

COUNTDOWN TO RA 13 – A TIMELINE FOR TAKING ACTION

In 2019, the Securities & Futures Commission of Hong Kong (SFC) launched a consultation on the introduction of a new regulated activity, Type 13, or RA 13, to put depositaries of SFC-authorized Collective Investment Schemes (CIS) under the SFC's direct supervision.

Through the introduction of RA 13, the SFC proposes to bring Hong Kong in line with other jurisdictions by enforcing a licensing regime that will fundamentally and permanently affect the way in which trustees and custodians conduct business.

This timeline sets out the key pillars of RA 13 and milestones from 2022 until the expected implementation deadline in 2024 – together with insights to support your forward planning.

KEY PILLARS:

Licensing requirements:

The introduction of RA 13 will enforce a mandatory licensing regime that will affect all trustees and custodians of SFC-authorized CIS in Hong Kong. Individuals performing any regulated function in relation to RA 13 will be required to be SFC-licensed, and new licensing examinations will be introduced.

Manager-In-Charge (MIC) regime:

This sets out eight core functions that require a designated MIC. The MICs of overall management oversight functions and key business line functions must also be a Responsible Officer (RO).

Financial resource requirements:

All registered corporations must maintain a minimum paid-up share capital of HK \$10,000,000 and a minimum liquid capital of HK \$3,000,000.

Professional indemnity insurance:

There will be a non-statutory requirement to maintain a professional indemnity insurance policy for claims for liability arising from breaches of duty in the course of carrying out the trustee/custodian's RA 13 business.

Conduct and internal controls:

Once licensed under RA 13, trustees and custodians will be subject to SFC supervision and must comply with a non-exhaustive list of Codes, Guidelines and Circulars. A new Schedule 11 will be implemented which not only highlights existing Product Code provisions but also introduces additional provisions in various subsidiary legislations.

2022

22 February SFC Publication

Part I – Consultation conclusions on the proposed regulatory regime for depositaries of SFC-authorized CIS

KEY HIGHLIGHTS:

Release of public comments with detailed SFC responses

Part II – Further consultation on proposed amendments to subsidiary legislation and SFC codes and guidelines to implement the new regulatory regime

KEY HIGHLIGHTS:

Section 1 – Proposed approach for defining RA 13

Section 2 – Proposed amendments to subsidiary legislation

Section 3 – Proposed amendments to SFC codes and guidelines

Appendix A – Proposed amendments to subsidiary legislation (indicative drafts):

KEY HIGHLIGHTS:

Section 1 – Proposed amendments to the CSR

Section 2 – Proposed amendments to the CMR

Section 3 – Proposed amendments to the KRR

Section 4 – Proposed amendments to the FRR, Insurance Rules, Accounts and Audit Rules and Contract Notes Rules

Section 5 – Proposed amendments to the OTCD Reporting Rule

CAPCO INSIGHT:

- Firms are advised to conduct RA 13 impact and self-assessments to identify risks and ensure issues are reviewed at an early stage
- To best prepare for the implementation of RA 13, firms should also assess the feasibility of meeting licensing requirements and providing the necessary documents for the application for RA 13
- Firms should perform a comprehensive review of requirements, identify gaps in policies, procedures and recommend controls
- Assess feasibility of supplying items required for licensing, and documents required for applications

30 April Stakeholder Action

Deadline for Public Response

KEY HIGHLIGHTS:

The SFC invites market participants and interested parties to submit written comments no later than **30 April 2022** on the proposals in **Part II and the draft amendments in Appendices A to C** or on related matters which might have a significant impact upon the proposals.

Q2 Proposed Action

Existing and prospective trustees and custodians of Relevant CIS may apply for licensing

KEY HIGHLIGHTS:

The SFC believes a transitional period of 18 months for RA 13 will be sufficient for existing and potential RA 13 licensees and their related staff members to prepare and complete the licensing or registration process ahead of the implementation of the RA 13 regime. The SFC will extend the application submission deadline to four months from the gazettal date.

Note that existing staff of trustees and custodians of relevant CIS will be exempt from passing local regulatory framework papers, allowing them to complete a course of no less than five hours on the legal and regulatory framework of RA 13 within 12 months after being granted licenses for RA 13. New trustees, however, will be subject to the new licensing and training requirements for RA 13. Prospective trustees/custodians intending to apply for licensing should take this into account in their planning.

CAPCO INSIGHT:

- Prioritize planning above all else. Firms should begin to assess the upcoming effects of RA 13, and dispel the perception of a relatively long implementation timeline.
- Firms should begin conversations with relevant change teams, who must be well-versed in the RA 13 proposals, to understand and set up appropriate organizational structures for compliance.

Q3 Expected Conclusion of Second Public Consultation

SFC publishes conclusion to consultation on proposed amendments to subsidiary legislation and SFC codes and guidelines

KEY HIGHLIGHTS:

Section 1 – Concluded approach for defining RA 13

Section 2 – Finalized amendments to subsidiary legislation

Section 3 – Finalized amendments to SFC codes and guidelines

CAPCO INSIGHT:

- With the details of the proposed RA 13 regime becoming clear, trustees and custodians should consider working with transformation teams to complete a formal impact analysis and gap analysis with regard to their existing structures (e.g. financial structures, organizational structures) to ensure compliance. They will then need to develop a detailed plan and timetable to ensure that all the necessary changes are implemented well ahead of the 2024 implementation deadline and to mitigate any disruptions to business.

2023

January Expected Gazettal Date

Gazettal date of the RA 13 regime

KEY HIGHLIGHTS:

Gazettal date as declared by Financial Secretary

CAPCO INSIGHT:

- Once the gazette has been formalized, firms should work closely with their change teams to initiate their implementation plan and ensure compliance with RA 13 standards ahead of the target 2024 deadline. To mitigate any risk of penalties and avoid any disruptions to business, firms should build in a significant buffer of time ahead of the deadline.
- Ensuring the successful implementation of the RA 13 regime is likely to require a dedicated project management team to build a structured approach, and manage the implementation in line with RA 13 timelines.

April SFC Applicant Deadline

Expected deadline for licensing and registration process

KEY HIGHLIGHTS:

Applicants will be expected to submit their applications to the SFC within four months of the gazettal date. The SFC will provide priority to existing depositaries and their staff, however a delay in registration submissions would lengthen the application process.

CAPCO INSIGHT:

- There are several supplements and questionnaires to be included with Form A (Application for license - Corporation), requiring information on the corporate entity, Responsible Officers, MICs of core functions, and applicant's financial information including bank account details and financials to support their application for the regime.
- In preparation for this, applicants should consider identifying their MIC and all relevant RA 13 key personnel and ensuring that they meet SFC 'Fit and Proper' criteria so as to avoid issues at the time of the application.

2024

2024 Implementation

RA 13 Implementation Deadline

KEY HIGHLIGHTS:

Expected deadline for when RA 13 standards will be enforced

SOURCES:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR9>

<https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/product-authorization/doc?refNo=19CP3>

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