applications for RA 13 to the SFC on or before 30 November 2023.
13. Corporate applications should be submitted together with applications for the firms' proposed responsible officers (ROs) or executive officers (EOs), as the case may be. All EO applications should be submitted directly to the Hong Kong Monetary Authority (HKMA) according to the HKMA's procedures. EO application forms are available on the HKMA's Supervisory Communication Website accessible by authorized institutions (AIs).
14. Save for the submission of RO or EO applications referred to above, individual practitioners seeking to become licensed representatives (LRs) of existing depositaries are required to submit their LR applications to the SFC through WINGS between 1 June 2024 and 31 July 2024. In relation to the submission of particulars of relevant individuals (Rels) to the HKMA, please refer to the circular "Depositaries of SFC-authorised Collective Investment Schemes (Type 13 Regulated Activity)" issued by the HKMA to AIs today.
15. The SFC will endeavour to complete processing all RA 13 licence or registration applications submitted by existing depositaries and their representatives by the time when the new regime comes into effect on 2 October 2024.
16. If an existing depositary foresees that it would not be able to meet the expected submission timeframe mentioned in paragraph 12, it should approach the SFC (and the HKMA in the case of an AI) as soon as practicable.

Grandfathering arrangement for individual practitioners

17. Individual practitioners who are engaged by an existing depositary to provide depositary services are exempted from taking the local regulatory framework paper (LRP) for RA 13 as long as their licence applications, sponsored by an existing depositary, are submitted to the SFC before 2 October 2024. Similarly, in the case of practitioners seeking to be EOs or Rels, the required applications or submission should be filed with the HKMA before 2 October 2024.



18. In lieu of sitting the LRP, these individual practitioners are required to complete 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 within 12 months immediately before or after being licensed or registered. This training requirement is additional to the normal CPT requirements imposed on licensed or registered persons under the SFC's Guidelines on Continuous Professional Training.
19. For the avoidance of doubt, there is no particular minimum work experience requirement attached to this one-off LRP exemption, which is available to all individual practitioners engaged by existing depositaries, for transitioning to the new regime.
20. Individuals who will join the depositary industry after the commencement of the RA 13 regime will have to satisfy the usual competence requirements set out in the SFC's Guidelines on Competence, including, among other things, fulfilling the LRP requirements as applicable. The Hong Kong Securities and Investment Institute will be administering the licensing examinations relating to RA 13 in due course.

**Licensing Department
Intermediaries Division
Securities and Futures Commission**

Enclosure