

HONG KONG SFC LICENSING AND REGISTRATION OF DEPOSITARIES OF SFC- AUTHORISED COLLECTIVE INVESTMENT SCHEMES - NEWLY ADDED SFC TYPE 13 LICENSE

**(FOR REFERENCE ONLY)
(AS OF AUGUST 2023)**



THE NEW REGIME WILL TAKE EFFECT **ON 2 OCTOBER 2024.** DEPOSITARIES OPERATING IN HONG KONG NEED TO SUBMIT RA 13 APPLICATIONS THROUGH WINGS, THE SFC'S ONLINE SUBMISSION PLATFORM, **ON OR BEFORE 30 NOVEMBER 2023.**

Starting from July 2023, Hong Kong SFC began accepting applications for carrying on Type 13 regulated activity (RA 13) under a new regime which will bring depositaries of SFC-authorized collective investment schemes under the SFC's direct supervision.

Under Schedule 5 to the SFO as amended, RA 13 refers to "providing depositary services for relevant CISs". Generally speaking, upon commencement of the new regime, any depositary of an SFC-authorized 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 for the CIS in Hong Kong, unless the CIS is:

- (a) a registered mandatory provident fund scheme or a constituent fund of such scheme; or
- (b) an approved pooled investment fund, which is not offered to retail investors.

Depositary services refer to both of the following key functions carried out by a depositary:

- (a) the custody and safekeeping of relevant CIS property; and
- (b) the oversight of a relevant CIS to ensure that it is operated in accordance with its scheme documents.

In light of this newly added SFC Type 13 license, SFC also amended Securities and Futures (Client Money) Rules, Securities and Futures (Client Securities) Rules, Securities and Futures (Keeping of Records) Rules, Securities and Futures (Financial Resources) Rules, Securities and Futures (Insurance) Rules, Securities and Futures (Account and Audit) Rules and Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules in order to set out obligations of a SFC Type 13 licensed corporations in respect of their obligations on scheme securities, scheme money, scheme assets of Hong Kong SFC Authorized Collective Investment Schemes etc.

This note explains the key licensing requirements for Type 13 and the timeline for depositaries filing the SFC license application and how CompliancePlus can help and our services offering on Type 13!

HIGHLIGHTS OF SFC TYPE 13 LICENSE REQUIREMENTS



Financial Requirements	A depositary licensed for RA 13 is required at all times to maintain paid-up share capital of not less than HK\$10,000,000 and liquid capital which is not less than the required liquid capital of HK\$3,000,000 as defined under the amended Securities and Futures (Financial Resources) Rules (FRR).
Financial Resources Return (FRR) Filing	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 form for the RA 13 regime is published by the SFC. 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.
Manager-In-Charge Regime (MIC)	Type 13 Licensed Corporation also needs to fulfil SFC Manager-In-Charge Regime that they should designate senior personnel and management to be responsible for the 8 core functions on their overall management oversight, key business lines, operation, risk controls etc. Please note that the MIC taking up the core functions of Overall Management Oversight and Key Business Line MUST BE licensed as RESPONSIBLE OFFICER for the Type 13 licensed corporation.
Compliance with SFC (Licensing and Registration) (Information) Rules	<p>As a SFC Licensed Corporation, Type 13 licensed corporation also needs to comply with SFC notification requirements that SFC has issued circular reminding industry of the importance of such. The notification requirements are not limited to information concerning regulated activities in Hong Kong, nor to information concerning intermediaries. They also cover information relating to substantial shareholders or directors, as well as other corporations or businesses owned or managed by those substantial shareholders or directors. Relevant SFC circular can be found below:</p> <p>https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=15EC27</p>

HIGHLIGHTS OF SFC TYPE 13 LICENSE REQUIREMENTS



<p>Local Regulatory Framework Paper/ Examination</p>	<p>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 license applications, sponsored by an existing depositary, are submitted to the SFC <u>before 2 October 2024</u>. Similarly, in the case of practitioners seeking to be EOs or Relevant Licensed Individuals, the required applications or submission should be filed with the HKMA before 2 October 2024.</p>
<p>Responsible Officers and Licensed Representatives</p>	<p>Please note that the MIC taking up the core functions of Overall Management Oversight and Key Business Line MUST BE licensed as RESPONSIBLE OFFICER for the Type 13 licensed corporation. Staff of a Type 13 licensed corporation, a depositary, performing part or all of this function within the firm, that are empowered to approve instructions or transactions for custody-related purposes (eg, approving payments or asset transfers, signing-off cash reconciliation) in respect of a relevant CIS and those who assume oversight duties over the performance of this function will need to be licensed or registered for Type 13 regulated activities.</p>
<p>CPT Training Hours Compliance</p>	<p>In lieu of sitting the Local Regulatory Framework Paper under the grandfather arrangement, 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.</p> <p>Currently, a SFC licensed representative must undertake a <u>minimum of 10 CPT hours per calendar year (regardless of the number and types of regulated activities he or she engages in). Responsible Officers are required to take two additional CPT hours (ie, at least 12 CPT hours per calendar year). These two CPT hours should cover topics relating to regulatory compliance.</u></p>
<p>Filing of Audited Account and BRMQ</p>	<p>Type 13 Licensed Corporation also needs to submit annual audited account to the SFC within 4 months of the end of their financial year together with the auditor questionnaire and Business and Risks Management Questionnaire (BRMQ).</p>



TIMELINE FOR EXISTING DEPOSITARIES AND THEIR REPRESENTATIVES TO SUBMIT APPLICATIONS

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.**

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).

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.**

The SFC will endeavor to complete processing all RA 13 license or registration applications submitted by existing depositaries and their representatives by the time when the new regime comes into effect **on 2 October 2024.**

All Depositaries of Hong Kong SFC Authorized Collective Investment Schemes should now review their licensing needs on this area and should assess the impact of such to ensure that they can benefit from the SFC Grandfathering arrangement and submit their license application on time to ensure their operation will not be impacted.



HOW COMPLIANCEPLUS CAN HELP YOU?!

As one of leading compliance firms in Hong Kong specializing in SFC licensing, we have helped many SFC licensed corporations on licensing matters and ongoing compliance. It is not a simple task for a corporation to become a SFC licensed corporation that they need to be reminded of the ongoing compliance obligations to ensure ongoing compliance! We are always here to help!

1. Assessing the qualification and competency of the proposed Responsible Officers and staff that should be licensed with Type 13;
2. Assisting in obtaining SFC Wings System's online portal access rights in respect of the license application;
3. Preparing, drafting and/or updating proposed responsible officer and license application related required documentation such as related SFC forms, SFC supplements, detailed organization chart and resumes of the proposed responsible officer;
4. Reviewing, assisting in preparing, drafting compliance manual;
5. Checking and reviewing related application documentation and supporting and forms including company license application forms, proposed Responsible Officer licenses application forms and submitting the application and the forms to the SFC on behalf of the Client, liaising with the SFC and handling inquiries from the SFC and their further inquiries and if required, providing further materials for the license application;
6. Providing appropriate compliance framework and compliance manual and risk control compliance advice to the Client;
7. Handling subsequent licensed representatives licenses application for the firm;
8. During the entire license application process, preparing and drafting replies to inquiries from the SFC till license is granted, such as inquiries from the SFC about the organization chart, experience and competency of the proposed Responsible Officer, liaising with the SFC and managing the application process and preparing draft replies and providing advice to the Client to facilitate the application;
9. Providing compliance advice in respect of internal organization controls, competence of the proposed Responsible Officer, sufficiency of liquid capital, internal procedures and compliance controls in relation to the license application;
10. Drafting Manager In Charge (MIC) Organization Chart and preparing related application forms for Manager In Charge (MIC) for Overall Management Oversight, Key Business Line, Operational Control, Risk Control, Finance and Account, Information Technology, Compliance and Anti-Money Laundering;
11. Providing compliance kickoff training to management and staff of the firm and providing compliance checklists on ongoing compliance obligations and SFC notification requirements with compliance calendar;
12. Offering monthly ongoing compliance services plan;
13. Conducting Mock Inspection visit on the firm with inspection report and recommendation; and
14. Providing ad hoc/compliance retainer services etc.

COMPLIANCEPLUS CONSULTING LIMITED



CompliancePlus is an independent consulting firm focused on providing a complete range of proven and reliable compliance solutions to fund management companies and hedge fund managers in Asia. Our dedicated team of compliance officers has years of professional experience equipped with in-depth knowledge of both functional and compliance experience in managing and minimizing regulatory, operational and reputational risks.

We have been providing real time compliance support and proactive recommendations to start-up hedge funds, fund of hedge funds and multi-strategies hedge funds with our solid compliance knowledge.

By partnering with CompliancePlus, our clients gain access to compliance solutions that they can trust and the latest knowledge of regulatory policies and procedures. Through building up strong relationships with our clients and by ensuring our availability to them, we are trusted advisors helping clients to navigate a challenging and changing regulatory environment.

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