



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

## **Consultation paper on proposed code and guidelines for implementing an uncertificated securities market in Hong Kong**

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**October 2023**

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## Foreword

This consultation paper is issued by the Securities and Futures Commission (**SFC**). Market participants and interested parties are invited to submit written comments on the proposals discussed in this paper and on related matters that might impact the proposals. Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

Comments should be submitted to the SFC in writing no later than **Friday, 15 December 2023** by the following methods:

- By mail or hand to: Supervision of Markets Division  
Securities and Futures Commission  
54/F One Island East  
18 Westlands Road  
Quarry Bay  
Hong Kong
- By fax to: (852) 2521 7917
- By online submission at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>
- By email to: [usmconsult@sfc.hk](mailto:usmconsult@sfc.hk)

Please note that the names of commentators and the contents of their submissions may be published, in whole or in part, on the SFC's website, as well as in other documents to be published by the SFC. In this connection, please read the SFC's Personal Information Collection Statement on the following two pages.

**If you do not wish to have your name, submission or both published, please state that in your submission.**

**October 2023**

## Personal information collection statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>1</sup> will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap 486) (**PDPO**).

### Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
  - (a) to administer the relevant provisions<sup>2</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
  - (b) in performing the SFC's statutory functions under the relevant provisions;
  - (c) for research and statistical purposes; or
  - (d) for other purposes permitted by law.

### Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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<sup>1</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap 486).

<sup>2</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571) and refers to the provisions of that Ordinance, together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), the Companies Ordinance (Cap 622) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615).

## **Enquiries**

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, requests for access to Personal Data or correction of Personal Data should be addressed in writing to:

Data Privacy Officer  
Securities and Futures Commission  
54/F One Island East  
18 Westlands Road  
Quarry Bay  
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

## Executive summary

### **Purpose**

1. This paper seeks views on the following, all of which relate to the implementation of an uncertificated securities market in Hong Kong:
  - (a) proposed amendments to the SFC's existing *Code of Conduct for Share Registrars*, which is also proposed to be renamed the *Code of Conduct for Approved Securities Registrars*;
  - (b) proposed amendments to the SFC's existing *Guidelines for Electronic Public Offerings*, which are also proposed to be renamed *Guidelines for Electronic Public Offers*; and
  - (c) further amendments to the Stamp Duty Ordinance (Cap 117, **SDO**).

### **Background**

2. In 2019 and 2020, the Securities and Futures Commission (**SFC**), Hong Kong Exchanges and Clearing Limited (**HKEX**) and the Federation of Share Registrars Limited (**FSR**) jointly consulted the market on the operational model for implementing an uncertificated securities market (**USM**) in Hong Kong.
3. In June 2021, the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (**USM Amendment Ordinance**)<sup>3</sup> was enacted. This put in place a broad framework for implementing USM. It also anticipated the introduction of subsidiary legislation which would set out relevant details, taking into account the model endorsed.
4. In March 2023, the SFC issued a consultation paper on proposed subsidiary legislation for implementing USM (**March 2023 consultation on subsidiary legislation**)<sup>4</sup>. That paper exposed indicative drafts of the proposed subsidiary legislation, and further noted that the SFC was also working on amending and updating related codes and guidelines, namely: (i) its *Code of Conduct for Share Registrars*; and (ii) its *Guidelines for Electronic Public Offerings*. This paper discusses amendments to these regulations.

### **Proposed Code of Conduct for Approved Securities Registrars**

5. As noted in earlier consultations, share registrars will be regulated directly and more robustly under the USM environment than they are today. Details in this regard will largely be set out in:
  - (a) a new Part IIIAA of the Securities and Futures Ordinance (Cap 571, **SFO**), which will (among other things) require share registrars to be approved by the SFC as "approved securities registrars" (**ASRs**);<sup>5</sup>

<sup>3</sup> The USM Amendment Ordinance can be accessed at <https://www.elegislation.gov.hk/hk/2021/17!en>.

<sup>4</sup> This consultation paper can be accessed at <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=23CP3>.

<sup>5</sup> See section 7 of the USM Amendment Ordinance for new Part IIIAA of the SFO.

- (b) the Securities and Futures (Approved Securities Registrars) Rules (**ASR Rules**), which will set out various regulatory requirements and obligations applicable to ASRs;<sup>6</sup> and
  - (c) the *Code of Conduct for Approved Securities Registrars*, a proposed draft of which (marked-up to show changes from the existing *Code of Conduct for Share Registrars*) is at [Annex 1](#) (**proposed ASR Code**).
6. The proposed ASR Code builds on the SFC’s existing *Code of Conduct for Share Registrars*. The amendments proposed aim primarily to align requirements under the code with requirements under the proposed USM regime and ASR regime. They also aim to supplement the requirements under the ASR Rules and expand on the standards and practices expected of ASRs.
7. The key amendments proposed are as follows.
- (a) The current code contains seven General Principles (**GPs**). We propose to introduce three new GPs to deal more specifically with the following matters.
    - (i) **Outsourcing of ASR functions to a service provider:** This new GP aims to ensure that ASRs retain sufficient oversight and control over outsourced tasks, and put in place appropriate safeguards to protect their own interests, as well as the interests of their issuer-clients and registered holders. Our expectations in respect of this new GP are expanded in new section 5 of the proposed ASR Code.
    - (ii) **Standards expected of ASRs’ computer systems and facilities:** This new GP aims to underscore the critical role that ASRs’ systems and facilities will play in the USM environment, and expand on the standards expected in terms of systems integrity, systems and data security, and cybersecurity. It also seeks to advocate the use of authenticated messages<sup>7</sup> for better certainty and protection of the parties involved. Our expectations in respect of this new GP are expanded in new section 6 of the proposed ASR Code.
    - (iii) **Information to be disclosed to issuer-clients and registered holders:** In the USM environment, ASRs will enter into direct contractual relationships with not only their issuer-clients but also users of ASRs’ service facilities<sup>8</sup>. These users may be existing, former or prospective registered holders of prescribed securities<sup>9</sup> (collectively referred to in the proposed ASR Code and in this consultation paper as “**registered holders**”). The new GP aims to ensure that sufficient disclosure is made to

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<sup>6</sup> A proposed draft of these rules was exposed for consultation as part of the March 2023 consultation on subsidiary legislation – see Annex 3 of that consultation paper.

<sup>7</sup> The proposed Securities and Futures (Uncertificated Securities Market) Rules (**USM Rules**) clarify what constitutes an authenticated message and expand on the rights and obligations that flow from using such messages. The effect is that persons communicating by way of authenticated messages benefit from better certainty and protection in respect of those communications.

<sup>8</sup> Service facilities refer to electronic facilities used in connection with an ASR’s provision of securities registrar services.

<sup>9</sup> Prescribed securities refer to six categories of securities that: (i) are listed on the Stock Exchange of Hong Kong Limited; and (ii) may participate in the USM regime. For more details, see paragraph 23(a) of the March 2023 consultation on subsidiary legislation.

such persons regarding the terms and conditions of their use of such facilities. Our expectations in respect of this new GP are expanded in new section 7 of the proposed ASR Code.

- (b) We also propose to amend provisions relating to some of the existing GPs. The key amendments in this regard are as follows.
- (i) **Amendments relating to GP1 on honesty and fairness (section 2):** We propose to cover a few additional matters under this GP. In particular, we propose to clarify that fees charged by ASRs, particularly to registered holders, must be fair and reasonable. We also propose to clarify the matters to be considered when assessing the independence of an ASR's auditor.
  - (ii) **Amendments relating to GP2 on diligence (section 3):** We propose to expand on the requirements relating to this GP to clarify what is expected of ASRs when they provide their service facilities for use. We consider this necessary given that, in the USM environment, investors will need to rely on ASRs' service facilities in order to manage and control their holdings of prescribed securities (including effecting transfers), and to apply for prescribed securities in a public offer.
  - (iii) **Amendments relating to GP3 on capabilities (section 4):** We propose to expand on some of the requirements relating to this GP and to include a number of notes. These aim to better clarify our expectations. We also propose to add a specific provision to clarify our expectations as to what constitutes suitable premises for the purposes of an ASR's business and operations.
  - (iv) **Amendments relating to GP7 on conflicts of interest (section 8):** We propose to expand the requirements relating to this GP so that they cover not only conflicts with issuer-clients' interests but also conflicts with registered holders' interests. This is because, under USM, ASRs will have direct contractual relationships with registered holders as well (as discussed in paragraph (a)(iii) above). Additionally, given the more significant role that ASRs' computer systems and facilities will play in the USM environment, we also propose to require ASRs to give due regard to safeguarding market integrity when dealing with conflicts of interest. A new provision is also added requiring ASRs to put in place policies and procedures for identifying and handling conflicts of interest.
  - (v) **Amendments relating to GP9 on compliance (section 10):** We propose to expand on some of the requirements relating to this GP. In particular, we propose to clarify our expectations in respect of ASRs' audit functions, and to make clear our expectation that compliance should be in respect of all applicable laws and regulations. We also propose to set out in more detail our expectations in respect of ASRs' handling of complaints and other requests. Additionally, in light of obligations under the proposed ASR Rules (sections 17 and 18) to report operational and systems-related incidents to the SFC, we propose to add a specific provision requiring ASRs to put in place appropriate incidents management policies and procedures, and expand on what this entails.



- (vi) **Amendments relating to GP10 on responsibilities of senior management (section 11):** We propose to expand on the requirements relating to this GP to better clarify senior management’s responsibilities and the information to which they are expected to have access. We also propose to define “senior management” (under section 1.1) to mean all persons involved in the management of the ASR’s business. A note is also proposed at the end of the definition to clarify some of the factors that the Commission will consider when determining if a particular person should be regarded as a member of senior management. It is worth noting that, in light of the proposed definition, the SFC’s power to take disciplinary action under Part IX of the SFO will apply in respect of all members of an ASR’s senior management.
- (c) We also propose the following additional key amendments.
- (i) **New disciplinary regime:** Section 10 of the existing code puts in place a regime for taking disciplinary action against share registrars who breach the code. However, under the proposed new regime for regulating ASRs, ASRs will be subject to the disciplinary regime under Part IX of the SFO. In view of this, the existing section 10 is no longer necessary or appropriate. We accordingly propose to delete it. We also propose to amend the SFC’s *Fining Guidelines* to reflect the inclusion of ASRs into the disciplinary regime under the Part IX of the SFO.
- (ii) **Addition of Schedules:** We propose to add two Schedules to the code to expand on various matters. ASRs will be expected to comply with these as well. The two schedules proposed are as follows:
- Schedule 1 sets out a list of fees and charges in respect of which upper limits might be set. The schedule is currently tentative pending conclusion of the March 2023 consultation on subsidiary legislation.
  - Schedule 2 expands on ASRs’ obligations when performing functions for issuer-clients.
- (iii) **Role of FSR:** The FSR will no longer have a formal role recognised under the law. Accordingly, references to the FSR are proposed to be removed from the code. However, the FSR can continue to serve as an effective industry channel for communications with different stakeholders. We accordingly propose to require ASRs to become and remain members of the FSR. Our current thinking is to impose this requirement as a condition of approval to be an ASR.
- (iv) **Others:** We also propose other editorial changes for better clarity and consistency. A number of definitions and notes are also proposed to be added. All changes (except formatting changes) are shown in mark-up mode on [Annex 1](#). A “clean” version of the proposed ASR Code is also attached, at [Annex 2](#), for easy reading.

## ***Proposed Guidelines for Electronic Public Offers***

8. The existing *Guidelines for Electronic Public Offerings* provide guidance as to what is expected of persons who offer services in relation to an electronic public offer<sup>10</sup> (**ePO**). Amendments are proposed to cater for the following.
- (a) **Changes in market practices:** The existing Guidelines date back to 2003. Market practices have since evolved and the ePO process is now largely electronic, and will remain so. We therefore propose to update provisions that describe the current ePO process and amend those that refer to paper processes.
  - (b) **Regulation of ASRs:** Currently, share registrars who wish to provide services in relation to an electronic public offer of prescribed securities (**ePO services**) must work with an intermediary that is licensed or registered under the SFO to carry on business in dealing in securities (**Type 1 intermediary**). This is due to the existing scope of “dealing in securities” in Schedule 5 to the SFO. However, under the proposed ASR Rules, the provision of ePO services by ASRs will come within the scope of “securities registrar services” and be regulated as such. The definition of “dealing in securities” in Schedule 5 to the SFO is also proposed to be amended to exclude ePO services provided by ASRs. As a result, ASRs will no longer have to work with a Type 1 intermediary when providing ePO services. The existing Guidelines are therefore proposed to be amended to reflect this change.
  - (c) **Revised scope:** The existing Guidelines cover ePO services in respect of all securities. However, the regulation of ASRs under the proposed ASR Rules will be in respect of prescribed securities only. To align with the rules, we propose to amend the Guidelines so that they deal essentially with ePOs of prescribed securities only. We do propose to provide for what is expected in respect of ePOs of non-prescribed securities, but only briefly. We consider this to be sufficient given that such ePOs are rare.<sup>11</sup>

A draft of the proposed amendments (marked-up on the existing Guidelines) is at [Annex 4 \(proposed ePO Guidelines\)](#). A “clean” version is also attached, at [Annex 5](#), for easy reading.

## ***Further changes to stamp duty arrangements under the USM environment***

9. Under the USM environment, it will be necessary to enable an alternative, wholly electronic, process for stamping and collecting stamp duty payable on contract notes. To that end, the USM Amendment Ordinance introduced various amendments to the SDO. However, in light of further discussions with relevant parties, it is agreed that further amendments are needed to cater for the revised role of ASRs. Specifically, it was previously envisaged that ASRs (among others) would be authorized to collect stamp duty on behalf of the Collector of Stamp Revenue and stamp related contract

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<sup>10</sup> Paragraph 48 below expands on what “electronic public offer” means.

<sup>11</sup> Non-prescribed securities refer to any securities that are not prescribed securities, such as structured products, bonds and SFC-authorized collective investment schemes that cannot be withdrawn from HKEX’s central clearing and settlement system. As far as we are aware, ePO services are not usually provided in respect of such securities. There have been instances of IPOs of listed bonds. However, such instances are very rare and only permit investors to subscribe through intermediaries.

notes. However, it is now agreed that a simpler and more practical option would be for ASRs to leverage on the existing e-stamping arrangements under Part IIA of the SDO.<sup>12</sup> This entails ASRs facilitating the stamping and stamp duty collection process by simply acting as applicants under Part IIA. Further amendments are therefore needed to cater for this.

10. As amendments to the SDO are drafted by the Department of Justice, no indicative draft is attached to this paper. We will, however, work with them on these amendments.

### ***Comments invited***

11. The USM initiative will introduce major changes in our market, including a new regime for regulating ASRs. The proposed ASR Code and proposed ePO Guidelines aim to provide more specifics on how this new regime for ASRs will be implemented. We invite interested parties to submit written comments on the proposals discussed in this paper. The deadline for submissions is **Friday, 15 December 2023**.

### ***Layout of this paper***

12. This paper is divided into the following sections.
  - (a) Section I discusses the proposed ASR Code.
  - (b) Section II discusses the proposed ePO Guidelines.
  - (c) Section III discusses further changes proposed to the SDO.
13. This paper should be read in conjunction with:
  - (a) the 2019 and 2020 consultation documents on the operational model for implementing USM, jointly issued by the SFC, HKEX and the FSR;<sup>13</sup> and
  - (b) the March 2023 consultation on subsidiary legislation.

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<sup>12</sup> Part IIA provides for the stamping of documents by way of an electronic stamp certificate.

<sup>13</sup> The January 2019 Joint Consultation Paper and April 2020 Joint Consultation Conclusions Paper can be accessed at, respectively, <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=19CP1> and <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=19CP1>.

## I. Proposed Code of Conduct for Approved Securities Registrars

### ***New ASR regime***

14. Currently, share registrars are not required to be approved or licensed by the SFC. They are only required to be members of the FSR and to comply with the SFC's *Code of Conduct for Share Registrars*.
15. Under the USM environment, share registrars' systems and facilities will take on a more significant role and form a critical part of the securities market infrastructure. Moreover, this will be in respect of all prescribed securities, ie, not only shares. Accordingly, they will be regulated directly and more robustly than today, and as "approved securities registrars" (ie, ASRs). To that end, a new regulatory regime will be introduced which will largely comprise:
  - (a) a new Part IIIAA of the SFO;<sup>14</sup>
  - (b) a new piece of subsidiary legislation, ie, the ASR Rules;<sup>15</sup> and
  - (c) a revised version of the existing *Code of Conduct for Share Registrars*, which will be renamed the *Code of Conduct for Approved Securities Registrars*.
16. This Section focuses on the proposed ASR Code, a draft of which is at [Annex 1](#). As the proposed code builds on the SFC's existing *Code of Conduct for Share Registrars*, the draft at Annex 1 is marked-up to show changes from the existing code. A "clean" version of the proposed ASR Code is also attached, at [Annex 2](#), for easy reading. The discussion below focuses on the key changes proposed to cater for the new regime.

### ***Key changes proposed***

#### Addition of new General Principles

17. All of the existing seven General Principles (**GPs**) are proposed to be retained. Additionally, three new GPs are proposed to be added. These cover: outsourcing; computer systems and facilities; and information to be disclosed to issuers and registered holders of prescribed securities. Each is discussed in more detail below.

#### ***New GP4 on outsourcing***

18. We appreciate that ASRs may outsource some of their tasks for better business efficacy and cost savings. However, we expect ASRs to strike an appropriate balance to ensure that they remain accountable and responsible for the performance of these tasks, and that they properly identify and manage any risks arising from outsourcing. To that end, we propose to introduce a new GP4 that is specific to outsourcing. The new GP aims to ensure that ASRs retain sufficient oversight and control over outsourced tasks, and put in place appropriate safeguards to protect their own interests, as well as the interests of their issuer-clients and registered holders.

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<sup>14</sup> See section 7 of the USM Amendment Ordinance for new Part IIIAA of the SFO.

<sup>15</sup> A draft of these rules was exposed for consultation in the March 2023 consultation on subsidiary legislation – see Annex 3 of that paper.

19. The specific requirements regarding outsourcing are set out in section 5 of the proposed ASR Code. They require ASRs to:
- (a) conduct an appropriate risk assessment before outsourcing any tasks, and regularly review such assessment thereafter;
  - (b) satisfy certain pre-requisites before outsourcing any tasks (eg, conduct proper due diligence on the service provider to whom tasks are to be outsourced and enter into a binding written contract with them; put in place procedures and controls to ensure proper monitoring and risk management; have sufficient oversight and control over any sub-contracting); and
  - (c) consider and address certain matters if tasks are to be outsourced to a service provider who is located, or will perform the outsourced tasks, outside Hong Kong.
20. In shaping these provisions, we have drawn reference to, among other things, the IOSCO principles on outsourcing<sup>16</sup>.

**Q1. Do you have any comments or concerns about the proposed new GP4 on outsourcing? If so, please elaborate.**

#### *New GP5 on ASRs' computer systems and facilities*

21. As noted in earlier consultations, the regulatory regime for ASRs is intended to be systems-focused given the critical role that ASRs' systems and facilities will play in the USM environment. To underscore this, we propose to introduce a new GP5 that is specific to such systems and facilities, and that expands on the standards required of them.
22. The specific requirements regarding ASRs' computer systems and facilities are set out in section 6 of the proposed ASR Code. They include:
- (a) requirements regarding systems integrity, systems and data security, and cybersecurity; and
  - (b) requirements advocating the use of authenticated messages<sup>17</sup> in communications between ASRs and registered holders.
23. Needless to say, GP5 is not the only GP relevant to ASRs' computer systems and facilities. Other GPs also apply where relevant, such as GP3 (on capabilities) which covers matters such as internal controls, resources, capacity, reliability and contingency planning.

**Q2. Do you have any comments or concerns about the proposed new GP5 on ASRs' computer systems and facilities? If so, please elaborate.**

<sup>16</sup> The IOSCO Principles on outsourcing can be accessed at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD687.pdf>.

<sup>17</sup> The proposed USM Rules clarify what constitutes an authenticated message and expand on the rights and obligations that flow from using such messages. The effect is that persons communicating by way of authenticated messages benefit from better certainty and protection in respect of those communications.

*New GP6 on information for issuers and registered holders*

24. Under the USM environment, ASRs may make available certain service facilities for use by registered holders of prescribed securities<sup>18</sup>. These include:
- (a) facilities for transferors and transferees to effect transfers of prescribed securities without paper documents (ie, the ASR's UNSRT system); and
  - (b) facilities for applicants in a public offer of prescribed securities to subscribe for such securities electronically and in their own names (ie, the ASR's ePO channel).
25. It is expected that ASRs will enter into user agreements with such registered holders to govern the latter's access to and use of such facilities. Given this direct contractual relationship between ASRs and registered holders, we propose to introduce a new GP6 which deals specifically with matters that ASRs should disclose. The existing code already has provisions along these lines but covers only ASRs' relationship with issuer-clients.<sup>19</sup> The proposed ASR Code seeks to expand these to cover the contractual relationship between ASRs and registered holders who wish to become users of ASRs' facilities.
26. The expansions are in section 7 of the proposed ASR Code and include:
- (a) requirements on matters to be included in the user agreement between ASRs and users of their facilities; and
  - (b) requirements on matters to be disclosed to registered holders, such as ASRs' fees and charges, and other information regarding their business, operations and services.

**Q3. *Do you have any comments or concerns about the proposed new GP6 on information to be disclosed by ASRs to their issuer-clients and registered holders? If so, please elaborate.***

Amendments to existing General Principles

27. Details relating to various existing GPs are proposed to be amended to cater for the new ASR regime. Key changes in this regard are to:
- (a) section 2 on GP1 (Honesty and fairness);
  - (b) section 3 on GP2 (Diligence);
  - (c) section 4 on GP3 (Capabilities);

<sup>18</sup> As noted in paragraph 7(a)(iii), "registered holders" here covers existing, former and prospective registered holders of prescribed securities.

<sup>19</sup> Specifically, sections 5.1 to 5.3 of the existing code set out requirements relating to the client agreement between an ASR and its issuer-clients, and to the disclosure of fees, charges and other ASR-related information to such clients.

- (d) section 8 on GP7 (Conflicts of interest);
- (e) section 10 on GP9 (Compliance); and
- (f) section 11 on GP10 (Responsibilities of senior management).

We elaborate each of these below.

*(i) Amendments relating to GP1 (Honesty and fairness)*

28. We propose to expand section 2 of the proposed ASR Code to make clear the requirement that fees charged by an ASR, particularly to registered holders, must be fair and reasonable in the circumstances. We also propose to expand on the requirement under the proposed ASR Rules (section 14) that ASRs appoint an independent auditor. Specifically, we set out some of the factors that will be relevant to determining if an auditor may be regarded as independent.

**Q4. Do you have any comments or concerns about the proposed amendments relating to GP1 on the honesty and fairness standards applicable to ASRs? If so, please elaborate.**

*(ii) Amendments relating to GP2 (Diligence)*

29. We propose to expand section 3 of the proposed ASR Code to clarify what is expected of ASRs when they provide their service facilities for use. This is necessary given the critical role that such facilities will play in the USM environment, ie, investors will need to rely on these facilities to: (i) manage and control their holdings of prescribed securities (including effecting transfers); and (ii) apply for prescribed securities in a public offer (if they wish to hold the securities in their own names).
30. A new section 3.2 is accordingly added to clarify the measures that ASRs are expected to take when providing service facilities for use by registered holders. In particular, ASRs are expected to:
- (a) provide and operate their service facilities in a fair and orderly manner, and promptly process and execute instructions received through these facilities;
  - (b) conduct appropriate identity checks when onboarding a person to be a user of their service facilities; and
  - (c) put in place appropriate systems and checks to be able to establish with reasonable certainty the identity and authority of persons sending instructions or requests through the facilities.
31. The requirements relating to identity checks and establishing a user's identity and authority are necessary to ensure that instructions are attributed to the correct registered holder.

**Q5. Do you have any comments or concerns about the proposed amendments relating to GP2 on the diligence standards applicable to ASRs? If so, please elaborate.**

*(iii) Amendments relating to GP3 (Capabilities)*

32. We propose to expand section 4 of the proposed ASR Code to provide more information and guidance on the SFC's expectations regarding GP3 on ASR's capabilities. The key amendments proposed are as follows:
- (a) to add a note under paragraph (a) of section 4.1 to provide more information regarding the financial resources obligations that may be imposed on ASRs;
  - (b) to add a note under paragraph (c) of section 4.1 to provide more information regarding the safeguards and risk management policies to be put in place by ASRs;
  - (c) to add a new paragraph (d) under section 4.1 to make clear that supervisory and review functions must be kept separate from operational duties;
  - (d) to expand paragraph (g) of section 4.1 and to add a note under it to underscore and clarify our expectations when ASRs perform functions for issuer-clients, and those functions are subject to legal or regulatory requirements imposed on issuers;<sup>20</sup>
  - (e) to add a new provision (section 4.3) to provide more guidance as to what ASRs should take into account when considering whether any particular premises are suitable for use in connection with their business and operations;<sup>21</sup>
  - (f) to amend section 4.4 to better clarify the capacity requirements in respect of ASRs, including: (i) adding a note to clarify the matters that an ASR should consider when assessing the adequacy of systems capacity; and (ii) removing provisions relating to outsourcing as that is now covered by a separate GP as discussed in paragraphs 18 to 20 above; and
  - (g) to add various notes under paragraphs (a) and (b) of section 4.6 to provide further guidance on the SFC's expectations regarding ASRs' contingency planning, including expanding on what ASRs' contingency plans should include and the matters to be taken into account when developing such plans.

**Q6. Do you have any comments or concerns about the proposed amendments relating to GP3 on ASRs' capabilities? If so, please elaborate.**

*(iv) Amendments relating to GP7 (Conflicts of interest)*

33. We propose to expand section 8 of the proposed ASR Code to better clarify our expectations regarding conflicts of interest. A few changes are worth highlighting.
- (a) Currently, requirements relating to conflicts of interest are cast by reference to conflicts between ASRs and their issuer-clients. Going forward, however, ASRs

<sup>20</sup> See also paragraph 39(b) below which discusses this in more detail.

<sup>21</sup> This provision aims to expand on the requirement under section 4 of the proposed ASR Rules.



will also have contractual dealings with registered holders (as users of ASRs' service facilities) – see paragraphs 24 to 26 above. In view of this, we consider that conflicts of interest concerns are relevant to this relationship as well. We accordingly propose to expand section 8.1 so that it covers conflicts with issuer-clients as well as registered holders.

- (b) We also propose to expand section 8.1 to require that ASRs take into account the need to safeguard market integrity when considering how to deal with conflicts. Given the more significant role that ASRs' systems and facilities will play in the USM environment, we believe this requirement is necessary and appropriate. A note has also been added to clarify our expectations in this regard. In particular, the note highlights that while ASRs may be contractually obligated to comply with requests and directions from issuer-clients, they should also have due regard to safeguarding market integrity, and where conflicts arise, they should, as far as reasonably practicable, endeavour to work with their issuer-clients to find solutions that address conflicting interests.
- (c) Lastly, we propose to include a new section 8.2 to specifically require ASRs to put in place policies and procedures for identifying and dealing with conflicts of interest, and avoiding them where possible.

**Q7. Do you have any comments or concerns about the proposed amendments relating to GP7 on conflicts of interest? If so, please elaborate.**

*(v) Amendments relating to GP9 (Compliance)*

34. We propose a number of amendments to section 10 to clarify our expectations on compliance. In particular:
- (a) We propose to expand the requirements under paragraph (b) of section 10.1. That paragraph currently requires ASRs to comply with any Listing Rule requirements imposed on issuers when they perform functions for their issuer-clients. In reality, however, issuers are also subject to requirements under other laws. For example, requirements relating to the keeping of registers of holders are typically imposed by company law and imposed on issuers rather than share registrars. It is important that ASRs comply with any such other requirements also where they relate to the performance of functions that they undertake on behalf of their issuer-clients. Paragraph (b) of section 10.1 is proposed to be expanded accordingly. A note is also proposed to be added under that paragraph to clarify our expectations in this regard.
  - (b) We propose to add a new paragraph (c) under section 10.1 to make clear that ASRs will be held responsible for any non-compliance stemming from the acts or omissions of their employees and agents.
  - (c) We propose to expand the provision on ASRs' audit function (section 10.2) to clarify the SFC's expectations in this regard. In particular, paragraph (b) is amended to clarify that, wherever possible, the audit function should be segregated from operational and supervisory functions, and should have direct

access to senior management. A new paragraph (c) is also added to further clarify how the audit function is to be performed in terms of review work undertaken, the reporting of findings, and the follow-up and resolution of risks identified.

- (d) We propose to set out in more detail our expectations regarding ASRs' handling of complaints and other requests (section 10.3). We believe this is important for better investor protection given that the number of registered holders may be larger in the USM environment, and they may require more assistance to adapt to new processes and practices which will be largely electronic.
- (e) A new section 10.5 is proposed to be added to deal with incidents management. Under the proposed ASR Rules, ASRs will be required to report incidents relating to their systems and operations.<sup>22</sup> The proposed section 10.5 supplements this by requiring ASRs to put in place incidents management policies and procedures to facilitate the detection and subsequent handling of incidents. Among other things, it is proposed that ASRs classify incidents by their degree of severity (eg, as minor, medium or major). This will enable their staff to better handle incidents, and ensure timely escalation to senior management, and reporting to the SFC, where necessary. Detailed notes have also been proposed (under paragraphs (b) and (e) of section 10.5) to provide more guidance on how incidents should be classified, and how quickly they should be reported to the SFC.

**Q8. Do you have any comments or concerns about the proposed amendments relating to GP9 on ASRs' compliance obligations? If so, please elaborate.**

*(vi) Amendments to GP10 (Responsibilities of senior management)*

- 35. We propose various amendments to section 11 to clarify the SFC's expectations of senior management. In particular, we propose to:
  - (a) expand the description of senior management's responsibilities, under section 11.1, to specifically include responsibility for: (i) understanding the nature of the ASR's business and operations, and properly managing the risks associated with them; and (ii) ensuring that appropriate and adequate internal controls and risk management policies and procedures are in place in accordance with applicable laws and regulations and to guard against such risks; and
  - (b) clarify, under section 11.2, the information and advice to which senior management should have access.
- 36. For better clarity, we also propose to add a specific definition for "senior management", under section 1.1, to mean all persons involved in the management of an ASR's business, ie, all persons against whom disciplinary action can be taken under Part IX of the SFO. This will make clear that persons who may be disciplined under the SFO in respect of failures of an ASR, may also be held responsible under the proposed ASR Code. A note has also been added after the definition in section 1.1 to clarify some of

<sup>22</sup> The requirement to report such incidents is embodied in sections 17 and 18 of the proposed ASR Rules.

the factors to be considered when determining if a person is a member of an ASR's senior management or not.

**Q9. Do you have any comments or concerns about the proposed amendments relating to GP10 on the responsibilities of ASRs' senior management? If so, please elaborate.**

### New disciplinary regime

37. With the introduction of a statutory regime for regulating ASRs, provisions in the existing code relating to the effects of breaching the code, and the possible actions that may be taken for such breach will need amendment. To that end, we propose as follows.
- (a) Section 10 of the existing code puts in place a process for taking disciplinary action for breaches of the existing code. As ASRs will be subject to the disciplinary regime under Part IX of the SFO, section 10 is no longer necessary or appropriate, and hence proposed to be deleted.
  - (b) Consequent to deleting section 10, we also propose to amend section 1.3 to make clear that breaches of the code may reflect adversely on an ASR's fitness and properness and result in disciplinary action under Part IX of the SFO.
  - (c) Related amendments are also proposed to the explanatory notes at the beginning of the code and to section 1.2. These note the importance of a person's fitness and properness if they wish to become or remain an ASR, and the importance of the proposed ASR Code in assessing such fitness and properness.
38. A related point to note is that, with ASRs coming under the disciplinary regime in Part IX of the SFO, it will be necessary to make consequential amendments to the SFC's *Fining Guidelines*. Under those guidelines, the level of fines to be imposed varies depending on the seriousness of the misconduct in question. The guidelines expand on the matters to be considered when determining the level of seriousness in any particular case. We propose to amend this list of matters to include: (i) the impact of the misconduct on market operations; and (ii) whether the conduct reveals systematic failure in the operation and maintenance of the ASR's facilities or systems.

### Addition of two Schedules

39. Two schedules have been added to the proposed ASR Code. These supplement and expand on certain matters covered by the code, and form part of it. ASRs are thus expected to comply with these Schedules as well. They cover the following.
- (a) Schedule 1 provides a list of fees and charges in respect of which upper limits might be set. In the March 2023 consultation on subsidiary legislation, we invited views on whether any fees chargeable to investors in the USM environment should be standardised and upper limits specified in respect of them. We have yet to form a view on the matter. Meanwhile, Schedule 1 has been added as a possible place for specifying any fees that may be standardised in future. Section

2.2 of the proposed ASR Code notes the requirement for ASRs to abide by any limits set under Schedule 1.

- (b) Schedule 2 expands on ASRs' obligations when performing functions for issuer-clients. Many functions of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders). Some of these functions are subject to legal or regulatory requirements. Although such requirements are imposed on issuers, it is crucial that ASRs comply with them when performing the functions for their issuer-clients. Schedule 2 aims to provide further guidance as to what is expected of ASRs in this regard. Section 4.1(g) of the proposed ASR Code notes the requirement for ASRs to comply with Schedule 2.

**Q10. Do you have any comments or concerns about the Schedules proposed to be included? If so, please elaborate.**

#### Other changes

40. Apart from the above, we also propose to take this opportunity to make editorial changes for better reading and clarity, and in some cases, better consistency across the provisions. (For example, "applicable laws and regulations" is now defined, and consistently used, when referring to obligations that ASRs, or their issuer-clients, may be subject to.)
41. A number of new terms are added to the list of definitions under section 1.1. This is for better clarity and to align with defined terms now introduced under the SFO, the proposed ASR Rules or the proposed USM Rules.
42. Notes have also been added under various provisions to further expand or clarify the SFC's expectations regarding those provisions.
43. All changes (other than formatting changes) from the existing version of the code are highlighted on [Annex 1](#). A "clean" version of the proposed ASR Code is also attached for easier reading at [Annex 2](#).

#### **Other related matters**

##### Application for approval to provide securities registrar services

44. Any person wishing to become an ASR will be required to submit an application to the SFC under new section 101AAG of the SFO. That section sets out in broad terms the information that a person will need to include in its application. For clarity, we set out at [Annex 3](#) a more detailed list of the information, documents and matters to be submitted by an applicant seeking to become an ASR. The list largely echoes the list of matters set out in Part 2 of the Schedule to the proposed ASR Rules (ie, the list of matters that an ASR must notify the SFC of if it becomes aware of a change to them).

## Role of the FSR

45. As mentioned in paragraph 14 above, share registrars are currently only required to be members of the FSR and to comply with the SFC's existing *Code of Conduct for Share Registrars*. The FSR, therefore, has a specific role in setting standards for the industry, and FSR membership is critical for a share registrar to remain approved under the current regime.
46. Going forward however, ASRs will be regulated directly by the SFC, and the role of the FSR will become less significant. Accordingly, all references to the FSR in the code are proposed to be removed.
47. The above said, it is hoped that the FSR may continue to act as a central channel to facilitate communications between the share registrar industry and other parties including the SFC, HKEX, and other relevant bodies or authorities. To that end, we propose to make it a condition of ASRs' approval that they remain members of the FSR.

## II. Proposed Guidelines for Electronic Public Offers

### **Changes affecting the ePO process**

48. An electronic public offer (**ePO**) refers to the process where electronic facilities (particularly the Internet) are used to display or provide access to prospectuses<sup>23</sup> and collect applications from the public during an initial public offer (**IPO**) or follow-on public offer of prescribed securities. The existing *Guidelines on Electronic Public Offerings* provide guidance as to what is expected of persons who offer services in relation to an ePO (ie, ePO services).
49. Currently, share registrars who wish to provide ePO services may only do so by working with a Type 1 intermediary. This is because the provision of ePO services entails, among other things, the provision and operation of an electronic channel for receiving applications, and the handling of such applications including arranging refunds in respect of unsuccessful applications. To some extent, these activities fall within the existing scope of “dealing in securities” under Schedule 5 to the SFO and thus require persons offering such service to be licensed for such activity.
50. As discussed in the March 2023 consultation on subsidiary legislation, it is proposed that the provision of ePO services by ASRs be regulated as “securities registrar services” under the ASR Rules, and carved out from the definition of “dealing in securities”.<sup>24</sup> Consequently, it will no longer be necessary for ASRs to work with Type 1 intermediaries when providing ePO services.
51. In view of the above, the existing Guidelines will need to be amended. This Section focuses on proposed amendments in this regard, and a draft of the same (marked-up to show changes from the existing Guidelines) is at [Annex 4](#). A “clean” version is also attached, at [Annex 5](#), for easy reading.

### **Key changes proposed**

#### Changes in market practices

52. The current ePO Guidelines date back to 2003. Market practices regarding IPOs have since evolved. In particular, the process is now largely electronic, particularly since mid-2021 when HKEX amended its listing rules to no longer require prospectuses to be in paper form.<sup>25</sup> The increased availability and use of electronic channels to subscribe for IPO securities has also contributed to this change. Additionally, the process is expected to be further streamlined following the implementation of HKEX’s Fast Interface for New Issuance (FINI), which is scheduled for 22 November 2023.

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<sup>23</sup> The term “prospectus” refers to: (a) in the case of shares, the “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); and (b) in the case of other securities, any equivalent document issued or proposed to be issued in connection with a public offer of such securities.

<sup>24</sup> See paragraphs 102 to 104 and 144 to 146 of the March 2023 consultation on subsidiary legislation.

<sup>25</sup> The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited previously required listing documents to be in both paper and electronic forms. Since July 2021, however, the rules only require issuers to issue electronic prospectuses.

53. In view of the above, we propose to amend various provisions of the ePO Guidelines to better reflect current market practices. Key changes in this regard are to paragraphs 1.7, 1.8 and 3.1.3 of the ePO Guidelines. Additionally, we also propose to:
- (a) delete provisions concerning the paper-based IPO process as they are no longer relevant; and
  - (b) further update paragraphs 2.6.2 and 4.2 to take into account the increasing use of mobile apps to access IPO documents and submit IPO applications.

**Q11. Do you have any comments or concerns about the proposed amendments to reflect changes in market practices? If so, please elaborate.**

### Regulation of ASRs

54. As discussed in paragraphs 48 to 50 above, ASRs will no longer have to work with Type 1 intermediaries to provide ePO services. The role previously played by such intermediaries will be taken up by ASRs. The key amendments proposed in this regard are to the following provisions.
- (a) **Issuer-driven ePO:** The description of the issuer-driven ePO process (in paragraph 1.8.1) is proposed to be amended to reflect that ASRs can provide such services on their own rather than have to work with a Type 1 intermediary (currently referred to in the ePO Guidelines as an “eligible service provider” / “ESP”).
  - (b) **Criteria for ESPs:** Paragraph 2.2 of the existing Guidelines sets out criteria that Type 1 intermediaries need to satisfy in order to participate as an ESP in an issuer-driven ePO. The provision is proposed to be deleted given that ASRs will be able to provide ePO services on their own, ie without having to work with Type 1 intermediaries.
  - (c) **ASRs’ role in an ePO:** The main sections dealing with the provision of ePO services (ie, paragraphs 2.3 and 2.6) are proposed to be amended so that ASRs take up the roles and responsibilities previously taken up by Type 1 intermediaries as ESPs. Additionally, a new paragraph 2.6.2(k) is added to cater for pre-registration services<sup>26</sup> that some ASRs may be providing.
  - (d) **Specific requirements for ESP:** Certain provisions that apply specifically to ESPs are proposed to be deleted because they would not be applicable to ASRs, namely:
    - (i) provisions on how ESPs and share registrars currently cooperate or coordinate on certain matters, ie, sub-paragraphs (i), (j), (k) and (n) under paragraph 2.3.1; and

<sup>26</sup> These are services provided by an ASR to an investor whereby the investor may submit personal particulars and other information to the ASR in advance of any IPO, and in the expectation that such particulars and information will be incorporated by the ASR as part of the investor’s IPO application when he / she next uses that ASR’s ePO service to subscribe for securities in an IPO.

- (ii) the provision noting that ESPs do not act as the issuer's agent (which will not apply in the case of ASRs because they do act as the issuer's agent), ie, paragraph 2.6.2(q)(ix).
- (e) **Information to the public:** Paragraph 2.4, which requires issuers to make available certain information regarding Type 1 intermediaries who act as ESPs, is proposed to be amended so that issuers are required instead to provide information relating to the ASR appointed to provide ePO services.

**Q12. Do you have any comments or concerns about the proposed amendments to reflect ASRs' ability to offer ePO services without having to work with a Type 1 licensed intermediary? If so, please elaborate.**

#### Revised scope

- 55. The current ePO Guidelines cover ePO services in respect of all securities. However, the regulation of ASRs under the new regime will be in respect of prescribed securities only. Accordingly, we propose to amend the ePO Guidelines so that the provisions deal essentially with ePOs of prescribed securities only.
- 56. That said, we recognise that it is possible (at least in theory) to have ePOs of non-prescribed securities. In light of this, we have added a new section 4.3. This clarifies that:
  - (a) intermediaries who provide ePO services for non-prescribed securities (ie, as part of an intermediary-driven ePO) would also need to comply with the requirements in section 3 which govern intermediary-driven ePOs; and
  - (b) issuers who provide ePO services for non-prescribed securities by setting up a standalone website should also have regard to relevant requirements of the ePO Guidelines.
- 57. As for ASRs, the provision by them of ePO services in respect of non-prescribed securities would not constitute securities registrar services under the proposed ASR Rules. As such, it would constitute dealing in securities under Schedule 5 to the SFO, and hence it would be necessary for ASRs to work with a Type 1 intermediary (unless the ASR is itself licensed as a Type 1 intermediary). That said, ePOs of non-prescribed securities are extremely rare. As such, rather than set out specific requirements on this in the ePO Guidelines, we propose to simply require that ASRs who wish to offer ePO services in respect of such securities should approach the SFC to discuss the matter further. Paragraph 4.3 also clarifies this.

**Q13. Do you have any comments or concerns about the proposal that the ePO Guidelines deal essentially with ePOs of prescribed securities, and have only limited application in respect of ePOs of non-prescribed securities? If so, please elaborate.**



### III. Further changes to stamp duty arrangements under USM

58. Sections 52 to 62 of the USM Amendment Ordinance amend the SDO to enable an alternative, wholly electronic, process to be put in place for stamping and collecting stamp duty payable on contract notes. The provisions envisage that the Collector will approve arrangements under which persons authorized by the Collector will be responsible for collecting the stamp duty payable and passing it on to the Collector, as well as stamping the contract note.
59. It was previously expected that ASRs would be one of the categories of persons to be authorized by the Collector. However, it is now agreed that a simpler and more practical option would be for ASRs to leverage on the existing e-stamping arrangements under Part IIA of the SDO.<sup>27</sup> This would entail ASRs facilitating the stamping and stamp duty collection process by simply acting as applicants under Part IIA.<sup>28</sup>
60. To achieve the above, we propose to make the following further changes to the SDO amendments introduced under the USM Amendment Ordinance:
- (a) to delete all references to ASRs, and their systems, from the new section 5AAB of the SDO that was introduced under the USM Amendment Ordinance;
  - (b) to add a new section 19(1H) in the SDO to clarify that contract notes need not be physically signed if: (i) they are stamped by way of a stamp certificate issued under Part IIA; (ii) the applicant for such certificate is an ASR; and (iii) the application is submitted by the ASR electronically and in a manner determined by the Collector; and
  - (c) to make consequential amendments to Schedule 1 to the Electronic Transactions Ordinance (Cap 553) to make clear that contract notes stamped via ASRs as described do not need to be in paper form.
61. As amendments to the SDO are drafted by the Department of Justice, no indicative draft is attached to this paper. We will however work with them on the amendments.

**Q14. Do you have any comments or concerns about the proposed further amendments regarding the arrangements for stamping and collecting stamp duty in the USM environment? If so, please elaborate.**

<sup>27</sup> Part IIA provides for the stamping of documents by way of an electronic stamp certificate. This provides for a stamping mechanism whereby a stamp certificate is issued online instead of a conventional physical stamp or imprint. The process requires an applicant to apply for the stamp certificate.

<sup>28</sup> Essentially, under the USM environment, parties to a transfer of prescribed securities will send their transfer instructions to the relevant ASR for registration. As part of that process, it will be necessary to check that stamp duty (where chargeable) has been paid. The ASR will facilitate this process by directing the transferor/transferee to the Stamp Office's e-stamping portal, and assisting in the process of obtaining a stamp certificate. In view of the ASR's involvement, it will be regarded as an "applicant" for the stamp certificate.

#### IV. Comments invited

62. The USM initiative will introduce a major change in our market. A key aspect will be the new regime for regulating ASRs, and the proposed ASR Code and proposed ePO Guidelines aim to provide more specifics in this regard. In particular:
- (a) the proposed ASR Code will supplement the requirements under the ASR Rules, and expand on the standards and practices expected of ASRs, including in particular, the requirements and standards that ASRs and their systems will be expected to meet;
  - (b) the proposed ePO Guidelines will update the existing guidelines to reflect changes in market practices and ASRs' ability to provide certain services without having to work with a Type 1 intermediary.
63. We invite interested parties to submit written comments on the proposals discussed in this paper. The deadline for submissions is **Friday, 15 December 2023**.
64. For easy reference, we set out below a full list of the questions raised in this Consultation Paper.

- Q1. Do you have any comments or concerns about the proposed new GP4 on outsourcing? If so, please elaborate.*
- Q2. Do you have any comments or concerns about the proposed new GP5 on ASRs' computer systems and facilities? If so, please elaborate.*
- Q3. Do you have any comments or concerns about the proposed new GP6 on information to be disclosed by ASRs to their issuer-clients and registered holders? If so, please elaborate.*
- Q4. Do you have any comments or concerns about the proposed amendments relating to GP1 on the honesty and fairness standards applicable to ASRs? If so, please elaborate.*
- Q5. Do you have any comments or concerns about the proposed amendments relating to GP2 on the diligence standards applicable to ASRs? If so, please elaborate.*
- Q6. Do you have any comments or concerns about the proposed amendments relating to GP3 on ASRs' capabilities? If so, please elaborate.*
- Q7. Do you have any comments or concerns about the proposed amendments relating to GP7 on conflicts of interest? If so, please elaborate.*

- Q8.** *Do you have any comments or concerns about the proposed amendments relating to GP9 on ASRs' compliance obligations? If so, please elaborate.*
- Q9.** *Do you have any comments or concerns about the proposed amendments relating to GP10 on the responsibilities of ASRs' senior management? If so, please elaborate.*
- Q10.** *Do you have any comments or concerns about the Schedules proposed to be included? If so, please elaborate.*
- Q11.** *Do you have any comments or concerns about the proposed amendments to reflect changes in market practices? If so, please elaborate.*
- Q12.** *Do you have any comments or concerns about the proposed amendments to reflect ASRs' ability to offer ePO services without having to work with a Type 1 licensed intermediary? If so, please elaborate.*
- Q13.** *Do you have any comments or concerns about the proposal that the ePO Guidelines deal essentially with ePOs of prescribed securities, and have only limited application in respect of ePOs of non-prescribed securities? If so, please elaborate.*
- Q14.** *Do you have any comments or concerns about the proposed further amendments regarding the arrangements for stamping and collecting stamp duty in the USM environment? If so, please elaborate.*

## Glossary

<b>ASR</b>	an approved securities registrar, ie, a person approved by the SFC to provide securities registrar services under new section 101AAG of the SFO introduced under section 7 of the USM Amendment Ordinance
<b>ASR Rules</b>	the Securities and Futures (Approved Securities Registrars) Rules, a proposed draft of which is at Annex 3 of the March 2023 consultation on subsidiary legislation
<b>ePO</b>	an electronic public offer, ie, the process where electronic facilities (particularly the Internet) are used to display or provide access to prospectuses and collect applications from the public during an IPO or follow-on public offer of prescribed securities
<b>ePO channel</b>	any electronic channel or facility used to display or provide access to prospectuses, and collect applications from the public during an initial public offer (or follow-on public offer) of prescribed securities
<b>ePO services</b>	services in relation to an ePO
<b>FSR</b>	the Federation of Share Registrars Limited
<b>GP</b>	General Principle
<b>HKEX</b>	Hong Kong Exchanges and Clearing Limited
<b>IPO</b>	an initial public offer of securities
<b>March 2023 consultation on subsidiary legislation</b>	the SFC's <i>March 2023 Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong</i>
<b>prescribed securities</b>	the six categories of securities that are listed on the Stock Exchange of Hong Kong Limited and may participate in the USM regime – see paragraph 23(a) of the March 2023 consultation on subsidiary legislation for more details
<b>proposed ASR Code</b>	the SFC's <i>Code of Conduct for Approved Securities Registrars</i> , a proposed draft of which, marked-up to show changes from the SFC's existing <i>Code of Conduct for Share Registrars</i> , is at <a href="#">Annex 1</a> and a “clean” version at <a href="#">Annex 2</a>
<b>proposed ePO Guidelines</b>	the SFC's <i>Guidelines for Electronic Public Offers</i> , a proposed draft of which, marked-up to show changes from the SFC's existing <i>Guidelines for Electronic Public Offerings</i> , is at <a href="#">Annex 4</a> and a “clean” version at <a href="#">Annex 5</a>
<b>registered holder</b>	means any person who is the registered holder of prescribed securities, and includes any person who: (i) was previously registered as such a holder; or (ii) is a subscriber or transferee of prescribed securities and is seeking to be registered as such a holder

<b>ROM</b>	the register of members (in the case of shares) or register of holders (in the case of other prescribed securities)
<b>SDO</b>	the Stamp Duty Ordinance (Cap 117)
<b>securities registrar</b>	a person who maintains in Hong Kong the ROM for any prescribed securities
<b>securities registrar services</b>	services that may only be provided by ASRs – see paragraphs 102 to 105 of the March 2023 consultation on subsidiary legislation
<b>service facilities</b>	the electronic facilities used to provide securities registrar services, and includes any UNSRT system and ePO channel
<b>SFC</b>	the Securities and Futures Commission
<b>SFO</b>	the Securities and Futures Ordinance (Cap 571)
<b>title instrument</b>	the paper certificate or other document issued as evidence of title to any prescribed securities
<b>Type 1 intermediary</b>	an intermediary that is licensed or registered under the SFO to carry on business in dealing in securities
<b>UNSRT system</b>	a computer-based system, together with procedures and other facilities, that: (a) enables title to prescribed securities to be evidenced and transferred without paper documents; and (b) facilitates supplementary and incidental matters – see new section 101AAB of the SFO introduced under section 7 of the USM Amendment Ordinance
<b>USM</b>	the initiative or regime for implementing an uncertificated securities market in Hong Kong
<b>USM Amendment Ordinance</b>	the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021
<b>USM Rules</b>	the Securities and Futures (Uncertificated Securities Market) Rules, a proposed draft of which is at Annex 2 of the March 2023 consultation on subsidiary legislation

**Annex 1: Proposed ASR Code (marked-up version)**

**Code of Conduct for Approved Securities Registrars**

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*[Date]*

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## The Code of Conduct for Share Registrars

### Explanatory notes

~~This Code has been issued by the Commission, in consultation with the Federation of Share Registrars.~~ This Code of Conduct for Approved Securities Registrar (**Code**) is published under section 399 of the Securities and Futures Ordinance (Cap 571) (**SFO**). The Commission will be guided by this Code in considering whether a person is fit and proper to be or remain an approved securities registrar (**ASR**). In this context, the Commission will have regard to the general principles, as well as the letter, of the Code. This Code also, among other matters, provides guidance in relation to the operation of particular statutory provisions. The Code has been published in the Gazette.<sup>1</sup>

~~The primary purpose of this Code is to provide an orderly framework within which Share Registrars are to conduct their business.~~ Where the Commission has information which suggests that an ASR is not a fit and proper person to remain approved, it may conduct an investigation under section 182(1)(e) of the Securities and Futures Ordinance (**SFO**). This information may refer to how the ASR conducts its business and operations, or it may refer to other matters. The Commission places great importance on ASRs being fit and proper, particularly in light of the significant role that their systems, processes and facilities play in the uncertificated securities market environment.

This Code is to be interpreted sensibly and in accordance with its spirit. When considering whether ~~a Share Registrar~~ an ASR has failed to attain any of the standards prescribed in this Code, the Commission will adopt a pragmatic approach, taking into account all relevant circumstances, including whether the ~~Share Registrar~~ ASR has taken any compensatory measures, the nature and scope of ~~its business activities conducted by it and~~ and operations, as well as its legal and organisational structure.

ASRs should note the various Schedules to this Code. These are part of the Code and provide, among other things, limits on certain fees and charges that are payable by registered holders, and ASRs' obligations when performing certain functions. ASRs are also expected, under section 10.1(a) below, to comply with the rules of any clearing house of which they are participants.

Unless otherwise specified, or the context otherwise requires, words and phrases in this Code shall be interpreted in accordance with section 1 below.

This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law. ~~This Code represents a consensus of opinion of the Share Registrar industry and the Commission regarding the standards of commercial conduct and behaviour considered acceptable for Share Registrars. It is framed so far as possible in non-technical language and should not be interpreted as if it is statute.~~

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<sup>1</sup> **Note for the purpose of this consultation only:** The finalised version of this Code will be published in the Gazette in due course and before it comes into effect.

~~Share Registrars who wish to be a part of the securities markets in Hong Kong should ensure that they, and their staff, conduct themselves in accordance with the Code. A breach of the requirements of this Code will reflect adversely on the Share Registrar and its status as a member of the Federation of Share Registrars and may result in disciplinary action. The Listing Rules state that only an approved Share Registrar may be employed to maintain a register of shareholders or warrant holders in Hong Kong. A Share Registrar needs to be a member of the Federation in order to be an approved Share Registrar.~~

~~The Commission may, in consultation with the Federation of Share Registrars, amend this Code from time to time.~~

~~This Code supersedes the *Code of Conduct for Share Registrars* published by the Commission in April 2003.~~

Draft for Consultation

## General principles

### GP1: Honesty and fairness

In conducting its business ~~activities and operations~~, ~~a Share Registrar~~ an ASR should act honestly, fairly, and in the best interests of its ~~Clients~~ issuer-clients and the integrity of the market.

### GP2: Diligence

In conducting its business ~~activities and operations~~, ~~a Share Registrar~~ an ASR should act with due skill, care and diligence, in the best interests of its ~~Clients~~ issuer-clients and the integrity of the market.

### GP3: Capabilities

~~A Share Registrar~~ An ASR should have and employ ~~effectively~~ the resources and procedures which are needed for the proper performance of its ~~functions and obligations to its Clients and the integrity of the market~~ as an ASR.

### GP4: Outsourcing

When outsourcing tasks, an ASR should take into account the criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that material risks are properly identified and managed, and that the interests of the ASR, issuer-clients and registered holders are properly protected.

### GP5: Computer systems and facilities

An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.

### GP6: Information for issuer-clients and registered holders

An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and registered holders.

### GP7: Conflicts of interest

~~A Share Registrar~~ An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that ~~its Clients~~ issuer-clients and registered holders are ~~fairly~~ treated fairly.

### GP8: Safeguarding of ~~Client~~ third-party assets

~~A Share Registrar~~ An ASR should ensure that ~~Client~~ third-party ~~A~~ assets are promptly and properly accounted for and adequately safeguarded.

## **GP69. Compliance**

~~A Share Registrar~~ An ASR should comply with all regulatory requirements applicable to the conduct of its business ~~activities and operations~~ so as to promote the best interests of its ~~Clients issuer-clients~~ and the integrity of the market. In addition, ~~a Share Registrar~~ an ASR should ~~also~~ provide ~~share registry securities registrar~~ services in a manner which enables its ~~Clients issuer-clients~~ to comply with their ~~obligations under applicable laws and regulations~~ ~~requirements relating to share registry services that are imposed on its Clients by the Listing Rules~~.

## **GP710. Responsibilities of senior management**

The senior management of ~~a Share Registrar~~ an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ~~Share Registrar~~ ASR. ~~In determining the degree of responsibility of a particular individual, regard shall be had to the factors referred to in paragraph 1.2(b) below.~~

Draft for Consultation

## 1. Interpretation and Application

### 1.1 Definitions

In this Code, unless otherwise specified, or the context otherwise requires:

<b><i>applicable laws and regulations</i></b>	in relation to a person, means any laws, rules or regulations (whether statutory or otherwise) applicable to the person, and includes any codes and guidelines issued by the Commission (including this Code) and the rules of any exchange or clearing house applicable to the person;
<b><i>approved securities registrar / ASR</i></b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b><i>ASR Rules</i></b>	means the Securities and Futures (Approved Securities Registrars) Rules (Cap 571, sub leg [ ]); <sup>2</sup>
<b><i>authenticated message</i></b>	bears the meaning given by section 2 of the USM Rules;
<b><i>CCASS</i></b>	means the Central Clearing and Settlement System operated by HKSCC, and includes any other system that may replace it;
<b><i>this Code</i></b>	means this Code of Conduct for Approved Securities Registrars;
<b><i>the Commission</i></b>	means the Securities and Futures Commission;
<b><i>Companies Ordinance</i></b>	means the Companies Ordinance (Cap 622);
<b><i>computer systems and facilities</i></b>	in relation to an ASR, means the computer systems and facilities used in connection with the ASR's business and operations, irrespective of whether such systems or facilities are provided or operated by the ASR or a service provider, and includes any service facilities, and any interface or other connections to the systems or facilities of another person;

**Note:**

*The scope here includes, for example:*

- (1) *all interface connections between the ASR and other parties (eg, HKSCC, the Stamp Office, other companies within the same group as the ASR, etc); and*
- (2) *all computer systems and facilities used in connection with the handling of matters and processes relating to prescribed*

<sup>2</sup> **Note for the purpose of this consultation only:** A proposed draft of these rules is at Annex 3 of the SFC's March 2023 Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong.

*securities (eg, transfers, dematerializations, corporate actions, public offer applications, updating of registers of holders, pre-registration for the use of service facilities, etc).*

<b>EDSP</b>	means an electronic data storage provider;
<b>ePO channel</b>	means any electronic channel or facility used to display or provide access to prospectuses and collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities;
	<b>Note:</b> <i>See also the Commission's Guidelines for Electronic Public Offers, which deal with the provision and operation of ePO channels.</i>
<del>the Executive</del>	<del>means the staff members of the Commission who perform the duties described in Section 10 of this Code;</del>
<del>the Federation</del>	<del>means the Federation of Share Registrars approved by the Securities and Futures Commission under the Securities and Futures (Stock Market Listing) Rules, Cap. 571;</del>
<del>HKEx</del>	<del>means Hong Kong Exchanges and Clearing Limited and its successors and assigns.</del>
<b>HKSCC</b>	means Hong Kong Securities Clearing Company Limited;
<b>issuer</b>	bears the meaning given by section 2 of the USM Rules;
<del>Clients-issuer-client</del>	<del>in relation to an ASR, means an issuers of listed prescribed securities to which, or as agent of which, the Share Registrar ASR provides securities registrar services for;</del>
<del>the Listing Rules</del>	<del>means the Rules Governing the Listing of Securities on the Stock Exchange and, where the context requires, includes the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange;</del>
<b>operational incident</b>	bears the meaning given by section 17(5) of the ASR Rules;
<b>outsourcing</b>	in relation to an ASR, means a business practice in which the ASR engages another person (the service provider) to perform tasks that would otherwise be undertaken by the ASR itself, and <b>outsource</b> is to be construed accordingly;
<b>prescribed securities</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b>Registered Owners of Securities holder</b>	means any person who is the registered owners-holder of listed-prescribed securities of the Share Registrar's Clients and includes any person who: (i) was previously registered

as such a holder; or (ii) is a subscriber or transferee of such securities and is seeking to be registered as such a holder;

**register of holders**

bears the meaning given by section 2 of the USM Rules;

**Share Registrars**

~~means persons whose business and services typically include maintaining registers of holders of securities and all matters relating directly or indirectly to the maintenance thereof, issuing certificates for securities offerings and transfers, balloting, handling payment and refund cheques, distributing entitlements, providing secretarial services (arranging for annual shareholder meetings, mailing proxies and other corporate communication materials, etc.), advising Clients with regard to the timing of offerings and other corporate activities and establishing trust arrangements on behalf of Registered Owners of Securities and who are members of the Federation;~~

**Share Registrars Disciplinary Appeals Committee**

~~means the committee constituted in accordance with section 10.7;~~

**Share Registrars Disciplinary Committee**

~~means the committee constituted in accordance with section 10.1;~~

**securities**

~~has bears~~ the meaning assigned to it given by section 1 of Part 1 of Schedule 1 ~~of to~~ the Securities and Futures Ordinance, Cap. 571 SFO; and

**securities registrar service**

bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO and section 3 of the ASR Rules;

**Note:**

*The provision of securities registrar services includes the provision and/or operation of any related service facilities, such as any UNSRT system and any ePO channel.*

**senior management**

in relation to an ASR, means persons involved in the management of the business of the ASR;

**Note:**

- (1) *In considering whether a person should be regarded as a member of an ASR's senior management, the Commission will look at all relevant facts and circumstances, including the following:*
- *the ASR's organisation and control structure (including its group organisation and control structures where it is part of a group);*

- *the person's seniority and role within such organisation and control structures, including whether the person is a member of the ASR's governing body; and*
- *the level of actual or apparent control, oversight, authority or influence held by the person in respect of the ASR's business and operations, including in particular its provision of securities registrar services.*

- (2) *The fact that a person is not a member of an ASR's governing body, or is based outside Hong Kong, will not of itself exclude them from being regarded as a member of the ASR's senior management. The Commission's focus will be on the extent of the person's control, authority and influence vis-à-vis the ASR's business and operations.*
- (3) *Under Part IX of the SFO, the Commission may take disciplinary action against persons who are involved in the management of the business of an ASR, i.e. the senior management of an ASR.*

<b>service facilities</b>	bears the meaning given by section 2 of the ASR Rules; <b>Note:</b> <i>An ASR's service facilities include any UNSRT system and ePO channel used in connection with the ASR's provision of securities registrar services.</i>
<b>service facilities incident</b>	bears the meaning given by section 17(5) of the ASR Rules;
<b>service provider</b>	in relation to an ASR, means the person to whom the ASR outsources any of its tasks;
<b>SFO</b>	means the Securities and Futures Ordinance (Cap 571);
<b>task</b>	means any task, function, process, service or activity;
<b>Client third-party Assets</b>	in relation to an ASR, means any information, documents <del>and stationery</del> , or other property (including any securities, seals and impressions, blank <del>share certificates</del> title instruments, <del>and dividend</del> cheques, stationery or money) <del>that are received, retained and or kept at the premises of a Share Registrar</del> by the ASR for or on behalf of a Client an issuer-client, and includes any information, documents or other property (including any securities, title documents, cheques or money) relating, belonging or payable to a registered holder and received, retained or kept by the ASR as agent for an issuer-client; <b>Note:</b> <i>The term "third-party assets" includes any "client money", as defined in section 2 of the ASR Rules.</i>
<b>title instrument</b>	bears the meaning given by section 2 of the USM Rules;
<b>uncertificated form</b>	is to be interpreted in accordance with section 1AB of Part 1 of Schedule 1 to the SFO;



<b>UNSRT system</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b>USI facility</b>	means an electronic facility set up with an ASR for the purposes of holding legal title to prescribed securities without title instruments, effecting transfers of legal title to prescribed securities without instruments of transfer, and effecting other transactions and communications relating to prescribed securities electronically;
<b>USM Rules</b>	means the Securities and Futures (Uncertificated Securities Market) Rules (Cap 571, sub leg [ ]). <sup>3</sup>

## 1.2 Persons to whom this Code applies

- (a) This Code ~~sets out the conduct requirements for Share Registrars. It also applies to Share Registrars~~ all ASRs in respect of their provision of:
- (i) securities registrar services that they are approved to provide; and
  - (ii) other related services provided to an issuer-client or registered holder.

**Note:**

*Examples of related services include: arranging and coordinating general meetings of the issuer-client; providing corporate action services in respect of non-prescribed securities issued to registered holders of prescribed securities; assisting registered ~~who help~~ shareholders to establish trust arrangements for their ~~shares~~ prescribed securities; and providing ~~probate services and other services~~; etc.*

- (b) This Code ~~is applicable also~~ applies to all ~~Share Registrars and their employees~~ persons who are members of the senior management of an ASR. ~~A senior manager's~~ In applying this Code to any such person, the Commission will consider the person's level of responsibility within the ASR, ~~his any~~ supervisory duties they may perform, and the levels of control and knowledge ~~he has~~ they may have concerning any failure by the ~~Share Registrar~~ ASR, or by any persons under ~~his~~ their supervision, ~~will be considered in applying this to follow this Code to him~~.
- ~~(c) A Share Registrar whose business operations are fully automated is expected to comply with requirements set out in Section 4 relating to computer and backup systems. Where the business operations of a Share Registrar are partially automated, it is expected to comply with these requirements as far as it is reasonably practicable to do so. Where none of the business operations of a Share Registrar are automated, it is expected to comply fully with the requirements relating to proper record keeping and establishing a full audit trail.~~

<sup>3</sup> **Note for the purpose of this consultation only:** A proposed draft of these rules is at Annex 2 of the SFC's March 2023 Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong.

### 1.3 Effects of breaches of this Code

- (a) ~~Breaches of this Code will, i~~In the absence of extenuating circumstances, breaches of this Code may:
- (i) reflect adversely on ~~the Share Registrar and its status as a member of the Federation~~ an ASR's fitness and properness to provide securities registrar services, and/or on any other person's fitness and properness to be involved in the management of an ASR's business; and
  - (ii) ~~may~~ result in disciplinary action under ~~Section 10 of this Code Part IX~~ of the SFO.
- (b) A failure by an ASR or any other person to comply with any provision of this Code that applies to them will not by itself render the ASR or such other person liable to any judicial or other proceedings. However, in any proceedings under the SFO before any court, this Code will be admissible in evidence, and if any provision set out in this Code appears to the court to be relevant to any question arising in the proceedings, it will be taken into account in determining the question.

### 1.4 ~~Membership~~

~~The Federation shall have clear entry requirements for any person who wishes to become a member of the Federation and carry on the business of a Share Registrar.~~

## 2. Honesty and Fairness

*In conducting its business and operations, an ASR should act honestly, fairly, and in the best interests of its issuer-clients and the integrity of the market.*

### 2.1 Accurate representations and information

~~A Share Registrar~~ An ASR should ensure that any representations made by it, or information provided by it, to its ~~Clients~~ issuer-clients or to ~~R~~registered ~~Owners~~ holders of ~~Securities~~ is/are accurate and not misleading.

### 2.2 Fair and reasonable charges

An ASR's fees and charges, particularly if payable by registered holders, should be transparent, fair and reasonable in the circumstances, commensurate with the services provided and work done, and comply with applicable laws and regulations. Additionally, fees and charges for services listed in Schedule 1 to this Code should not exceed the levels set out in that schedule.

### 2.3 Marketing and operation of services

~~A Share Registrar~~ An ASR should market, promote and carry out its services in a proper, appropriate and fair manner ~~and that complies~~ with all applicable ~~legislation, codes, rules and guidelines issued by the Federation or the Commission~~ laws and regulations.

### 2.4 Anti-bribery guidelines

An ASR should be familiar with the Prevention of Bribery Ordinance (Cap 201) and follow related guidance issued by the Independent Commission Against Corruption. The Prevention of Bribery Ordinance may prohibit an agent (normally an employee) from soliciting or accepting an advantage without the permission of the principal (normally the employer) when conducting the principal's business. A person who offers the advantage may also commit an offence.

### 2.5 Financial auditor

(a) Under the ASR Rules, an ASR must appoint an independent auditor, within 1 month after it is approved to provide securities registrar services or an auditor ceases to be so appointed, to audit its financial statements. In assessing the independence of an ASR's auditor, the Commission will take into account all relevant facts and circumstances. In general, the following persons will not be regarded as independent:

- (i) any person who is an officer, employee or agent of the ASR;
- (ii) any person who is engaged by the ASR to provide services (other than services as an independent auditor);
- (iii) any person who is engaged in any work, or subject to any obligation, control or influence that will or may present a conflict (actual or perceived) with the person's obligations as the ASR's auditor.

(b) In addition, the auditor appointed should be Hong Kong-qualified. An auditor will be regarded as Hong Kong-qualified only if he or she is a "certified public

accountant (practising)", as defined in section 2 of the Accounting and Financial Reporting Council Ordinance (Cap 588).

Draft for Consultation

### 3. Diligence

*In conducting its business and operations, an ASR should act with due skill, care and diligence, in the best interests of its issuer-clients and the integrity of the market.*

#### 3.1 Performance of services: due skill, care and diligence

- (a) ~~A Share Registrar~~ An ASR should perform services for its ~~Clients~~ issuer-clients in accordance with the terms and conditions upon which the ~~Share Registrar~~ ASR is appointed by the respective ~~Clients~~ issuer-clients. ~~The Share Registrar~~ An ASR should also take all reasonable steps to carry out instructions from its ~~Clients~~ issuer-clients diligently and with reasonable skill and care.

**Note:**

*Compliance with paragraph (a) may require the ASR to be proactive in certain circumstances. For example, where an issuer has changed its appointed ASR, the incoming ASR will generally be expected to proactively notify affected registered holders of any steps they need to take to continue managing any securities held in uncertificated form (eg, completing the incoming ASR's onboarding process for using any service facilities to transfer such securities).*

#### ~~3.2 Duty to Registered Owners of Securities~~

- (b) ~~In addition to its duty to Clients, a Share Registrar~~ In the course of providing securities registrar services, an ASR will (in its capacity as agent of an issuer-client) receive requests, enquiries and instructions from registered holders. The ASR should ~~perform its services~~ take all reasonable steps to acknowledge, respond to and process such requests, enquiries and instructions ~~for Registered Owners of Securities~~ promptly, diligently and with reasonable skill and care.

#### 3.2 Provision of service facilities

An ASR should provide the use of its service facilities in accordance with the terms and conditions notified to and agreed with users of such facilities. In particular, an ASR should take all reasonable steps to ensure that:

- (a) such facilities are provided and operated in a fair and orderly manner;
- (b) activities, instructions or other things carried out, executed or processed through such facilities are processed promptly and in accordance with such terms and conditions;
- (c) appropriate identity checks are conducted when onboarding persons as users of such facilities;

**Note:**

*The ASR is expected to take all reasonable steps to establish the true and full identity of a person seeking to become a user of its service facilities. At a minimum, this includes checking the identity document that is first mentioned in the list below (save that where the person does not hold such document, the next mentioned document should be used and so forth), ie:*

- (1) *in the case of a natural person, his or her: (A) Hong Kong identity card; (B) other national identification document; or (C) passport;*

- (2) *in the case of a corporation, its: (A) legal entity identifier (LEI) registration document; (B) certificate of incorporation; (C) certificate of business registration; or (D) other equivalent identity document; and*
  - (3) *in the case of a trust, the trustee's information (as described in paragraph (1) or (2) of this note, as applicable).*
- (d) appropriate systems are in place, and checks conducted, to enable the ASR to establish with reasonable certainty the identity of the person sending instructions or requests through such facilities, and the person's authority to do so; and

**Note:**

*In general, the ASR is expected to adopt authentication methodologies to ascertain the reliability of instructions and requests received. Such methodologies should be in line with industry standards and market practice, and provide a reasonable and appropriate degree of protection to registered holders, taking into account:*

- (1) *the nature of the instruction or request received;*
  - (2) *the size and value of any prescribed securities that are the subject of the instruction or request;*
  - (3) *the potential impact that the instruction or request may have on the registered holder of those securities if acted upon; and*
  - (4) *any pre-existing agreement with such holder regarding the sending of such instructions or requests (eg, any limits set, any agent appointed, etc).*
- (e) where the ASR offers pre-registration in respect of its service facilities (ie, permits persons to become users of such facilities even though they have no immediate need to use the facilities), appropriate checks are conducted to ensure that information provided by a person at the time of pre-registration is, or may be reasonably expected to be, up-to-date at the time that the person uses the facilities to send any instructions or requests.

**Note:**

*In assessing whether any information submitted by a person during the pre-registration process remains up-to-date, the ASR is expected to take into account the length of time that has passed since the person submitted the information, and since the person last used the facilities. Due regard should also be had to:*

- (1) *the nature of the instruction or request received;*
- (2) *the size and value of any prescribed securities that are the subject of the instruction or request; and*
- (3) *the potential impact that the instruction or request may have on the registered holder of those securities if acted upon.*

### 3.3 Best interests of ~~Clients~~ issuer-clients

In performing its services or in carrying out instructions from its ~~Clients~~ issuer-clients, ~~a Share Registrar~~ an ASR should act in the best interests of its ~~Clients~~ issuer-clients and the integrity of the market.

## 4. Capabilities

*An ASR should have and employ effectively the resources and procedures which are needed for the proper performance of its functions and obligations as an ASR.*

### 4.1 Internal Controls, financial and operational resources

~~A Share Registrar~~ An ASR should have satisfactory internal control procedures in place and financial and operational capabilities to ensure its business and operations ~~is~~ ~~are~~ properly structured and ~~operated~~ ~~conducted~~ so that there is reasonable assurance that:

- (a) ~~The Share Registrar~~ ASR has adequate financial resources;

**Note:**

- (1) *The Commission may specify specific financial resources requirements under section 8 of the ASR Rules, including a minimum capital level, a minimum liquidity level and a maximum gearing ratio. In specifying such requirements, the Commission will take into account all relevant circumstances (including the scope and size of the ASR's business and operations), and the need for reasonable assurance as to the ASR's continued financial viability and ability to wind down in an orderly manner (should that become necessary).*
- (2) *The levels specified may vary from ASR to ASR. However, in general, it is expected that minimum capital levels specified will not be lower than HK\$5 million, minimum liquidity levels will be set by reference to the ASR's projected operating expenses for at least the next six months, and maximum gearing ratios specified will not be higher than 70%.*

- (b) ~~The Share Registrar~~ ASR can carry on its business and operations in an orderly, efficient and effective manner;

- (c) ~~There are~~ proper and adequate safeguards ~~for Clients~~ and risk management policies are in place and documented to protect the ASR's business and operations, its issuer-clients and ~~R~~registered holders ~~Owners of Securities~~ from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions ~~committed by the Share Registrar~~;

**Note:**

- (1) *Safeguards and risk management policies put in place are expected to be commensurate with the nature, size and complexity of the ASR's business and operations, and to be regularly reviewed and updated to ensure their continued effectiveness taking into account any change to the ASR's business and operations, and relevant regulatory developments.*
- (2) *Where the ASR's business and operations include matters other than the provision of securities registrar services, the safeguards to be put in place are expected to take into account and address any risks posed by such matters.*

- (d) supervisory and other internal review functions (eg, compliance and internal audit) are segregated from operational duties to avoid undetected errors and abuses which may expose the ASR, its issuer-clients or registered holders to inappropriate risk;

- ~~(d)~~(e) Proper records are kept and maintained in relation to the ASR's business and operations;

**Note:**

*This includes complying with requirements under Part 4 of the ASR Rules and relevant provisions of company law (eg, section 627 of the Companies Ordinance).*

- (e)(f) ~~The Share Registrar~~ ASR can carry on its business and operations in a manner that is ~~in compliance~~ ~~with all applicable laws and regulations~~ ~~requirements in relation to its business and the services it offers~~; and
- (f)(g) ~~The Share Registrar~~ ASR ~~shall~~ can perform its functions and obligations in a manner which enables its ~~Clients~~ issuer-clients to comply with all laws and regulatory requirements applicable to ~~such Clients~~ them, and which complies with the requirements set out in Schedule 2 to this Code.

**Note:**

*Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from registered holders including instructions to transfer, dematerialize or rematerialize prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers, it is crucial that the ASR complies with those requirements when performing such functions and obligations (eg, requirements under relevant company law, the USM Rules, etc).*

## 4.2 Human and ~~T~~technical ~~R~~resources

- (a) ~~A Share Registrar~~ An ASR should have sufficient human and technical resources and experience to ensure the proper performance of its ~~duties~~ ~~functions and obligations~~ at all times. ~~A Share Registrar shall~~ An ASR should ensure ~~at all times~~ that any person it employs or appoints ~~to conduct business in connection with its business and operations for or on behalf of Clients or Registered Owners of Securities~~ is qualified, suitably trained or ~~with~~ has appropriate experience to act in the capacity and to perform the respective duties and responsibilities for which ~~they are~~ person is so employed or appointed.

- (b) ~~A Share Registrar shall~~ An ASR should provide suitable training ~~and supervision and adequate information~~ to its employees and agents to ensure that they can perform their duties and responsibilities diligently.

**Note:**

*This includes, for example, ensuring that employees and agents are apprised of policies and procedures that are relevant to their respective roles and responsibilities.*

- (c) ~~A Share Registrar shall~~ An ASR should ensure ~~at all times~~ that it has adequate resources to ~~manage and~~ supervise its employees and agents diligently, and does so supervise them.

## 4.3 ~~Systems Integrity~~

*[Note for the purpose of this consultation only: Section 4.3 on "Systems Integrity" has been moved and is now section 6.1 below.]*

## 4.4 ~~Security~~

*[Note for the purpose of this consultation only: Section 4.4 on "Security" has been moved and is now section 6.2 below.]*



### 4.3 Suitable premises

Under the ASR Rules, an ASR must not use any premises for any of the purposes specified in those Rules unless the premises are suitable for use for that purpose. In assessing the suitability of any such premises (or of any other premises used in connection with its business and operations), the ASR should have due regard to the following:

- (a) that the premises are subject to appropriate security measures, and are (as necessary) fire and water-proof;
- (b) that the premises are not used for residential purposes;
- (c) that any area of the premises used for storing records and documents relating to issuer-clients and/or registered holders is segregated, and subject to appropriate security and access controls;
- (d) that if the premises are shared with a third party (whether or not within the same group as the ASR), appropriate measures are taken to restrict access to that part of the premises used by the ASR and to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or any registered holders, as necessary and reasonable in the circumstances;
- (e) that any access to the premises by third parties (including any issuer-client, registered holder, or another company within the same group as the ASR) is appropriately restricted so as to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or any registered holders, as necessary and reasonable in the circumstances;
- (f) that the premises are accessible at all times for the purposes of regulatory visits by the Commission.

#### 4.54.4 Capacity

- (a) ~~A Share Registrar~~ An ASR should ensure that it has adequate systems capacity for the ~~processing of public offering allocations and other transactions, the printing and distribution of share certificates and the updating of share registers in the event of a public offering~~ proper performance of its functions and obligations as an ASR.

**Note:**

- (1) *This includes, for example, ensuring adequate systems capacity in connection with the performance of any services to issuer-clients or registered holders, including the provision of securities registrar services and operation of any service facilities.*
  - (2) *In considering the adequacy of systems capacity, an ASR should take into account its service level commitments and obligations regarding the volume, speed and turnaround times for any processes, transactions or other matters. The market's reasonable expectation in respect of these matters should also be taken into account.*
- (b) ~~A Share Registrar~~ An ASR should have an adequate margin above its current capacity to handle its current volume and systematically establish future capacity estimates on a regular basis. In addition, ~~a Share Registrar~~ an ASR should conduct periodic stress tests to assess whether its systems and

service facilities can perform adequately in relation to estimated capacity levels ~~and~~, including in the event of heavily subscribed public offerings and large increases in the number of registered holders or number of transactions effected by such holders.

~~(c) Where a Share Registrar outsources part or all of the above processes to agents, it should ensure that these agents comply with the requirements in paragraphs 4.5(a) and (b) above.<sup>4</sup>~~

#### 4.64.5 Reliability

~~A Share Registrar~~ An ASR should ensure that the computer and other systems and facilities used in the performance of its ~~business and services~~ functions and obligations are reliable and that both internal and external system/programme developers observe the following requirements:

- (a) ~~P~~proper planning, testing and implementation of such systems and facilities, and of any upgrades. ~~Proper planning and testing must be undertaken;~~
- (b) ~~R~~regular monitoring of such systems and ~~printers~~ facilities, including any equipment;
- (c) ~~A~~availability of timely and adequate support in emergencies;
- (d) ~~T~~timely rectification of problems;
- (e) ~~A~~adequate resolution of recurring problems;
- (f) ~~P~~proper and adequate maintenance of written ~~systems~~ documentation detailing functional and technical specifications of ~~the share registration system~~ all such systems and facilities; and
- (g) ~~M~~maintenance and retention of a continuous and properly documented audit trail of ~~systems~~ changes and/or repairs to such systems and facilities.

**Note:**

*It is expected that not all systems and facilities may be computer-based, eg, an ASR may put in place systems and facilities for handling enquiries in person. Obligations under this section 4.5 are intended to apply in respect of both computer-based and non-computer-based systems and facilities.*

#### 4.74.6 Contingency Planning

- (a) ~~A Share Registrar~~ An ASR should have an appropriate contingency plan to deal with potential operational failures, emergencies ~~or~~ and disasters. The contingency plan should be documented, maintained and periodically tested to ensure that it is viable and adequate. A plan for dealing with media and regulatory enquiries should be formulated and the ~~Share Registrar~~ ASR should have competent and trained staff to deal with such matters.

**Note:**

*(1) At a minimum, an ASR's contingency plan is expected to cover the following:*

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<sup>4</sup> Note for the purpose of this consultation only: A separate section on outsourcing (section 5 below) is now added.

- *identify and address different contingency scenarios that may pose a significant risk of disrupting normal operations (including cyber-attacks<sup>5</sup>, critical vendor failures, relevant physical disasters or emergencies, etc);*
  - *provide a clear business continuity plan and its objectives, and set out details of recovery times and recovery points<sup>6</sup>; and*
  - *include clearly defined procedures for crisis and event management (including the management of operational incidents and service facilities incidents).*
- (2) *In developing its contingency plan, an ASR should take into account that it is expected to make all reasonable efforts to resume the provision of services, particularly critical services, as soon as reasonably practicable following the occurrence of any contingency scenario, and with a view to minimising divergence from service level commitments and obligations. Critical services are expected to include any services affecting:*
- *the timely update of registers of holders (eg, following any transfer, dematerialization, corporate action, etc); or*
  - *the smooth operation of CCASS (eg, services relating to the transfer of prescribed securities to the central nominee to settle continuous net settlement (CNS) transactions within the settlement period, timely adjustments to the registered holdings of the central nominee following a corporate action, etc).*
- (b) ~~The Share Registrar~~ An ASR should ensure that its backup site and systems are protected and operational in the event of systems failure. ~~As~~ At a minimum, the ~~Share Registrar~~ ASR should have:
- (i) ~~A~~ a backup site or other suitable facility which will enable the ~~Share Registrar~~ ASR to maintain critical functions in the event of an emergency;
- Note:**
- Critical functions include any functions that are time critical, such as functions that may affect the timely update of registers of holders or the smooth operation of CCASS.*
- (ii) ~~B~~ backup records, servers and supporting ~~securities~~ documentation which are located in separate premises;
- (iii) ~~B~~ backup client and transaction databases which are kept ~~securely~~ in an off-line medium (such as ~~computer tapes, which are preferably stored off-site.~~ mass storage devices) which enable the ASR to retrieve and access the data in a timely manner;
- Note:**
- (1) *Client and transaction databases include, at a minimum, all registers of holders, as well as other databases containing critical data relating to the ASR's issuer-clients, registered holders and transactions conducted through any of the ASR's service facilities.*
- (2) *To enable recovery points for registers of holders to be no more than one business day old, the backup record of each register of holders should be updated to no earlier than the close of business of the immediately preceding business day.*

<sup>5</sup> See also section 6.3, below (which discusses matters relating to cybersecurity), and in particular section 6.3(c) (which notes the need for contingency procedures to cover cyber-attack scenarios).

<sup>6</sup> See also note (2) under section 4.6(b)(iii) below, which expands on "recovery points" expected in respect of registers of holders.

- (3) *Offsite storage is generally expected to be subject to proper security measures, and to be fire and waterproof.*
- (iv) Backup functions which are preferably performed after each updating of information for critical data relating to Clients and Registered Owners of Securities; regularly and monitored to:
- (A) ensure information stored in client and transaction databases is securely and completely backed up; and
  - (B) enable timely remedial action and resolution of errors; and
- (v) Backup printing facilities or printers for the production of securities title instruments (where applicable) or other related client documentation.

Draft for Consultation

## 5. Outsourcing

*When outsourcing tasks, an ASR should take into account the criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that material risks are properly identified and managed, and that the interests of the ASR, issuer-clients and registered holders are properly protected.*

### 5.1 Risk assessment preceding outsourcing arrangements

An ASR should not commence any arrangements for outsourcing its tasks to a service provider unless it has first performed a suitable risk assessment and is satisfied that:

- (a) all material risks relating to the arrangements (including to the particular tasks to be outsourced and the particular service provider involved) have been identified;
- (b) all material risks identified can and will be adequately managed for so long as the arrangements are and remain effective; and
- (c) the arrangements will not impair the effectiveness of the ASR's internal controls nor compromise the interests of issuer-clients or registered holders or the integrity of the market.

Such risk assessment should be regularly reviewed in light of any material change to the outsourcing arrangements entered into, or to the ASR's business and operations, and relevant regulatory developments.

### 5.2 Pre-requisites for outsourcing

Where an ASR outsources any of its tasks to a service provider, it should ensure that:

- (a) sufficient and appropriate due diligence is carried out as regards the service provider's suitability and ability to carry out the outsourced tasks, and to do so in compliance with the ASR's obligations under applicable laws and regulations;
- (b) sufficient and appropriate procedures and controls are in place to monitor the service provider's performance of the outsourced tasks, and to effectively manage any risks posed by the outsourcing arrangements on a continuing basis;

**Note:**

*The monitoring of the service provider's performance of outsourced tasks will be crucial. Accordingly, and taking into account the criticality of the outsourced tasks to the business and operations of the ASR, it is expected that:*

- (1) *the ASR's monitoring will, at a minimum, seek to:*
  - *ensure that the service provider is in compliance with all material terms of the outsourcing arrangements;*
  - *ensure the adequacy of the resources deployed by the service provider for the purposes of the outsourced tasks;*
  - *establish whether any incidents or problems have been encountered, and if so, how these have been handled;*

- *establish whether the service provider's contingency plan regarding the outsourced tasks has been suitably updated in light of such incidents or problems; and*
  - *review the service provider's risk profile and in particular its continued financial viability;*
- (2) *the ASR's monitoring will be performed by staff with sufficient relevant knowledge and expertise;*
- (3) *the ASR's senior management will be kept suitably apprised of the service provider's performance, and any issues or incidents of concern will be promptly escalated as necessary; and*
- (4) *the ASR's control procedures for overseeing the outsourced tasks will be regularly reviewed by its audit function.*
- (c) a binding written contract is entered into with the service provider, the nature and details of which are appropriate to the materiality or criticality of the outsourced tasks to the business and operations of the ASR;
- Note:**
- See also section 5.3 below which expands on the matters that the contract should, at a minimum, cover.*
- (d) sufficient and appropriate procedures and controls are in place to ensure continuity of service by the service provider to the ASR, including a business recovery plan (with periodic testing of backup facilities) and exit strategies in the event of the termination of any outsourcing arrangements;
- Note:**
- Contingency arrangements relating to any outsourcing will be critical to ensuring the continued smooth performance of the outsourced tasks. The ASR is therefore expected to:*
- (1) *have an adequate understanding of the service provider's contingency arrangements, and consider the implications that these may have on the ASR's own contingency plans and exit strategies in the event that an outsourced task is interrupted due to systems or other failures at the service provider's end;*
  - (2) *consider the availability of alternative service providers and/or the arrangements for possibly having to bring the outsourced tasks back in-house in an emergency situation; and*
  - (3) *ensure that, when outsourcing arrangements (or any part thereof) are terminated:*
    - *all relevant data is either retrieved from the service provider or destroyed/deleted; and*
    - *the service provider has not retained any copy of it (or of any part of it).*
- (e) sufficient and appropriate procedures and controls are in place to protect from loss, damage and unauthorised use or disclosure, any property, information or data belonging or relating to the ASR, its issuer-clients or any registered holders, and in the possession or control of the service provider;
- Note:**
- This includes ensuring that the ASR's outsourcing arrangements (including any sharing of personal data with the service provider or its use by such provider) are in compliance with the Personal Data (Privacy) Ordinance (Cap 486) and with relevant codes, guidelines and best practices issued by the Office of the Privacy Commissioner for Personal Data from time to time.*

- (f) sufficient and appropriate procedures and controls are in place to ensure that the service provider will not use the services of a sub-contractor unless the ASR:
  - (i) has been fully informed of all relevant details, including the name of the sub-contractor, where it will perform the services sub-contracted, and (if applicable) where any data will be stored;
  - (ii) is able to object to or terminate the sub-contracting if it could have material adverse effects on the performance of a critical or material task or would lead to a material increase in risk; and
  - (iii) is able to take other appropriate measures against the service provider if it identifies shortcomings as a consequence of any sub-contracting arrangement; and
- (g) sufficient and appropriate arrangements are in place to ensure that the ASR (including its auditor) and the Commission are able to obtain promptly, directly and upon request, up-to-date information concerning outsourced tasks including, as necessary, access to any data, systems, premises and staff of the service provider and of any sub-contractor engaged by the service provider.

**Note:**

*Information will be regarded as up-to-date if it is as up-to-date as reasonably practicable in the circumstances. The arrangements mentioned in this paragraph should also cover the obtaining of information following any insolvency, resolution or discontinuation of business operations of the service provider or sub-contractor concerned.*

### 5.3 Outsourcing contract

The written contract mentioned in section 5.2(c) above should, at a minimum:

- (a) specify the tasks to be outsourced, the terms of the outsourcing, and the respective rights, responsibilities and liabilities of the ASR and the service provider;
- (b) enable the ASR to comply with its obligations under applicable laws and regulations;
- (c) be regularly reviewed and revised, as appropriate, to reflect any changes to the outsourcing arrangements (or to risks posed by the outsourcing arrangements<sup>7</sup>), to the ASR's business and operations, and relevant regulatory developments; and
- (d) provide for sufficient levels of maintenance and technical assistance to enable the ASR to meet, as far as reasonably practicable, its service level commitments and obligations to issuer-clients and/or registered holders.

### 5.4 Outsourcing tasks outside Hong Kong

- (a) An ASR should, as far as reasonably practicable, avoid outsourcing tasks to a service provider that is located, or that will perform the tasks, outside Hong

<sup>7</sup> See also section 5.1 above, which requires an ASR to regularly review its risk assessment of any outsourcing arrangements entered into.

Kong. Where this is unavoidable, the ASR should as far as reasonably practicable, ensure that the outsourcing arrangements are governed by Hong Kong law.

**Note:**

*In considering whether an overseas outsourcing arrangement is unavoidable, the Commission will take into account all relevant facts and circumstances, and all factors taken into account by the ASR (eg, economic considerations, security considerations, operational considerations, etc).*

- (b) An ASR should also consider the additional risks posed by engaging a service provider that is located, or that will perform the tasks, outside Hong Kong, and ensure that such risks are appropriately and adequately addressed. At a minimum, the ASR should consider and address the following:
- (i) whether the service provider is subject to conflicting requirements under the laws and regulations of a place outside Hong Kong that may materially affect its ability to perform the outsourced tasks as intended;
  - (ii) whether, in an emergency or contingency situation, it may be more difficult to monitor and control the outsourced task or to implement appropriate responses in a timely manner;
  - (iii) whether there are any applicable economic, social, or political conditions that might adversely impact the service provider's ability to perform the outsourced tasks effectively for the ASR;
  - (iv) whether the ASR or Commission may be denied prompt and direct access to any books, records, or other material in the possession or control of the service provider and relating to the ASR's business or operations;
  - (v) whether the regulatory environment for data security and protection is such as to require additional precautionary measures (such as introducing enhanced encryption) to safeguard any confidential information or data relating to the ASR's business or operations (including confidential information or data relating to the ASR, its issuer-clients or any registered holder) that the service provider has access to or control of;
  - (vi) whether confidential information or data belonging or relating to the ASR, its issuer-clients and/or any registered holders will be accessible by overseas authorities and/or regulators, and if so, whether such access is reasonable in the circumstances, requires authorisation by the ASR, issuer-client or registered holder involved (as appropriate), and (unless prohibited by applicable laws and regulations) will be notified to the SFC; and

**Note:**

*In general, where an overseas authority or regulator has sought access to such data, the ASR should notify the SFC immediately. The SFC may require the ASR to make alternative arrangements for the outsourced tasks if it considers the access request to be inappropriate or unjustified.*



- (vii) whether confidential information or data (including any personal data) belonging or relating to the ASR, its issuer-clients or any registered holder will be transferred and/or maintained outside Hong Kong, and if so, whether this will be done in accordance with relevant laws and regulations (including relevant provisions of the Personal Data (Privacy) Ordinance) and with the consent or authority of the ASR, issuer-client and/or registered holder (as appropriate).

**Note:**

*The matters listed in paragraphs (i) to (vii) above should be similarly considered and addressed when the ASR's service provider is seeking to appoint a sub-contractor that is located, or will perform the outsourced tasks, outside Hong Kong and/or outside the jurisdiction where the service provider is located.*

## **5.5 ASRs to remain responsible and liable for outsourced tasks**

Notwithstanding any outsourcing of an ASR's tasks to a service provider (or a sub-contractor), the ASR remains fully responsible in respect of any matter to which the outsourced tasks relates, and for ensuring compliance with obligations imposed on the ASR under applicable laws and regulations.

**Note:**

- (1) *This section 5 applies irrespective of whether or not the service provider is an affiliate within the same group of companies as the ASR.*
- (2) *When assessing the suitability of outsourcing arrangements between an ASR and an affiliated service provider, the Commission will generally take into account:*
- *the group's organisation and control structures, as well as the specific arrangements between the ASR and its affiliates;*
  - *the ASR's ability to control or influence the actions of the affiliated service provider;*
  - *whether the interests of the ASR (or of its issuer-clients or any registered holders) differ from those of the affiliated service provider;*
  - *whether the intra-group relationship may restrict the ability of the ASR to control or influence the affiliated service provider, and by extension, the ability of the Commission to effectively supervise the ASR; and*
  - *whether the ASR and/or its affiliate may choose not to enforce with rigour the provisions of the contract between them regarding the outsourcing arrangements.*

## 6. Computer systems and facilities

An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.

### 6.1 Systems Integrity<sup>8</sup>

- (a) An ASR should ensure that:
- (i) the computer systems and facilities used by a Share Registrar in connection with its business and operations should have sufficient operational integrity. The Share Registrar should ensure that its operating and information management systems (including electronic data processing (EDP) systems), meet business needs, and operate in a secure and adequately controlled environment that seeks to minimise fraud and disruption; and
  - (ii) key components of the information management its computer systems design and implementation programme should be and facilities are adequately documented, and regularly reviewed and updated to ensure their continued suitability and adequacy taking into account any changes in its business and operations, and relevant regulatory developments.
- Note:**
- At a minimum the following is expected to be documented in respect of the computer systems and facilities:
- (1) its design, development, functions and detailed specifications; and
  - (2) all testing, reviews, modifications, upgrades and rectifications.
- (b) A Share Registrar An ASR should ensure that a periodic review programme is established to comprehensively plan, test and monitor its computer systems' the security, reliability and capacity of its computer systems and facilities.
- (c) A Share Registrar should ensure that system documentation and audit logs are diligently maintained. The audit logs should be reviewed regularly by senior management to detect potential problems and plan preventive measures.

### 6.2 Systems and data security<sup>9</sup>

A Share Registrar An ASR should ensure that the following key principles aspects of computer systems and data security are implemented in respect of its computer systems and facilities:

- (a) proper segregation of employee duties;
- (b) restricted and controlled access to the following, with clear audit logs:

<sup>8</sup> **Note for the purpose of this consultation only:** This section on "Systems Integrity" is based on section 4.3 of the existing Code of Conduct for Share Registrars.

<sup>9</sup> **Note for the purpose of this consultation only:** This section on "Systems and data security" is based on section 4.4 of the existing Code of Conduct for Share Registrars.

- (i) the computer systems and facilities, or any part thereof;
- (ii) any programme or data stored in or accessible through or forming part of such systems or facilities; and
- (iii) any premises where such systems or facilities are located;

**Note:**

*Restrictions and controls on access should cater for remote access as well and, at a minimum, require:*

- (1) ~~use adoption of alpha-numeric-robust and effective passwords rules for access to the computer system~~ (including the use of multiple passwords and system-generated one-time passcodes, where necessary or appropriate);
  - (2) ~~change of passwords at regular intervals; and~~
  - (3) ~~use of an automatic time-out feature for system access.;~~
- (c) implementation of policies and procedures for:
    - (i) granting, modifying and removing user access rights to ensure access is on a need-to-have basis and approved by persons duly authorised to do so; and
    - (ii) regularly reviewing access rights already granted to ensure they remain appropriate;
  - (d) storage of data in a safe and secure systems environment protected against data leakage or loss due to system breakdown, cyber-attack or unauthorised access;
  - (e) use of appropriate encryption technology to ensure secured communication with ~~Clients~~-issuer-clients and ~~or R-Registered Owners of Securities~~ holders, and to protect the confidentiality of information stored in and transmitted from the computer systems or facilities; ~~and~~
  - (f) prompt and appropriate notification to users of the computer systems or facilities of material information relating to their (actual or purported) use of such systems or facilities (eg, system login, password resets, changes to personal particulars, etc);
  - (g) maintenance of audit logs for logging details of user activities on the computer systems and facilities;

**Note:**

*At a minimum, audit logs should reflect, in respect of each user activity, the user ID of the user concerned; the date, time and duration of access and of the activity concerned; and the nature of the activity concerned.*

- (h) regular review of such audit logs by suitably qualified and independent persons to detect potential problems and plan preventive measures, and appropriate reporting of review results to senior management;
- (i) implementation of intrusion detection devices to monitor any unauthorised or abnormal access to the computer systems or facilities, and any unauthorised use or modification of any programme or data stored in or accessible through or forming part of such systems or facilities.;

- (j) implementation of robust and effective fraud monitoring mechanisms to detect suspicious transactions and unusual activities in a timely manner to minimise fraud and forgery; and
- (k) deployment of a secure network infrastructure through proper network segmentation (ie, a Demilitarised Zone with multi-tiered firewalls) to protect critical systems and data.

### 6.3 Cybersecurity

- (a) An ASR should monitor and evaluate security patches or hotfixes released by software provider(s) on a timely basis and, subject to an evaluation of the impact, conduct testing as soon as practicable and implement the security patches or hotfixes as soon as practicable following the completion of testing.
- (b) An ASR should implement and update anti-virus and anti-malware solutions (including the corresponding definition and signature files) on a timely basis to detect malicious applications and malware on critical components of its computer systems and facilities.
- (c) To ensure appropriate contingency procedures<sup>10</sup> can be effectively executed when cybersecurity situations occur, an ASR should make all reasonable efforts to cover possible cyber-attack scenarios (such as distributed denial-of-service (DDoS) attacks, and total loss of business records and/or data belonging or relating to the ASR, its issuer-clients or registered holders resulting from cyber-attacks (eg, ransomware)) in its contingency plan.
- (d) An ASR should define a cybersecurity risk management framework and set out key roles and responsibilities of the staff involved.

**Note:**

*In general, the framework should, as far as reasonably practicable (taking into account the nature and extent of potential cybersecurity threats that might be faced given the structure of the ASR's computer systems and facilities), cover the following responsibilities:*

- (1) *conducting a self-assessment of the overall cybersecurity risk management framework on a regular basis;*
  - (2) *performing periodic security testing to detect security vulnerabilities in its computer systems and facilities;*
  - (3) *monitoring and logging suspicious activities on such systems and facilities to protect them and any data against cyber-attack;*
  - (4) *reviewing significant issues escalated from any cybersecurity incident reporting (whether actual or suspected);*
  - (5) *reviewing major findings identified from internal or external audits or from cybersecurity reviews, and endorsing and monitoring the completion of remedial actions;*
  - (6) *monitoring and assessing the latest cybersecurity threats and attacks; and*
  - (7) *where applicable, reviewing and approving contracts with service providers to whom any tasks have been outsourced.*
- (e) An ASR should establish written policies and procedures specifying the manner in which an actual or suspected cybersecurity incident should be

<sup>10</sup> See also section 4.6 above, which expands on requirements relating to contingency planning.

escalated and reported internally and externally (eg, to issuer-clients, registered holders, the Commission, etc, as appropriate).

- (f) An ASR should provide adequate cybersecurity awareness training to internal users of its computer systems and facilities on a regular basis. When designing the content of the training programme, the ASR should take into account the nature and extent of potential cybersecurity threats it might face.
- (g) An ASR should take all reasonable steps to remind and alert issuer-clients and registered holders about cybersecurity risks, and to recommend preventive and protection measures when using any of its service facilities (eg, that login credentials should be properly safeguarded and cannot be shared).

#### 6.4 Use of authenticated messages

An ASR should, as far as reasonably practicable, use and advocate the use of authenticated messages in its communications with registered holders where such communications are:

- (a) in electronic form;
- (b) personal to a particular registered holder; and
- (c) material to that holder's rights, interests or obligations as a registered holder.

**Note:**

*In general, and as far as reasonably practicable, an ASR is expected to use and advocate the use of authenticated messages where these materially affect:*

- (1) any instructions regarding the transfer, dematerialization or rematerialization of prescribed securities;
- (2) any corporate action entitlements relating to prescribed securities; and
- (3) any proxy instructions relating to prescribed securities.

## 5.7. Information for ~~Clients~~ issuer-clients and registered holders

*An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and registered holders.*

### 5.17.1 Client agreement

~~A Share Registrar shall~~ An ASR should enter into a written agreement with its ~~Clients~~ issuer-clients before providing services to them. ~~Client~~. The written agreement should, ~~as~~ at a minimum, include a description of the scope and nature of the services to be provided ~~to the Client~~, the terms and conditions on which they are to be provided, and the terms and processes for varying, suspending or terminating such services.

**Note:**

*The terms and conditions must also be compliant with applicable laws and regulations. For example, any suspension or termination of a client agreement must also comply with Part 8 of the ASR Rules.*

## 7.2 User agreement

- (a) An ASR should enter into a written agreement with users of its service facilities before making such facilities available to them. The written agreement should set out the terms and conditions on which the facilities are to be made available and, at a minimum, include:
- (i) the identity, address and contact details of each party to the agreement;
  - (ii) a description of the service facilities to be made available to the user, and the purposes for which such facilities may be used (or not used, if applicable); and
  - (iii) sufficient details and information to ensure users are properly informed of how to use the service facilities, their rights and obligations when doing so, and the risks involved.

**Note:**

- (1) *The address(es) provided in the agreement should include:*
  - *in the case of the ASR, at least one place where users can attend physically to make enquiries with or submit instructions and documents to the ASR or its issuer-clients in person; and*
  - *details of any appropriate channels for the parties to make enquiries to verify the identity of the sender of or the authenticity of any messages received.*
- (2) *The details and information should include, for example:*
  - *details of operating hours for using the facilities;*
  - *details of any applicable pre-requisites, limitations and dependencies for using the facilities;*
  - *where the facilities are to be used to send messages to, or receive messages from, the ASR or its issuer-clients, and/or to effect transactions in prescribed securities (eg, to effect transfers, submit dematerialization requests, etc), details of the processing procedure, applicable cut-off and turnaround times (and consequences of missing those times), different service levels, etc;*
  - *details of any fees and charges to be borne by users;*

- *sufficient information for users to understand the risks and responsibilities involved in using the facilities; and*
  - *details of any contingency arrangements relating to the provision or use of the facilities.*
- (b) An ASR should provide a copy of the User Agreement (including any amendments and any other related or supporting documents) to users, and draw to their attention any relevant risks and risk disclosure statements.

**Note:**

*Where a User Agreement is entered into otherwise than on a face-to-face basis, there is generally a higher risk of impersonation. The ASR is expected to ensure that its checks and procedures are adequate in providing reasonable assurance of the identity of the person concerned. This may include, for example, relying on facial recognition technologies to confirm a person's identity.*

### 7.3 No circumvention of legal requirements

An ASR should ensure that it complies with its obligations under each Client Agreement and User Agreement, and that these agreements:

- (a) do not operate to remove, exclude or restrict any rights of an issuer-client or user of its service facilities, or obligations of the ASR, under the law; nor
- (b) include any clause, provision or term which is inconsistent with the ASR's obligations under this Code.

#### 5.27.4 Fees and Charges and Disclosure of fees, charges and related information

- (a) ~~A Share Registrar~~ An ASR should disclose ~~the basis and the amount of fees and charges for services to the relevant Client issuer-client and Registered Owners of Securities~~ registered holder the basis and amount of any fees and charges payable for services provided to them or on their behalf. ~~The fees and charges should, where applicable, comply with requirements set out in the Listing Rules or be reasonable and, if applicable, adhere to the fees recommended by the Federation.~~

**Note:**

- (1) *Where different levels of fees or charges are payable (eg, based on different service levels), all relevant details should be clearly specified.*
  - (2) *Where a percentage-based fee or charge is payable, details of what the percentage is charged against should be clearly specified.*
- (b) As far as reasonably practicable, an ASR should make public any fees or charges payable by registered holders, including in particular fees or charges payable in connection with the following:
- (i) any transactions in prescribed securities handled or processed by the ASR (including any transfer, dematerialization or transmission of prescribed securities); and
  - (ii) any enquiries or other matters handled by the ASR at the request of a registered holder and relating to securities issued by the ASR's issuer-client or to the ASR's service facilities.

### 5-37.5 Information about the ~~Share Registrar~~ : general ASR

~~A Share Registrar~~ An ASR should upon request provide ~~Clients~~ its issuer-clients and registered holders with adequate and appropriate information about its business and operations, including contact details, services available and fees structure.

#### 5.4 ~~Recordkeeping and Reporting~~

- (a) ~~A Share Registrar should at all times maintain each register for which it is responsible properly and accurately. The information for each Registered Owner of Securities should also be properly and accurately maintained. In addition, the registers of securities should be updated in a timely manner. The management of this information, both in physical and electronically stored form should be assigned to qualified and experienced staff members.~~<sup>11</sup>
- (b) ~~A Share Registrar should notify the Federation in writing of the location of the premises at which it conducts its business.~~<sup>12</sup>
- (c) ~~A Share Registrar should establish and maintain record retention policies which ensure that all relevant legal and regulatory requirements are complied with and which enable the Share Registrar, its auditor and regulators to carry out routine and ad hoc comprehensive reviews or investigations.~~<sup>13</sup>
- (d) ~~A Share Registrar should provide information in relation to the provision of its services to the Commission upon request.~~<sup>14</sup>

#### 5.5 ~~Communications between the Client and Registered Owners of Securities through the Share Registrar~~

**[Note for the purpose of this consultation only: This section 5.5 has been moved and is now paragraph 3 of Schedule 2 below.]**

<sup>11</sup> **Note for the purpose of this consultation only:** This paragraph (a) has been incorporated into paragraphs 1.1(b) and 1.1(c) of Schedule 2 below.

<sup>12</sup> **Note for the purpose of this consultation only:** This paragraph (b) will no longer be relevant as it is proposed that share registrars be directly regulated by the SFC, and the location of their premises reported to the SFC – see section 101AAK of the SFO (introduced under section 7 of the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021) and section 19 of the proposed ASR Rules.

<sup>13</sup> **Note for the purpose of this consultation only:** This paragraph (c) will no longer be relevant as it is proposed that share registrars be subject to more specific and detailed record-keeping obligations under the proposed ASR Rules – see Part 4 of the proposed ASR Rules.

<sup>14</sup> **Note for the purpose of this consultation only:** This paragraph (d) will no longer be relevant as the SFC will have powers to ask for such information under the SFO – eg, under section 180 of the SFO, as amended by section 8 of the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021.



## 6.8. Conflicts of Interest

*An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that issuer-clients and registered holders are treated fairly.*

### 6.18.1 Conflicts of Interest

~~A Share Registrar~~ An ASR should ~~at all times~~ act in the best interests of its ~~Clients~~ issuer-clients, registered holders and the integrity of the market. ~~The Share Registrar~~ An ASR should try to avoid conflicts of interest (whether actual or potential), and when conflicts cannot be avoided, it should ensure that the parties involved are informed of the conflict, ~~and~~ that the interests of its ~~Clients~~ issuer-clients or registered holders (as the case may be) are ~~fairly~~ treated fairly, and that the integrity of the market is safeguarded.

**Note:**

*While an ASR may be contractually obligated to comply with requests or directions from its issuer-clients, it must also have due regard to safeguarding the integrity of the market. Where requests or directions from an issuer-client might jeopardise the integrity of the market, the ASR is expected to highlight its concerns to the issuer-client and endeavour, as far as reasonably practicable, to find an alternative solution that addresses conflicting interests and concerns.*

## 8.2 Policies and procedures

An ASR should establish, maintain and implement policies and procedures for identifying and dealing with conflicts of interest (whether actual or potential). Such policies and procedures should also specify steps for avoiding such conflicts.

### 6.28.3 Confidentiality

~~A Share Registrar~~ An ASR should take all reasonable steps to preserve confidentiality in respect of any personal or confidential information obtained by it in the performance of its functions and obligations as an ASR. In particular, it should not:

- (a) disclose information ~~in relation~~ relating to any of its ~~Clients and~~ issuer-clients or any ~~Registered holder~~ Owners of Securities to any person; nor
- (b) use ~~this~~ such information for any purpose,

other than in the performance of its functions and obligations as ~~a Share Registrar~~ an ASR unless such disclosure or use ~~if it~~ is expressly or impliedly authorised by ~~its~~ ~~Clients~~ the relevant issuer-client ~~and/or~~ ~~the relevant Registered Owners of Securities~~ registered holder (as the case may be), or is required or permitted by ~~or under~~ any applicable laws, ~~rules,~~ and regulations, ~~orders or by any regulator.~~

## 7.9. Safeguarding of ~~client~~ **third-party assets**

*An ASR should ensure that third-party assets are promptly and properly accounted for and adequately safeguarded.*

### 7.19.1 Establishment of review processes

~~A Share Registrar~~ An ASR should establish and maintain appropriate procedures (~~this may include~~, where appropriate, regular reconciliation) to prevent or detect errors, omissions, fraud and other unauthorised or improper activities in ~~the its business and operations of the Share Registrar~~ as an ASR.

**Note:**

*The ASR is expected to:*

- (1) regularly reconcile its internal records and reports with those issued by relevant third parties (eg, HKSCC, banks, etc) to identify and highlight for action any errors, omissions or misplacement of assets; and*
- (2) ensure that such reconciliations are checked/reviewed and approved by appropriate senior staff member(s).*

### 7.29.2 Audit ~~t~~ Trails

Adequate audit trails should be maintained which will enable ~~a Share Registrar an~~ ASR to detect and investigate suspected improprieties in ~~the its business and operations of the Share Registrar~~ so as to assist the ~~Share Registrar~~ ASR in the prevention of any improprieties.

### 7.39.3 Safekeeping of documents and ~~Client Assets~~ **third-party assets**

- (a) ~~A Share Registrar shall~~ An ASR should properly store and safe-keep ~~Client Assets third-party assets. The Share Registrar~~ It should also establish appropriate procedures for the distribution of dividends, warrants and other entitlements, and for the handling of ~~security~~ documentation (such as blank ~~security certificates title instruments~~ or cheques), securities, seals and impressions and information relating to ~~Clients issuer-clients and Registered Owners of Securities~~ registered holders.
- (b) An ASR should also establish ~~P~~ procedures ~~should be established by the Share Registrar~~ to document the handling ~~of or~~ movements of ~~Client Assets and the assets of the Registered Owners of Securities~~ **third-party assets**. This may include procedures for:
  - (i) ~~C~~ clear identification of staff member(s) and representatives of ~~Clients issuer-clients (for Client Assets)~~ with authority to make additions, deletions or changes or otherwise part with possession of ~~Client Assets third-party assets~~, and the parameters of such authority; ~~The authority should be checked with respect to each movement recorded in the Client registers and cheque withdrawal requests;~~
  - (ii) ~~U~~ use of standardised and sequentially numbered documents or other appropriate methods to acknowledge and account for asset movements ~~within Client records;~~

(iii) ~~S~~secure storage of the ~~Share Registrar's-ASR's~~ assets and ~~Client Assets~~ third-party assets, as well as other important ~~security or bank~~ documents and controlled forms (e.g. eg, cheque books, ~~title instruments, etc~~) which are kept at the ~~Share Registrar's-ASR's~~ premises;

(iv) ~~P~~rompt depositing of cheques, cashier orders and other negotiable instruments and securities into appropriate account(s); ~~at banks or securities depositories.~~

**Note:**

*During the period ~~in which physical scrip~~ when any title instrument or cash is held at the ~~Share Registrar's-ASR's~~ premises, routine audits should be conducted to ensure proper safeguarding of the ~~Share Registrar's-ASR's~~ assets and ~~Client Assets~~; third-party assets.*

(v) ~~Payment of cheques in relation to dividend~~ payments or refunds ~~from~~ in relation to dividends, public offer~~ings~~ applications, rights issues or other corporate actions, and whether payable to an issuer-client or registered holder;

**Note:**

*(1) In the case of application monies relating to public offers, the ASR is expected to have adequate arrangements to protect such monies until the allotment of the securities concerned to successful applicants and the despatch of refund monies to unsuccessful and partially successful applicants is completed. This includes holding the application monies in a separate account on trust for the applicants so as to ensure that the monies belong beneficially to the applicants, and that the issuer is entitled to receive only the amount representing payment for allotted securities.*

*(2) Where any payment is made by cheque, ~~S~~such cheques should be crossed "Account Payee Only" and made payable to the ~~relevant registered holder Registered Owner of the Securities~~ or ~~the~~ unsuccessful applicant in a public offer~~ing~~ (as applicable).*

(vi) ~~M~~aintenance and updating of ~~the~~ registers of ~~securities~~ holders that it is responsible for in a timely and accurate manner; -

(vii) ~~C~~lear definition and communication of authorisation requirements and authorised ~~cheque~~ signatories and applicable authority parameters to relevant banks.

**Note:**

*A ~~Share Registrar~~ An ASR should consider the need to require two or more authorised signatures. A ~~Share Registrar's~~ cheques should not be signed authorised signatories, and should not make any payment (whether by cheque or otherwise) unless the date, specified payee and amount portions of the cheques or other payment instruction (as the case may be) are properly filled in.*

- (viii) ~~The existence of appropriate controls with respect to access to computer systems, facsimile transmission and telex devices where such devices are used to transmit important information. Clear policies should be established regarding confidentiality of passwords (e.g. passwords should be regularly changed and relevant passwords disabled upon a staff member(s) leaving the employment of the Share Registrar).~~

Draft for Consultation

## 8.10. Compliance

*An ASR should comply with all regulatory requirements applicable to the conduct of its business and operations so as to promote the best interests of its issuer-clients and the integrity of the market. In addition, an ASR should provide securities registrar services in a manner which enables its issuer-clients to comply with their obligations under applicable laws and regulations.*

### 8.10.1 Compliance

- (a) ~~A Share Registrar shall~~ An ASR should comply with, and implement and maintain measures to comply with, ~~the provisions of this Code and all applicable laws, codes and guidelines issued by any regulatory body which may be in force from time to time and the Share Registrar~~ all applicable laws and regulations. Such measures should also aim to ensure that ~~its~~ the ASR's employees and agents comply with ~~them~~ such laws and regulations.

**Note:**

*Compliance with applicable laws and regulations includes compliance with this Code, the Commission's Guidelines on Electronic Public Offers, and (where the ASR is a participant of HKSCC) the rules and operational procedures of HKSCC.*

- (b) In addition, ~~a Share Registrar~~ an ASR should provide ~~share registry securities registrar~~ services in a manner which ~~enables its Clients to comply~~ with ~~the any related~~ requirements ~~relating to share registry services that are~~ imposed on its ~~Clients by the Listing Rules~~ issuer-clients under applicable laws and regulations, and with the requirements set out in Schedule 2 to this Code.

**Note:**

*Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from registered holders including instructions to transfer, dematerialize or rematerialize prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers (eg, requirements under relevant company law, the USM Rules, the rules of any exchange on which prescribed securities issued by the issuer are listed or traded, etc), or where there are reasonable market expectations as to how such functions or obligations are to be performed, the ASR is expected to:*

- (1) perform the functions and obligations in a manner that complies with such requirements and (as far as reasonably practicable) such expectations; and*
- (2) advise its issuer-client of any potential or actual breach of such requirements or expectations.*

- ~~(c) As long as a Share Registrar performs share registry services for its Clients, it shall continue to be a member of the Federation.~~

- (c) An ASR will be responsible for the acts and omissions of its employees and agents in the conduct of the ASR's business and operations.

### 8.210.2 Maintenance of audit function

- (a) ~~A Share Registrar~~ An ASR should maintain an audit function to evaluate and report on the adequacy and effectiveness of its management, operations and internal controls. The audit function should conduct regular reviews and audits to detect activities or conditions which may breach, or contribute to non-compliance by the ~~Share Registrar~~ ASR and/or its staff ~~of, with,~~ legal and

regulatory requirements, ~~as well as with its or its~~ own policies and procedures. The ~~relevant~~ work and procedures of the internal audit unit should be periodically reviewed by external auditors.

- (b) ~~Wherever possible, an ASR's compliance and internal audit functions should be effectively segregated from and independent of its operational and supervisory functions, and should report directly to senior management. Where the size of the Share Registrar ASR does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors.~~
- (c) An ASR should ensure that:
- (i) there is adequate planning, control and recording of all audit and review work performed;
  - (ii) timely reporting of findings, conclusions and recommendations to senior management; and
  - (iii) matters or risks highlighted in relevant reports are followed up and resolved satisfactorily.

### 8-310.3 Handling of ~~c~~Complaints and other requests

- (a) ~~The Share Registrar~~ An ASR should have properly documented policies and procedures in relation to the timely handling of complaints and other requests from ~~Clients issuer-clients~~ or ~~R~~registered ~~Owners of Securities~~ holders. The ASR should also review such policies and procedures regularly, and update them as necessary, to ensure their continued suitability and adequacy taking into account changes in the ASR's business and operations, and relevant regulatory developments.

**Note:**

*In general, an ASR should have due regard to the following when assessing the suitability and adequacy of its policies and procedures for handling complaints and other requests:*

- (1) *whether there is sufficient senior management supervision of its complaints handling policies and procedures (including the setup, implementation and on-going monitoring of its complaints handling process);*
- (2) *taking into account the scale of the ASR's operations (eg, the number of issuer-clients it serves, or the number of issuer-clients with a significant number of registered holders, etc) and the nature and volume of complaints and requests received, whether there is a need to put in place dedicated resources to handle complaints and other requests or enquiries;*
- (3) *whether serious or high-impact complaints are properly escalated internally to senior management and/or reported to the Commission (eg, complaints regarding the same or similar issue and involving or affecting multiple registered holders, complaints concerning possible fraud or misconduct by the ASR's staff, etc);*
- (4) *whether key information about the ASR's policies and procedures for handling complaints and other requests (eg, information about how complaints or requests can be lodged, the expected processing timeframes under normal circumstances and when a response may be expected, etc) is disclosed or otherwise readily accessible to the ASR's issuer-clients and registered holders, and presented in clear and understandable language;*
- (5) *whether proper records of all complaints are kept (including details of the substance of each complaint, follow-up actions taken in respect of complaints relating to issuer-*

*clients, registered holders and third-party assets, and how the complaint was resolved); and*

*(6) whether clear and effective record retention policies are established and maintained to ensure that relevant documents and records are readily accessible and available to senior management, and (where applicable) to the Commission.*

(b) ~~The Share Registrar~~ An ASR should ensure that:

- (i) ~~C~~omplaints from ~~C~~lients-issuer-clients and ~~R~~egistered Owners of ~~S~~ecurities-registered holders are handled in a timely and appropriate manner;
- (ii) ~~S~~steps are taken to investigate and respond to ~~such~~-complaints in a timely and appropriate manner;
- (iii) ~~W~~here a complaint ~~is not~~ cannot be dealt with promptly, the complainant is advised of any further steps, which may be available to ~~him under the regulatory system (this may include the complainant, such as~~ advice that the complaint may be made to the Commission); and
- (iv) ~~In the event that if~~ the complaint cannot be satisfactorily resolved between the ~~Share Registrar~~ ASR and the complainant, the complainant is advised ~~that he may, if he so wishes,~~ of the option to escalate the complaint to the Commission.

**Note:**

- (1) An ASR is expected to properly review the subject matter of each complaint and ensure that a complaint is investigated and assessed thoroughly, fairly and objectively taking into account all facts and circumstances of the complaint.*
- (2) If the subject matter of a complaint relates (or may relate) to other issuer-clients and/or registered holders, or raises issues of broader concern, the ASR is expected to take steps to investigate and remedy such issues, notwithstanding that the other clients or holders may not have filed complaints with the ASR.*
- (3) Where the ASR identifies any recurring or systemic problems, the ASR is expected to investigate to identify the root cause and rectify the problem accordingly.*
- (4) The ASR is expected to ensure that investigation results are communicated to complainants clearly and promptly.*

(c) An ASR should ensure that its policies and procedures for handling complaints and other requests are clearly communicated to all relevant staff and are strictly enforced. Relevant staff should also be provided with adequate training on such policies and procedures. Complaints should be investigated by staff who are not directly involved in the subject matter of the complaint.

~~(c) — A Share Registrar should at all times be responsible for the acts or omissions of his employees and agents in the conduct of its business.~~<sup>15</sup>

**Note:**

*Frequent complaints against an ASR may raise concerns about the adequacy of the ASR's internal controls, conduct, operational capabilities and management supervision.*

<sup>15</sup> **Note for the purpose of this consultation only:** The original paragraph (c) here has been moved and is now section 10.1(c) above.

#### 8.410.4 Notification

- (a) ~~A Share Registrar~~ An ASR should promptly notify ~~the Federation and the~~ Commission of any occurrences of material non-compliance by the ~~Share Registrar~~ ASR, or its ~~staff~~ employees, agents or service providers, with ~~relevant legal and regulatory requirements, including this Code~~ applicable laws and regulations.
- (b) An ASR should establish and maintain policies and procedures for escalating incidences of material non-compliance to senior management and reporting them to the Commission.

#### 10.5 Incidents management

An ASR should establish, maintain and implement incidents management policies and procedures for:

- (a) detecting occurrences of operational incidents and service facilities incidents;
- (b) assessing and classifying the severity of such incidents as **major**, **medium** or **minor**;

**Note:**

*In determining the severity of an operational incident or service facilities incident, the ASR is expected to consider, at a minimum, how great an impact the incident will (or is likely to) have on the following:*

- (1) *the ASR's continued smooth provision of securities registrar services (including its continued smooth operation of any service facilities);*
- (2) *the availability, reliability or integrity of information in critical databases (including any client and transaction databases);*
- (3) *the continued operation of fair and orderly markets;*
- (4) *the ASR's ability to comply, or to continue to comply, with its obligations under applicable laws and regulations (including this Code);*
- (5) *the nature and extent of any impact on the property, rights and interests of issuer-clients and/or registered holders, including the number of such clients or holders who are (or are likely to be) affected; and*
- (6) *the likelihood of attracting significant negative media attention, and its potential impact on the reputation of the ASR or the Hong Kong market.*

*The ASR is generally expected to classify an incident as "major" if its occurrence will have (or is likely to have) a serious or significant adverse impact on any of the above; and as "medium" if its occurrence will have (or is likely to have) an adverse impact on any of the above but not one which is serious or significant. Only incidents that are (or are likely to be) technical and easily rectified are expected to be classified as "minor".*

- (c) identifying and implementing response measures to mitigate damage arising from such incidents, and remedial or rectification measures for resolving issues or problems identified;
- (d) escalating to senior management, for information and/or decision, the occurrence of, and matters relating to, such incidents; and
- (e) keeping the Commission informed of the occurrence of, and matters relating to, such incidents.



**Note:**

*Section 18 of the ASR Rules deals with the reporting of operational incidents and service facilities incidents to the Commission. In determining whether, and how quickly, any such incident should be reported to the Commission, the ASR should take into account all relevant facts and circumstances, including in particular, the nature and severity of the incident. In general, the Commission expects that:*

- (1) if the severity of an incident is classified as “major” or “medium”, it will be reported to the Commission immediately upon the ASR becoming aware of it — ie, as soon as reasonably practicable after the key person-in-charge of monitoring the normal functioning of the service or service facility concerned has become aware and assessed that the time needed to investigate or make enquiries exceeds what might be considered reasonable in the circumstances;*
- (2) if the severity of an incident is classified as “minor”, it will be reported in the ASR’s next quarterly returns to the Commission.*

Draft for Consultation

## 9.11. Responsibilities of Senior Management

*The senior management of an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ASR.*

### 9.11.1 Responsibilities of senior management

The senior management of a Share Registrar an ASR should:

- (a) understand the nature of the Share Registrar's ASR's business and operations (including any outsourcing arrangements);
- (b) understand and properly manage the risks associated with the ASR's business and operations, including performing periodic evaluation of its risk management processes; and
- (c) ~~its~~ ensure that appropriate and adequate internal control and risk management policies and procedures are in place in accordance with applicable laws and regulations and to guard against such risks.

**Note:**

*Internal control and risk management policies and procedures are expected to be updated on an on-going basis as necessary, and to seek to protect all aspects of the ASR's business and operations, maintain the continued smooth functioning of its services and facilities, and ensure compliance with its obligations under applicable laws and regulations (including this Code).*

## 11.2 Access to information and advice

The senior management of an ASR should clearly understand the extent of their authority and responsibilities, and in that respect:

- (a) have access to all relevant information about the ASR's business and operations on a timely basis; and
- (b) have available to them, and seek where appropriate, all necessary advice on such business and operations and on their own responsibilities.

## 11.3 Responsibility of individuals

In determining the degree of responsibility of a particular individual, ~~General Principle 7 will be applied.~~ the Commission will give due regard to the factors referred to in section 1.2(b) above.

## 10. Disciplinary Proceedings

### 10.1 The Share Registrars' Disciplinary Committee ("Disciplinary Committee")

- (a) The Disciplinary Committee is a committee of the Commission established under section 8 of the Securities and Futures Ordinance, Cap. 571.
- (b) The Disciplinary Committee shall hear and determine disciplinary matters in the first instance.
- (c) The Disciplinary Committee shall consist of up to 26 members of whom up to 4 may be Executive Directors or staff of the Commission and the balance representatives of HKEx, financial institutions and other constituencies with an interest in the share registrar industry.
- (d) The quorum for the Committee is 5 including a Chairman. No more than 2 members who are Executive Directors or staff of the Commission may sit on any disciplinary hearings.
- (e) Members of the Committee are appointed and may be removed by the Commission. They shall normally hold office for a year but may be re-appointed at the end of each term.
- (f) The Committee may co-opt other persons to assist in specific circumstances.
- (g) The Committee shall have a Chairman and one or more Deputy Chairmen, who may not be Executive Directors or staff of the Commission. The Chairman of each hearing of the Disciplinary Committee shall either be the Chairman or a Deputy Chairman of the Committee, or if neither is available, such other member as may be appointed by the Chairman. The Chairman of each hearing of the Committee will have a deliberative and casting vote.
- (h) The Committee will appoint a secretary who will be a staff member of the Commission.
- (i) Each member of the Committee and where applicable, his firm is required to comply with conflict of interest guidelines issued by the Commission from time to time.

### 10.2 Disciplinary Proceedings

- (a) The Executive may institute disciplinary proceedings against a Share Registrar, members of its senior management or any person in its employment before the Disciplinary Committee when it considers that there has been a breach this Code.
- (b) Paragraph 10.2(a) shall not prejudice the right of the Executive to institute disciplinary proceedings in relation to breaches of this Code by a Share Registrar who was at the relevant time a Share Registrar but has since ceased to be, if the Executive considers that there are reasonable grounds to do so.
- (c) Each Share Registrar shall cooperate with the Federation, the Commission, the Executive, the Disciplinary Committee and the Disciplinary Appeals

~~Committee and provide such assistance as they (or any of them) may require for the purposes of disciplinary proceedings and the implementation of disciplinary decisions under this Code.~~

- ~~(d) The Executive may itself deal with a disciplinary matter if the party to be disciplined agrees to the disciplinary action proposed to be taken by the Executive.~~

### **10.3 Penalties the Disciplinary Committee may recommend**

~~Where the Disciplinary Committee finds that there has been a breach of this Code, it may impose one or more of the following penalties –~~

- ~~(a) revoking the Share Registrar's membership with the Federation. Where a revocation is imposed, the revocation shall not take effect earlier than a date specified by the Disciplinary Committee taking into consideration the time required by Clients of the Share Registrar to transfer their business to another Share Registrar and, where applicable, the time required by the Share Registrar to wind down its business with a view to ceasing its share registration operations;~~
- ~~(b) prohibiting the Share Registrar from soliciting or accepting new Clients and/or new business for existing Clients for such period and on such terms as the Disciplinary Committee considers fit. Where a prohibition from soliciting or accepting new business from existing Clients is imposed, the Disciplinary Committee shall specify the types of new businesses that will be subject to the prohibition taking into consideration the contractual agreements the Share Registrar has with its existing Clients and the relevant customary practices of the share registry business;~~
- ~~(c) privately or publicly reprimanding the Share Registrar or member of staff of the Share Registrar;~~
- ~~(d) requiring the Share Registrar to take remedial action within a prescribed period and specifying the consequences for the Share Registrar's failure to do so; and~~
- ~~(e) such other action against the Share Registrar as the Disciplinary Committee considers appropriate in the circumstances.~~

~~A Share Registrar whose membership has been revoked in accordance with this paragraph shall assist its Clients in promptly and efficiently transferring their respective businesses to another Share Registrar.~~

### **10.4 Hearings of the Disciplinary Committee**

- ~~(a) Notice of hearing shall be given in writing to the person under inquiry or investigation at least 14 business days prior to the date of the hearing. The written notice of hearing shall be accompanied by details regarding the reasons for the hearing.~~
- ~~(b) Such person shall have the right to attend the hearing in person or by his/its solicitor. Where the person a corporation, an officer or employee duly authorised by the corporation may attend the hearing on its behalf. The~~

~~person may either present his/its own case to the Disciplinary Committee or he/it may have such case presented by his/its solicitor on his/its behalf.~~

- ~~(c) — The Disciplinary Committee may inquire into any matter it considers relevant to each case.~~
- ~~(d) — Hearings shall be informal and conducted in private. The rules of evidence shall not apply to the hearing and the Disciplinary Committee may receive any evidence which it considers relevant to the case in such manner or by such means as the Disciplinary Committee considers fit. The Disciplinary Committee shall direct its own proceedings and make any inquiries it deems relevant or appropriate. Parties to the proceedings will be advised of the procedural rules applicable to the proceeding in advance of the hearing date.~~
- ~~(e) — The parties shall set out their case briefly in writing prior to the hearing date and the Executive shall submit a written summary of the issues. The parties, including the Executive, may call such witnesses as they consider necessary.~~
- ~~(f) — All parties are entitled to be present throughout the hearing and to see all papers submitted to the Disciplinary Committee. However, where a party may wish to present evidence to the Disciplinary Committee which is of a confidential commercial nature, the Disciplinary Committee may, if it is satisfied that such course is justified, be prepared to hear the evidence in question in the absence of some, or all, of the other parties involved. Parties and the Executive shall be absent during the Disciplinary Committee's deliberation on the case. Representations by Clients of the Share Registrar under inquiry or investigation may be presented in writing and heard by the Disciplinary Committee in their absence.~~
- ~~(g) — If a person under inquiry or investigation fails to appear at the hearing by himself or by an authorized representative, the Disciplinary Committee shall be entitled to decide the case in his absence.~~
- ~~(h) — The Disciplinary Committee may at any time either on its own initiative or at the request of a party to the hearing adjourn the hearing on such terms as it considers fit.~~
- ~~(i) — As proceedings before the Disciplinary Committee are private, none of the parties to the proceedings shall disclose any details of the proceedings to any other person including the media and such persons shall not make use of any information acquired during the course of the proceedings for any other purpose save those connected with the proceedings or in accordance with paragraph 10.11 below.~~

#### **~~10.5 Findings and recommendation to be made to Federation~~**

~~If the Disciplinary Committee is satisfied that the allegations against a Share Registrar are proved, it shall make a finding of fact and impose a penalty against the Share Registrar or other person as it considers appropriate subject to paragraph 10.3. The written finding of fact and penalty with reasons therefore shall be served on the person being disciplined and the Federation within 7 business days of the Disciplinary Committee's decision and subject to confidentiality considerations, will normally be published in accordance with paragraph 10.11 below.~~

## **10.6—Appeals**

- (a) Any person against whom the Disciplinary Committee has imposed a penalty may appeal to the Disciplinary Appeals Committee in respect of the penalty imposed by the Disciplinary Committee.
- (b) An appeal should be made in writing setting out the reasons and grounds for appeal and attaching a copy of the Disciplinary Committee's decision. These should be served on the Disciplinary Appeals Committee within 21 business days after the service of the Disciplinary Committee's written decision under paragraph 10.5.
- (c) The appellant shall lodge a copy of the appeal with the Federation and the Executive.

## **10.7—The Share Registrars' Disciplinary Appeals Committee ("Disciplinary Appeals Committee")**

- (a) The Disciplinary Appeals Committee is a committee of the Commission established under section 8 of the Securities and Futures Ordinance, Cap. 571.
- (b) The Commission shall constitute the Disciplinary Appeals Committee when an appeal is lodged with the Disciplinary Appeals Committee or as required. The Disciplinary Appeals Committee shall review decisions made by the Disciplinary Committee for the sole purpose of determining whether any sanction imposed by the Disciplinary Committee was unfair or excessive based on the Disciplinary Committee's findings of fact.
- (c) The Chairman and the Deputy Chairman, each of whom shall be a qualified barrister or solicitor, shall be appointed by the Commission. The other members of the Disciplinary Appeals Committee shall consist of members of the Disciplinary Committee other than the representatives of the Commission, and any other persons appointed by the Commission who have legal training and experience.
- (d) Each hearing of the Disciplinary Appeals Committee is presided by the Chairman or Deputy Chairman; or another member of the Disciplinary Appeals Committee who has legal training and experience and who is designated by the Chairman when he considers it inappropriate that he or the Deputy Chairman should chair a particular hearing.
- (e) Each hearing of the Disciplinary Appeals Committee shall consist of 3 members, namely the person presiding over the hearing and 2 members who did not participate in the hearing before the Disciplinary Committee.

## **10.8—Findings and recommendation which the Disciplinary Appeals Committee may make**

The Disciplinary Appeals Committee may confirm, vary or reverse the penalty recommended by the Disciplinary Committee. The decision of the Disciplinary Appeals Committee shall be final and binding on the parties in question.

#### **10.9 Hearings**

- (a) — ~~The Disciplinary Appeals Committee shall direct its own proceedings and may make inquiries which it considers relevant or appropriate. The Disciplinary Appeals Committee shall be guided in the way it conducts its proceedings by the procedural rules applicable to the Disciplinary Committee.~~
- (b) — ~~The Disciplinary Appeals Committee may refuse to hear any appeal which it considers frivolous.~~

#### **10.10 Notification of finding and recommendations**

~~The Disciplinary Appeals Committee shall serve its written decision with reasons therefore on the appellant and the Federation within 7 business days after the hearing of the appeal is concluded.~~

#### **10.11 Publication of rulings**

- (a) — ~~Subject to confidentiality considerations, the Disciplinary Committee and the Disciplinary Appeals Committee may publish their rulings and the reasons for them. All rulings shall be given to the parties in accordance with paragraph 10.5. Thereafter, rulings suitable for publication will then be constituted as written announcements and will be published as promptly as possible. None of the parties or persons appearing at the relevant hearing before the Disciplinary Committee or the Disciplinary Appeals Committee shall make any announcement of the ruling before the public announcement by the Disciplinary Committee or the Disciplinary Appeals Committee. Such persons may, after the public announcement, comment on it but such comments should not contain any information about the proceedings or make any reference to the text of the ruling or the reasons for it in terms other than those used in the public announcement.~~
- (b) — ~~Notwithstanding paragraph 10.11(a), the Federation may, in implementing a decision made by the Disciplinary Committee or the Disciplinary Appeals Committee under section 10.3(a) or (b), make a public announcement after the Disciplinary Committee or the Disciplinary Appeals Committee has made its public announcement. The public announcement made by the Federation should not contain any information about the proceedings or make any reference to the text of the ruling or the reasons for it in terms other than those used in the Disciplinary Committee's or the Disciplinary Appeals Committee's public announcement.~~

#### **10.12 The Federation to implement recommendations made by the Disciplinary Committee or the Disciplinary Appeals Committee**

- (a) — ~~The Federation shall implement any decision made by the Disciplinary Committee or, as the case may be, the Disciplinary Appeals Committee under this Section 10 to revoke a Share Registrar's membership with the Federation or to prohibit a Share Registrar from soliciting or accepting new Clients and/or new business from existing Clients.~~
- (b) — ~~The Federation shall not take any disciplinary action against a Share Registrar before the expiry of the period for appeal under paragraph 10.6 or if~~

~~an appeal has been submitted pursuant to this section, until the written decision of the Disciplinary Appeals Committee has been served on the Federation.~~

- ~~(c) The Commission shall give assistance and/or directions as the Federation may from time to time reasonably request for the purpose of implementing a decision of the Disciplinary Committee or the Disciplinary Appeals Committee.~~

Draft for Consultation



## Schedule 1: Maximum levels for certain fees and charges

	Description of service	Service level	Maximum fee / charge
1.	Setting up of a USI facility with an ASR	[ ]	[ ]
2.	Dematerialization of prescribed securities	[ ]	[ ]
3.	Transfer of prescribed securities (held or to be held in uncertificated form)	[ ]	[ ]

Draft for Consultation

## Schedule 2: Requirements relating to obligations of issuer-clients

### 1. Maintenance of issuer-clients' register of holders

#### 1.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of how their registers of holders should be kept (**Issuers' ROH requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), the USM Rules and the Securities and Futures (Stock Market Listing) Rules (Cap 571V). In practice, such registers (where they relate to prescribed securities) are kept and maintained by the issuer's ASR. Where this is the case, the ASR must ensure that:

- (a) each register of holders is kept and maintained in Hong Kong;

**Note:**

- (1) *Insofar as the ASR is concerned, a register of holders will be regarded as being "maintained in Hong Kong" if any changes to the register are initiated and controlled in Hong Kong and by persons located in Hong Kong. Such changes should be final, and not dependent on the need for further input or adjustments elsewhere.*
- (2) *Where the servers that store data comprising a register of holders are physically located outside Hong Kong, the Commission will take into account all relevant facts and circumstances to determine if the register can still be regarded as being maintained in Hong Kong, including:*
- *the actual systems set-up, and any arrangements and interdependencies between the ASR's systems in Hong Kong and any systems outside Hong Kong;*
  - *the data that will be stored in Hong Kong, and the extent to which matters relating to maintenance of the register will be controlled and decided in Hong Kong;*
  - *the location of employees and agents responsible for the operation of systems used in connection with the maintenance of the register;*
  - *the respective roles of the ASR's senior management and IT personnel in Hong Kong and overseas; and*
  - *all related risk management and contingency arrangements.*

*A key focus will be to establish whether the register of holders will be fully accessible and controlled from Hong Kong at all times, and whether any systems issues that arise can be resolved promptly (notwithstanding any time zone differences) and with minimal impact to investors in Hong Kong.*

- (3) *The Commission will generally regard the following as indicating that a register of holders is not maintained in Hong Kong:*
- *if access to the register of holders can be controlled or denied by a person located or an event occurring outside Hong Kong;*
  - *if key processes (such as transfers, dematerialization, or corporate actions) affecting entries in the register are substantively conducted or handled by systems or persons located outside Hong Kong;*
  - *if changes to the register cannot be regarded as final pending some action or confirmation from a person located outside Hong Kong; or*

- *if key IT support is located outside Hong Kong, or if systems issues affecting accessibility or proper maintenance of the register cannot be identified or resolved without assistance from persons located outside Hong Kong and those persons cannot be reached promptly.*
- (b) each register of holders is kept and maintained properly, accurately and in a manner which complies with all applicable laws and regulations, including the Issuer's ROH requirements and this Code;  
**Note:**  
*In particular, the ASR should ensure that registers properly and accurately reflect prescribed securities as being in uncertificated form where this is the case. The ASR should also ensure that registers are kept for the duration required under applicable laws and regulations. Where different laws and regulations prescribe different durations, the ASR should ensure that the most stringent requirement (ie, longest duration) is fulfilled.*
- (c) each register of holders is updated in a timely manner, and the management of information in the register is assigned to qualified and experienced staff;
- (d) all reasonably necessary procedures are adopted to:
  - (i) guard against falsification of any entries in a register of holders, and to facilitate discovery of any such falsification; and
  - (ii) identify and promptly rectify any errors, inaccuracies or omissions of any entries in a register of holders;

**Note:**

*In this regard, the ASR is expected to take all reasonable steps to comply with arrangements agreed with HKSCC for ensuring the accuracy of HKSCC's records of prescribed securities held by it or its nominee (HKSCC records), including arrangements for:*

- (1) *notifying or confirming to HKSCC details of any changes to entries in a register of holders reflecting prescribed securities held by HKSCC or its nominee (eg, following a transfer, dematerialization, corporate action, etc); and*
- (2) *facilitating HKSCC's reconciliation of entries in the HKSCC records with entries in relevant registers of holders.*
- (e) all reasonable assistance is rendered to facilitate the inspection and taking of copies of entries in any register of holders as permitted by applicable laws and regulations; and
- (f) registers of holders are not closed for any period that is longer than that permitted by applicable laws and regulations.

## 1.2 External electronic data storage provider

Where an ASR uses the services of an external electronic data storage provider (ie, EDSP) to store data constituting or relating to a register of holders, the ASR must:

- (a) conduct:

(i) proper initial due diligence on the EDSP, and the EDSP's controls vis-à-vis infrastructure, personnel and processes for delivering data storage services; and

(ii) regular monitoring of the EDSP's service delivery,

which due diligence and monitoring should be commensurate with the criticality, materiality, scale and scope of the EDSP's service, and take into account requirements under sections 5 and 6 of this Code (on, outsourcing and on computer systems and facilities, respectively);

(b) ensure that the EDSP is suitable and reliable having regard to the EDSP's operational capabilities, technical expertise and financial soundness; and

(c) ensure that all contents of registers of holders stored using the EDSP's services remain fully and promptly accessible at the ASR or Commission's reasonable request, and that an offline backup copy is maintained as required under section 4.6(b) of this Code.

### 1.3 Delisting

Where an ASR maintains the register of holders of prescribed securities and the listing status of such securities has been, or is in the process of being, cancelled, the ASR must take all reasonable steps to:

(a) update the register to reflect that, upon such cancellation, the securities are no longer in uncertificated form; and

(b) notify every person who immediately prior to the cancellation is registered in the register as a holder of the securities of the following:

(i) the number of units of the securities registered in their name immediately prior to the cancellation;

(ii) that such units ceased or will cease to be in uncertificated form upon such cancellation; and

(iii) whether the holder is entitled to obtain a title instrument in respect of such units, and if so, the process for doing so.

## 2. Transfer and dematerialization of prescribed securities

### 2.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of the processes for transferring or dematerializing prescribed securities (**Issuers' transfer and dematerialization requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), and the USM Rules. In practice, such processes will be handled by the issuer's ASR. Where this is the case, the ASR must ensure that:

(a) all transfers and dematerialization requests submitted to the ASR for registration are acknowledged and processed promptly and in a

manner that complies with all applicable laws and regulations, including the Issuer's transfer and dematerialization requirements and this Code;

**Note:**

*In particular, the ASR should ensure that transfers to be effected without an instrument of transfer are processed only: (i) upon receipt of a valid specified request (as defined in section 2 of the USM Rules); and (ii) through the ASR's UNSRT system.*

- (b) transfers of prescribed securities in uncertificated form are, as soon as reasonably practicable, either registered in the register of holders, or rejected with reasons for the rejection notified to the transferor and transferee;

**Note:**

*In this regard, the Commission considers that "as soon as reasonably practicable" means:*

- (1) *in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is HKSCC or its nominee, within the time period agreed with HKSCC;*
- (2) *in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is not HKSCC or its nominee, either:*
  - *(where the transfer is to be registered) as soon as reasonably practicable after receiving confirmation from the Stamp Office that stamp duty payable in respect of the transfer has been received, and provided such confirmation is received within five business days after the transferor and transferee have submitted transfer instructions in the requisite form and manner; or*
  - *(where the transfer is to be rejected because no confirmation is received from the Stamp Office within five business days after the transferor and transferee submitted transfer instructions in the requisite form and manner) as soon as reasonably practicable after the expiry of such five business days;*
  - *(where the transfer is to be rejected for any other reason) as soon as reasonably practicable after the decision to reject is made; and*
- (3) *in respect of a transfer of prescribed securities held by the transferor in certificated form, and to be held by the transferee in uncertificated form, within five business days after receiving all relevant documents and information from the transferor and transferee, such period to be gradually reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong.*

- (c) all requests to dematerialize prescribed securities are, as soon as reasonably practicable, either accepted and the dematerialization reflected in the register of holders, or rejected with reasons for the rejection notified to the person requesting the dematerialization.

**Note:**

*In this regard, the Commission considers that "as soon as reasonably practicable" means:*

- (1) *in respect of a dematerialization of prescribed securities where the title instrument is submitted through HKSCC or its nominee (and irrespective of*

*whether or not the securities are registered in the name of HKSCC or its nominee), within the time period agreed with HKSCC; and*

- (2) in any other case, within five business days after receiving all relevant documents and information relating to the securities sought to be dematerialized, such period to be reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong.*

## 2.2 Dematerializing where possible

As far as reasonably practicable, an ASR should endeavour to dematerialize prescribed securities where feasible.

**Note:**

*The following are examples of situations where dematerialization should be considered:*

- (1) where a registered holder seeks to dematerialize some but not all of the units covered by the title instrument that has been submitted in connection with a transfer request, the ASR should consider dematerializing all units covered by the title instrument;*
- (2) where a transferee seeks to dematerialize some but not all of the securities that it is acquiring, the ASR should consider dematerializing all units to be acquired;*
- (3) where the title instrument submitted in relation to a transfer is for more units than are to be transferred, and the transferor has not requested to dematerialize the portion to be retained by the transferor, the ASR should consider dematerializing all units covered by the title instrument;*
- (4) where, following a corporate event or action (eg, a split or consolidation exercise or a change in name of the issuer or the holder), a registered holder, or other person entitled to do so, submits their existing title instruments and a request to replace such instruments, the ASR should consider dematerializing the units covered by the title instruments;*
- (5) where a registered holder, or other person entitled to do so, submits a request to replace a lost or damaged title instrument, the ASR should consider dematerializing the units represented by the lost or damaged instrument;*
- (6) where title instruments have not been issued, and are not required to be issued, in respect of any securities, the ASR should consider dematerializing them.*

## 3. Communications with holders<sup>16</sup>

### 3.1 Distribution to registered and non-registered holders

~~A Share Registrar~~ An ASR should ensure that all communications ~~between the Client and~~ that an issuer-client has instructed the ASR to distribute on its behalf to any person who is:

- ~~(a) a Registered Owners holder of S securities (and, as the case may be, including non-Registered Owners of Securities issued by such client; or~~
- ~~(b) a person who holds their such securities through Hong Kong Clearing) which the Share Registrar is instructed to distribute, or which is otherwise in line with market practice to distribute HKSCC or its~~

<sup>16</sup> **Note for the purpose of this consultation only:** This section on “Communications with holders” appears as section 5.5 in the existing Code of Conduct for Share Registrars.

nominee, and who has requested to receive communications from the issuer directly (**non-registered holders**),

are distributed in a timely, accurate and appropriate manner. These communications may include the distribution of ~~the share certificates title instruments~~ (eg, from an initial public offering or a rights issue), the company's interim/annual reports, notifiable transactions circulars, and ~~documents relating to corporate activities~~ ~~documents~~ (eg, ~~such as~~ bonus issues, mergers and acquisitions, cash offers, preferential share offers, meetings convened under the direction of the Courts, etc).

### 3.2 Procedures for handling communications, payments, etc

~~A Share Registrar~~ An ASR should ensure that it has documented procedures ~~with regard to its for the handling of communications~~ (including and payments) between ~~a Client an issuer-client~~ and ~~the a Rregistered Owners of Securities in the performance of the Share Registrar's business or services holder, and that such procedures are properly followed and implemented~~. In particular, these procedures should:

- (a) address how the ~~Share Registrar should~~ ASR handles changes of instructions in relation to payments to ~~Rregistered Owners of Securities holders~~ and the return of important communications ~~to Registered Owners of Securities;~~ and
- (b) require ~~A~~ any deviation ~~in from~~ instructions ~~should to~~ be supported by written documentation from the relevant ~~Rregistered Owner of Securities holder or the Client~~ issuer-client (as the case may be).

**Note:**

*Procedures relating to the return of important communications should clarify the criteria and procedures for determining:*

- (1) *whether the address of a registered holder, as recorded in the relevant register of holders, may no longer be accurate; and if so*
- (2) *whether communications to such holder should no longer be sent to that address so as to avoid undue nuisance to new occupants at the address.*

### 3.3 Investigation in unusual or suspicious circumstances

The Commission expects ~~a Share Registrar~~ an ASR to, as far as practicable, conduct **reasonable** investigations when important communications to ~~a Rregistered Owners of Securities holder~~ are returned in unusual or suspicious circumstances.

**Note:**

*The ASR's procedures for handling the return of important communications (as mentioned in paragraph 3.2 above) should clarify when circumstances should be regarded as unusual or suspicious and provide guidance as to the nature and extent of the investigation to be conducted.*

### 3.4 Arrangements for handling enquiries

~~A Share Registrar~~ An ASR should ensure that it has arranged to make available facilities, adequate resources and, as far as possible, documented

procedures for the handling of ~~the~~enquiries (such as obtaining shareholding histories, dividend claims, lost items applications, title disputes, instructions to be taken in corporate actions and general questions about corporate announcements and dividend timetables) from ~~R~~registered ~~Owners of Securities~~holders and (to the extent appropriate) non-registered holders via telephone calls, letters, faxes, personal visits or other communication methods. ~~A Share Registrar~~An ASR should handle ~~the~~enquiries in a timely and appropriate manner as well as ensure that the reasonable instructions of ~~the R~~registered ~~Owners of Securities~~holders and (to the extent appropriate) non-registered holders, relating to the ~~the~~enquiries, are properly carried out.

#### **4. Provision of ePO channel**

##### **4.1 Compliance with Guidelines for Electronic Public Offers**

When an ASR provides an ePO channel to collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities, it must display or provide access to the relevant prospectus and supplemental prospectus (if any) in accordance with the Commission's Guidelines for Electronic Public Offers.

Draft for Consultation



**Annex 2: Proposed ASR Code (clean version)**

**Code of Conduct for Approved Securities Registrars**

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[Date]

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## Explanatory notes

This Code of Conduct for Approved Securities Registrar (**Code**) is published under section 399 of the Securities and Futures Ordinance (Cap 571) (**SFO**). The Commission will be guided by this Code in considering whether a person is fit and proper to be or remain an approved securities registrar (**ASR**). In this context, the Commission will have regard to the general principles, as well as the letter, of the Code. This Code also, among other matters, provides guidance in relation to the operation of particular statutory provisions. The Code has been published in the Gazette.<sup>1</sup>

Where the Commission has information which suggests that an ASR is not a fit and proper person to remain approved, it may conduct an investigation under section 182(1)(e) of the Securities and Futures Ordinance (**SFO**). This information may refer to how the ASR conducts its business and operations, or it may refer to other matters. The Commission places great importance on ASRs being fit and proper, particularly in light of the significant role that their systems, processes and facilities play in the uncertificated securities market environment.

This Code is to be interpreted sensibly and in accordance with its spirit. When considering whether an ASR has failed to attain any of the standards prescribed in this Code, the Commission will adopt a pragmatic approach, taking into account all relevant circumstances, including whether the ASR has taken any compensatory measures, the nature and scope of its business and operations, as well as its legal and organisational structure.

ASRs should note the various Schedules to this Code. These are part of the Code and provide, among other things, limits on certain fees and charges that are payable by registered holders, and ASRs' obligations when performing certain functions. ASRs are also expected, under section 10.1(a) below, to comply with the rules of any clearing house of which they are participants.

Unless otherwise specified, or the context otherwise requires, words and phrases in this Code shall be interpreted in accordance with section 1 below.

This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law.

This Code supersedes the *Code of Conduct for Share Registrars* published by the Commission in April 2003.

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<sup>1</sup> **Note for the purpose of this consultation only:** The finalised version of this Code will be published in the Gazette in due course and before it comes into effect.

## General principles

### **GP1 Honesty and fairness**

In conducting its business and operations, an ASR should act honestly, fairly, and in the best interests of its issuer-clients and the integrity of the market.

### **GP2 Diligence**

In conducting its business and operations, an ASR should act with due skill, care and diligence, in the best interests of its issuer-clients and the integrity of the market.

### **GP3 Capabilities**

An ASR should have and employ effectively the resources and procedures which are needed for the proper performance of its functions and obligations as an ASR.

### **GP4 Outsourcing**

When outsourcing tasks, an ASR should take into account the criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that material risks are properly identified and managed, and that the interests of the ASR, issuer-clients and registered holders are properly protected.

### **GP5 Computer systems and facilities**

An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.

### **GP6 Information for issuer-clients and registered holders**

An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and registered holders.

### **GP7 Conflicts of interest**

An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that issuer-clients and registered holders are treated fairly.

### **GP8 Safeguarding of third-party assets**

An ASR should ensure that third-party assets are promptly and properly accounted for and adequately safeguarded.

### **GP9 Compliance**

An ASR should comply with all regulatory requirements applicable to the conduct of its business and operations so as to promote the best interests of its issuer-clients and the integrity of the market. In addition, an ASR should provide securities registrar services in a manner which enables its issuer-clients to comply with their obligations under applicable laws and regulations.

### **GP10 Responsibilities of senior management**

The senior management of an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ASR.

Draft for Consultation

## 1. Interpretation and Application

### 1.1 Definitions

In this Code, unless otherwise specified, or the context otherwise requires:

<b><i>applicable laws and regulations</i></b>	in relation to a person, means any laws, rules or regulations (whether statutory or otherwise) applicable to the person, and includes any codes and guidelines issued by the Commission (including this Code) and the rules of any exchange or clearing house applicable to the person;
<b><i>approved securities registrar / ASR</i></b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b><i>ASR Rules</i></b>	means the Securities and Futures (Approved Securities Registrars) Rules (Cap 571, sub leg [ ]); <sup>2</sup>
<b><i>authenticated message</i></b>	bears the meaning given by section 2 of the USM Rules;
<b><i>CCASS</i></b>	means the Central Clearing and Settlement System operated by HKSCC, and includes any other system that may replace it;
<b><i>this Code</i></b>	means this Code of Conduct for Approved Securities Registrars;
<b><i>Commission</i></b>	means the Securities and Futures Commission;
<b><i>Companies Ordinance</i></b>	means the Companies Ordinance (Cap 622);
<b><i>computer systems and facilities</i></b>	in relation to an ASR, means the computer systems and facilities used in connection with the ASR's business and operations, irrespective of whether such systems or facilities are provided or operated by the ASR or a service provider, and includes any service facilities, and any interface or other connections to the systems or facilities of another person;

**Note:**

*The scope here includes, for example:*

- (1) *all interface connections between the ASR and other parties (eg, HKSCC, the Stamp Office, other companies within the same group as the ASR, etc); and*
- (2) *all computer systems and facilities used in connection with the handling of matters and processes relating to prescribed*

<sup>2</sup> **Note for the purpose of this consultation only:** A proposed draft of these rules is at Annex 3 of the SFC's March 2023 Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong.

*securities (eg, transfers, dematerializations, corporate actions, public offer applications, updating of registers of holders, pre-registration for the use of service facilities, etc).*

<b>EDSP</b>	means an electronic data storage provider;
<b>ePO channel</b>	means any electronic channel or facility used to display or provide access to prospectuses and collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities; <b>Note:</b> <i>See also the Commission's Guidelines for Electronic Public Offers, which deal with the provision and operation of ePO channels.</i>
<b>HKSCC</b>	means Hong Kong Securities Clearing Company Limited;
<b>issuer</b>	bears the meaning given by section 2 of the USM Rules;
<b>issuer-client</b>	in relation to an ASR, means an issuer of prescribed securities to which, or as agent of which, the ASR provides securities registrar services;
<b>operational incident</b>	bears the meaning given by section 17(5) of the ASR Rules;
<b>outsourcing</b>	in relation to an ASR, means a business practice in which the ASR engages another person (the service provider) to perform tasks that would otherwise be undertaken by the ASR itself, and <b>outsource</b> is to be construed accordingly;
<b>prescribed securities</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b>registered holder</b>	means any person who is the registered holder of prescribed securities and includes any person who: (i) was previously registered as such a holder; or (ii) is a subscriber or transferee of such securities and is seeking to be registered as such a holder;
<b>register of holders</b>	bears the meaning given by section 2 of the USM Rules;
<b>securities</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b>securities registrar service</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO and section 3 of the ASR Rules; <b>Note:</b> <i>The provision of securities registrar services includes the provision and/or operation of any related service facilities, such as any UNSRT system and any ePO channel.</i>



**senior  
management**

in relation to an ASR, means persons involved in the management of the business of the ASR;

**Note:**

- (1) *In considering whether a person should be regarded as a member of an ASR's senior management, the Commission will look at all relevant facts and circumstances, including the following:*
- *the ASR's organisation and control structure (including its group organisation and control structures where it is part of a group);*
  - *the person's seniority and role within such organisation and control structures, including whether the person is a member of the ASR's governing body; and*
  - *the level of actual or apparent control, oversight, authority or influence held by the person in respect of the ASR's business and operations, including in particular its provision of securities registrar services.*
- (2) *The fact that a person is not a member of an ASR's governing body, or is based outside Hong Kong, will not of itself exclude them from being regarded as a member of the ASR's senior management. The Commission's focus will be on the extent of the person's control, authority and influence vis-à-vis the ASR's business and operations.*
- (3) *Under Part IX of the SFO, the Commission may take disciplinary action against persons who are involved in the management of the business of an ASR, i.e. the senior management of an ASR.*

**service facilities**

bears the meaning given by section 2 of the ASR Rules;

**Note:**

*An ASR's service facilities include any UNSRT system and ePO channel used in connection with the ASR's provision of securities registrar services.*

**service facilities  
incident**

bears the meaning given by section 17(5) of the ASR Rules;

**service provider**

in relation to an ASR, means the person to whom the ASR outsources any of its tasks;

**SFO**

means the Securities and Futures Ordinance (Cap 571);

**task**

means any task, function, process, service or activity;

**third-party  
assets**

in relation to an ASR, means any information, documents or other property (including any securities, seals and impressions, blank title instruments, cheques, stationery or money) received, retained or kept by the ASR for or on behalf of an issuer-client, and includes any information, documents or other property (including any securities, title documents, cheques or money) relating, belonging or payable to a registered holder and received, retained or kept by the ASR as agent for an issuer-client;

**Note:**

*The term “third-party assets” includes any “client money”, as defined in section 2 of the ASR Rules.*

<b>title instrument</b>	bears the meaning given by section 2 of the USM Rules;
<b>uncertificated form</b>	is to be interpreted in accordance with section 1AB of Part 1 of Schedule 1 to the SFO;
<b>UNSRT system</b>	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
<b>USI facility</b>	means an electronic facility set up with an ASR for the purposes of holding legal title to prescribed securities without title instruments, effecting transfers of legal title to prescribed securities without instruments of transfer, and effecting other transactions and communications relating to prescribed securities electronically;
<b>USM Rules</b>	means the Securities and Futures (Uncertificated Securities Market) Rules (Cap 571, sub leg [ ]). <sup>3</sup>

## 1.2 Persons to whom this Code applies

- (a) This Code applies to all ASRs in respect of their provision of:
- (i) securities registrar services that they are approved to provide; and
  - (ii) other related services provided to an issuer-client or registered holder.

**Note:**

*Examples of related services include: arranging and coordinating general meetings of the issuer-client; providing corporate action services in respect of non-prescribed securities issued to registered holders of prescribed securities; assisting registered holders to establish trust arrangements for their prescribed securities; providing probate services; etc.*

- (b) This Code also applies to all persons who are members of the senior management of an ASR. In applying this Code to any such person, the Commission will consider the person’s level of responsibility within the ASR, any supervisory duties they may perform, and the levels of control and knowledge they may have concerning any failure by the ASR, or by any persons under their supervision, to follow this Code.

## 1.3 Effects of breaches of this Code

- (a) In the absence of extenuating circumstances, breaches of this Code may:
- (i) reflect adversely on an ASR’s fitness and properness to provide securities registrar services, and/or on any other person’s fitness and

<sup>3</sup> **Note for the purpose of this consultation only:** A proposed draft of these rules is at Annex 2 of the SFC’s March 2023 Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong.

properness to be involved in the management of an ASR's business;  
and

- (ii) result in disciplinary action under Part IX of the SFO.
- (b) A failure by an ASR or any other person to comply with any provision of this Code that applies to them will not by itself render the ASR or such other person liable to any judicial or other proceedings. However, in any proceedings under the SFO before any court, this Code will be admissible in evidence, and if any provision set out in this Code appears to the court to be relevant to any question arising in the proceedings, it will be taken into account in determining the question.

Draft for Consultation

## 2. Honesty and Fairness

*In conducting its business and operations, an ASR should act honestly, fairly, and in the best interests of its issuer-clients and the integrity of the market.*

### 2.1 Accurate representations and information

An ASR should ensure that any representations made by it, or information provided by it, to its issuer-clients or to registered holders are accurate and not misleading.

### 2.2 Fair and reasonable charges

An ASR's fees and charges, particularly if payable by registered holders, should be transparent, fair and reasonable in the circumstances, commensurate with the services provided and work done, and comply with applicable laws and regulations. Additionally, fees and charges for services listed in [Schedule 1](#) to this Code should not exceed the levels set out in that schedule.

### 2.3 Marketing and operation of services

An ASR should market, promote and carry out its services in a proper, appropriate and fair manner that complies with all applicable laws and regulations.

### 2.4 Anti-bribery guidelines

An ASR should be familiar with the Prevention of Bribery Ordinance (Cap 201) and follow related guidance issued by the Independent Commission Against Corruption. The Prevention of Bribery Ordinance may prohibit an agent (normally an employee) from soliciting or accepting an advantage without the permission of the principal (normally the employer) when conducting the principal's business. A person who offers the advantage may also commit an offence.

### 2.5 Financial auditor

- (a) Under the ASR Rules, an ASR must appoint an independent auditor, within 1 month after it is approved to provide securities registrar services or an auditor ceases to be so appointed, to audit its financial statements. In assessing the independence of an ASR's auditor, the Commission will take into account all relevant facts and circumstances. In general, the following persons will not be regarded as independent:
- (i) any person who is an officer, employee or agent of the ASR;
  - (ii) any person who is engaged by the ASR to provide services (other than services as an independent auditor);
  - (iii) any person who is engaged in any work, or subject to any obligation, control or influence that will or may present a conflict (actual or perceived) with the person's obligations as the ASR's auditor.
- (b) In addition, the auditor appointed should be Hong Kong-qualified. An auditor will be regarded as Hong Kong-qualified only if he or she is a "certified public accountant (practising)", as defined in section 2 of the Accounting and Financial Reporting Council Ordinance (Cap 588).

### 3. Diligence

*In conducting its business and operations, an ASR should act with due skill, care and diligence, in the best interests of its issuer-clients and the integrity of the market.*

#### 3.1 Performance of services: due skill, care and diligence

- (a) An ASR should perform services for its issuer-clients in accordance with the terms and conditions upon which the ASR is appointed by the respective issuer-clients. An ASR should also take all reasonable steps to carry out instructions from its issuer-clients diligently and with reasonable skill and care.

**Note:**

*Compliance with paragraph (a) may require the ASR to be proactive in certain circumstances. For example, where an issuer has changed its appointed ASR, the incoming ASR will generally be expected to proactively notify affected registered holders of any steps they need to take to continue managing any securities held in uncertificated form (eg, completing the incoming ASR's onboarding process for using any service facilities to transfer such securities).*

- (b) In the course of providing securities registrar services, an ASR will (in its capacity as agent of an issuer-client) receive requests, enquiries and instructions from registered holders. The ASR should take all reasonable steps to acknowledge, respond to and process such requests, enquiries and instructions promptly, diligently and with reasonable skill and care.

#### 3.2 Provision of service facilities

An ASR should provide the use of its service facilities in accordance with the terms and conditions notified to and agreed with users of such facilities. In particular, an ASR should take all reasonable steps to ensure that:

- (a) such facilities are provided and operated in a fair and orderly manner;
- (b) activities, instructions or other things carried out, executed or processed through such facilities are processed promptly and in accordance with such terms and conditions;
- (c) appropriate identity checks are conducted when onboarding persons as users of such facilities;

**Note:**

*The ASR is expected to take all reasonable steps to establish the true and full identity of a person seeking to become a user of its service facilities. At a minimum, this includes checking the identity document that is first mentioned in the list below (save that where the person does not hold such document, the next mentioned document should be used and so forth), ie:*

- (1) *in the case of a natural person, his or her: (A) Hong Kong identity card; (B) other national identification document; or (C) passport;*
- (2) *in the case of a corporation, its: (A) legal entity identifier (LEI) registration document; (B) certificate of incorporation; (C) certificate of business registration; or (D) other equivalent identity document; and*
- (3) *in the case of a trust, the trustee's information (as described in paragraph (1) or (2) of this note, as applicable).*

- (d) appropriate systems are in place, and checks conducted, to enable the ASR to establish with reasonable certainty the identity of the person sending instructions or requests through such facilities, and the person's authority to do so; and

**Note:**

*In general, the ASR is expected to adopt authentication methodologies to ascertain the reliability of instructions and requests received. Such methodologies should be in line with industry standards and market practice, and provide a reasonable and appropriate degree of protection to registered holders, taking into account:*

- (1) *the nature of the instruction or request received;*
  - (2) *the size and value of any prescribed securities that are the subject of the instruction or request;*
  - (3) *the potential impact that the instruction or request may have on the registered holder of those securities if acted upon; and*
  - (4) *any pre-existing agreement with such holder regarding the sending of such instructions or requests (eg, any limits set, any agent appointed, etc).*
- (e) where the ASR offers pre-registration in respect of its service facilities (ie, permits persons to become users of such facilities even though they have no immediate need to use the facilities), appropriate checks are conducted to ensure that information provided by a person at the time of pre-registration is, or may be reasonably expected to be, up-to-date at the time that the person uses the facilities to send any instructions or requests.

**Note:**

*In assessing whether any information submitted by a person during the pre-registration process remains up-to-date, the ASR is expected to take into account the length of time that has passed since the person submitted the information, and since the person last used the facilities. Due regard should also be had to:*

- (1) *the nature of the instruction or request received;*
- (2) *the size and value of any prescribed securities that are the subject of the instruction or request; and*
- (3) *the potential impact that the instruction or request may have on the registered holder of those securities if acted upon.*

### 3.3 Best interests of issuer-clients

In performing its services or in carrying out instructions from its issuer-clients, an ASR should act in the best interests of its issuer-clients and the integrity of the market.

## 4. Capabilities

*An ASR should have and employ effectively the resources and procedures which are needed for the proper performance of its functions and obligations as an ASR.*

### 4.1 Internal controls, financial and operational resources

An ASR should have satisfactory internal control procedures in place and financial and operational capabilities to ensure its business and operations are properly structured and conducted so that there is reasonable assurance that:

- (a) the ASR has adequate financial resources;

**Note:**

(1) *The Commission may specify specific financial resources requirements under section 8 of the ASR Rules, including a minimum capital level, a minimum liquidity level and a maximum gearing ratio. In specifying such requirements, the Commission will take into account all relevant circumstances (including the scope and size of the ASR's business and operations), and the need for reasonable assurance as to the ASR's continued financial viability and ability to wind down in an orderly manner (should that become necessary).*

(2) *The levels specified may vary from ASR to ASR. However, in general, it is expected that minimum capital levels specified will not be lower than HK\$5 million, minimum liquidity levels will be set by reference to the ASR's projected operating expenses for at least the next six months, and maximum gearing ratios specified will not be higher than 70%.*

- (b) the ASR can carry on its business and operations in an orderly, efficient and effective manner;

- (c) proper and adequate safeguards and risk management policies are in place and documented to protect the ASR's business and operations, its issuer-clients and registered holders from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions;

**Note:**

(1) *Safeguards and risk management policies put in place are expected to be commensurate with the nature, size and complexity of the ASR's business and operations, and to be regularly reviewed and updated to ensure their continued effectiveness taking into account any change to the ASR's business and operations, and relevant regulatory developments.*

(2) *Where the ASR's business and operations include matters other than the provision of securities registrar services, the safeguards to be put in place are expected to take into account and address any risks posed by such matters.*

- (d) supervisory and other internal review functions (eg, compliance and internal audit) are segregated from operational duties to avoid undetected errors and abuses which may expose the ASR, its issuer-clients or registered holders to inappropriate risk;

- (e) proper records are kept and maintained in relation to the ASR's business and operations;

**Note:**

*This includes complying with requirements under Part 4 of the ASR Rules and relevant provisions of company law (eg, section 627 of the Companies Ordinance).*

- (f) the ASR can carry on its business and operations in a manner that is compliant with all applicable laws and regulations; and
- (g) the ASR can perform its functions and obligations in a manner which enables its issuer-clients to comply with all laws and regulatory requirements applicable to them, and which complies with the requirements set out in [Schedule 2](#) to this Code.

**Note:**

*Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from registered holders including instructions to transfer, dematerialize or rematerialize prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers, it is crucial that the ASR complies with those requirements when performing such functions and obligations (eg, requirements under relevant company law, the USM Rules, etc).*

## 4.2 Human and technical resources

- (a) An ASR should have sufficient human and technical resources and experience to ensure the proper performance of its functions and obligations at all times. An ASR should ensure that any person it employs or appoints in connection with its business and operations is qualified, suitably trained or has appropriate experience to act in the capacity and to perform the respective duties and responsibilities for which the person is so employed or appointed.
- (b) An ASR should provide suitable training and adequate information to its employees and agents to ensure that they can perform their duties and responsibilities diligently.

**Note:**

*This includes, for example, ensuring that employees and agents are apprised of policies and procedures that are relevant to their respective roles and responsibilities.*

- (c) An ASR should ensure that it has adequate resources to manage and supervise its employees and agents diligently, and does so supervise them.

## 4.3 Suitable premises

Under the ASR Rules, an ASR must not use any premises for any of the purposes specified in those Rules unless the premises are suitable for use for that purpose. In assessing the suitability of any such premises (or of any other premises used in connection with its business and operations), the ASR should have due regard to the following:

- (a) that the premises are subject to appropriate security measures, and are (as necessary) fire and water-proof;
- (b) that the premises are not used for residential purposes;
- (c) that any area of the premises used for storing records and documents relating to issuer-clients and/or registered holders is segregated, and subject to appropriate security and access controls;
- (d) that if the premises are shared with a third party (whether or not within the same group as the ASR), appropriate measures are taken to restrict access



to that part of the premises used by the ASR and to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or any registered holders, as necessary and reasonable in the circumstances;

- (e) that any access to the premises by third parties (including any issuer-client, registered holder, or another company within the same group as the ASR) is appropriately restricted so as to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or any registered holders, as necessary and reasonable in the circumstances;
- (f) that the premises are accessible at all times for the purposes of regulatory visits by the Commission.

#### 4.4 Capacity

- (a) An ASR should ensure that it has adequate systems capacity for the proper performance of its functions and obligations as an ASR.

**Note:**

- (1) *This includes, for example, ensuring adequate systems capacity in connection with the performance of any services to issuer-clients or registered holders, including the provision of securities registrar services and operation of any service facilities.*
  - (2) *In considering the adequacy of systems capacity, an ASR should take into account its service level commitments and obligations regarding the volume, speed and turnaround times for any processes, transactions or other matters. The market's reasonable expectation in respect of these matters should also be taken into account.*
- (b) An ASR should have an adequate margin above its current capacity to handle its current volume and systematically establish future capacity estimates on a regular basis. In addition, an ASR should conduct periodic stress tests to assess whether its systems and service facilities can perform adequately in relation to estimated capacity levels, including in the event of heavily subscribed public offers and large increases in the number of registered holders or number of transactions effected by such holders.

#### 4.5 Reliability

An ASR should ensure that the computer and other systems and facilities used in the performance of its functions and obligations are reliable and that both internal and external system/programme developers observe the following requirements:

- (a) proper planning, testing and implementation of such systems and facilities, and of any upgrades;
- (b) regular monitoring of such systems and facilities, including any equipment;
- (c) availability of timely and adequate support in emergencies;
- (d) timely rectification of problems;
- (e) adequate resolution of recurring problems;
- (f) proper and adequate maintenance of written documentation detailing functional and technical specifications of all such systems and facilities; and

- (g) maintenance and retention of a continuous and properly documented audit trail of changes and/or repairs to such systems and facilities.

**Note:**

*It is expected that not all systems and facilities may be computer-based, eg, an ASR may put in place systems and facilities for handling enquiries in person. Obligations under this section 4.5 are intended to apply in respect of both computer-based and non-computer-based systems and facilities.*

## 4.6 Contingency planning

- (a) An ASR should have an appropriate contingency plan to deal with potential operational failures, emergencies and disasters. The contingency plan should be documented, maintained and periodically tested to ensure that it is viable and adequate. A plan for dealing with media and regulatory enquiries should be formulated and the ASR should have competent and trained staff to deal with such matters.

**Note:**

(1) *At a minimum, an ASR's contingency plan is expected to cover the following:*

- *identify and address different contingency scenarios that may pose a significant risk of disrupting normal operations (including cyber-attacks<sup>4</sup>, critical vendor failures, relevant physical disasters or emergencies, etc);*
- *provide a clear business continuity plan and its objectives, and set out details of recovery times and recovery points<sup>5</sup>; and*
- *include clearly defined procedures for crisis and event management (including the management of operational incidents and service facilities incidents).*

(2) *In developing its contingency plan, an ASR should take into account that it is expected to make all reasonable efforts to resume the provision of services, particularly critical services, as soon as reasonably practicable following the occurrence of any contingency scenario, and with a view to minimising divergence from service level commitments and obligations. Critical services are expected to include any services affecting:*

- *the timely update of registers of holders (eg, following any transfer, dematerialization, corporate action, etc); or*
- *the smooth operation of CCASS (eg, services relating to the transfer of prescribed securities to the central nominee to settle continuous net settlement (CNS) transactions within the settlement period, timely adjustments to the registered holdings of the central nominee following a corporate action, etc).*

- (b) An ASR should ensure that its backup site and systems are protected and operational in the event of systems failure. At a minimum, the ASR should have:

- (i) a backup site or other suitable facility which will enable the ASR to maintain critical functions in the event of an emergency;

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<sup>4</sup> See also section 6.3, below (which discusses matters relating to cybersecurity), and in particular section 6.3(c) (which notes the need for contingency procedures to cover cyber-attack scenarios).

<sup>5</sup> See also note (2) under section 4.6(b)(iii) below, which expands on "recovery points" expected in respect of registers of holders.

**Note:**

*Critical functions include any functions that are time critical, such as functions that may affect the timely update of registers of holders or the smooth operation of CCASS.*

- (ii) backup records, servers and supporting documentation which are located in separate premises;
- (iii) backup client and transaction databases which are kept securely in off-line media (such as mass storage devices) which enable the ASR to retrieve and access the data in a timely manner;

**Note:**

- (1) *Client and transaction databases include, at a minimum, all registers of holders, as well as other databases containing critical data relating to the ASR's issuer-clients, registered holders and transactions conducted through any of the ASR's service facilities.*
- (2) *To enable recovery points for registers of holders to be no more than one business day old, the backup record of each register of holders should be updated to no earlier than the close of business of the immediately preceding business day.*
- (3) *Offsite storage is generally expected to be subject to proper security measures, and to be fire and waterproof.*

- (iv) backup functions which are performed regularly and monitored to:
  - (A) ensure information stored in client and transaction databases is securely and completely backed up; and
  - (B) enable timely remedial action and resolution of errors; and
- (v) backup printing facilities or printers for the production of title instruments (where applicable) or other related documentation.

Draft for Comment

## 5. Outsourcing

*When outsourcing tasks, an ASR should take into account the criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that material risks are properly identified and managed, and that the interests of the ASR, issuer-clients and registered holders are properly protected.*

### 5.1 Risk assessment preceding outsourcing arrangements

An ASR should not commence any arrangements for outsourcing its tasks to a service provider unless it has first performed a suitable risk assessment and is satisfied that:

- (a) all material risks relating to the arrangements (including to the particular tasks to be outsourced and the particular service provider involved) have been identified;
- (b) all material risks identified can and will be adequately managed for so long as the arrangements are and remain effective; and
- (c) the arrangements will not impair the effectiveness of the ASR's internal controls nor compromise the interests of issuer-clients or registered holders or the integrity of the market.

Such risk assessment should be regularly reviewed in light of any material change to the outsourcing arrangements entered into, or to the ASR's business and operations, and relevant regulatory developments.

### 5.2 Pre-requisites for outsourcing

Where an ASR outsources any of its tasks to a service provider, it should ensure that:

- (a) sufficient and appropriate due diligence is carried out as regards the service provider's suitability and ability to carry out the outsourced tasks, and to do so in compliance with the ASR's obligations under applicable laws and regulations;
- (b) sufficient and appropriate procedures and controls are in place to monitor the service provider's performance of the outsourced tasks, and to effectively manage any risks posed by the outsourcing arrangements on a continuing basis;

**Note:**

*The monitoring of the service provider's performance of outsourced tasks will be crucial. Accordingly, and taking into account the criticality of the outsourced tasks to the business and operations of the ASR, it is expected that:*

- (1) *the ASR's monitoring will, at a minimum, seek to:*
  - *ensure that the service provider is in compliance with all material terms of the outsourcing arrangements;*
  - *ensure the adequacy of the resources deployed by the service provider for the purposes of the outsourced tasks;*
  - *establish whether any incidents or problems have been encountered, and if so, how these have been handled;*

- *establish whether the service provider's contingency plan regarding the outsourced tasks has been suitably updated in light of such incidents or problems; and*
  - *review the service provider's risk profile and in particular its continued financial viability;*
- (2) *the ASR's monitoring will be performed by staff with sufficient relevant knowledge and expertise;*
- (3) *the ASR's senior management will be kept suitably apprised of the service provider's performance, and any issues or incidents of concern will be promptly escalated as necessary; and*
- (4) *the ASR's control procedures for overseeing the outsourced tasks will be regularly reviewed by its audit function.*
- (c) a binding written contract is entered into with the service provider, the nature and details of which are appropriate to the materiality or criticality of the outsourced tasks to the business and operations of the ASR;
- Note:**
- See also section 5.3 below which expands on the matters that the contract should, at a minimum, cover.*
- (d) sufficient and appropriate procedures and controls are in place to ensure continuity of service by the service provider to the ASR, including a business recovery plan (with periodic testing of backup facilities) and exit strategies in the event of the termination of any outsourcing arrangements;
- Note:**
- Contingency arrangements relating to any outsourcing will be critical to ensuring the continued smooth performance of the outsourced tasks. The ASR is therefore expected to:*
- (1) *have an adequate understanding of the service provider's contingency arrangements, and consider the implications that these may have on the ASR's own contingency plans and exit strategies in the event that an outsourced task is interrupted due to systems or other failures at the service provider's end;*
  - (2) *consider the availability of alternative service providers and/or the arrangements for possibly having to bring the outsourced tasks back in-house in an emergency situation; and*
  - (3) *ensure that, when outsourcing arrangements (or any part thereof) are terminated:*
    - *all relevant data is either retrieved from the service provider or destroyed/deleted; and*
    - *the service provider has not retained any copy of it (or of any part of it).*
- (e) sufficient and appropriate procedures and controls are in place to protect from loss, damage and unauthorised use or disclosure, any property, information or data belonging or relating to the ASR, its issuer-clients or any registered holders, and in the possession or control of the service provider;
- Note:**
- This includes ensuring that the ASR's outsourcing arrangements (including any sharing of personal data with the service provider or its use by such provider) are in compliance with the Personal Data (Privacy) Ordinance (Cap 486) and with relevant codes, guidelines and best practices issued by the Office of the Privacy Commissioner for Personal Data from time to time.*

- (f) sufficient and appropriate procedures and controls are in place to ensure that the service provider will not use the services of a sub-contractor unless the ASR:
  - (i) has been fully informed of all relevant details, including the name of the sub-contractor, where it will perform the services sub-contracted, and (if applicable) where any data will be stored;
  - (ii) is able to object to or terminate the sub-contracting if it could have material adverse effects on the performance of a critical or material task or would lead to a material increase in risk; and
  - (iii) is able to take other appropriate measures against the service provider if it identifies shortcomings as a consequence of any sub-contracting arrangement; and
- (g) sufficient and appropriate arrangements are in place to ensure that the ASR (including its auditor) and the Commission are able to obtain promptly, directly and upon request, up-to-date information concerning outsourced tasks including, as necessary, access to any data, systems, premises and staff of the service provider and of any sub-contractor engaged by the service provider.

**Note:**

*Information will be regarded as up-to-date if it is as up-to-date as reasonably practicable in the circumstances. The arrangements mentioned in this paragraph should also cover the obtaining of information following any insolvency, resolution or discontinuation of business operations of the service provider or sub-contractor concerned.*

### 5.3 Outsourcing contract

The written contract mentioned in section 5.2(c) above should, at a minimum:

- (a) specify the tasks to be outsourced, the terms of the outsourcing, and the respective rights, responsibilities and liabilities of the ASR and the service provider;
- (b) enable the ASR to comply with its obligations under applicable laws and regulations;
- (c) be regularly reviewed and revised, as appropriate, to reflect any changes to the outsourcing arrangements (or to risks posed by the outsourcing arrangements<sup>6</sup>), to the ASR's business and operations, and relevant regulatory developments; and
- (d) provide for sufficient levels of maintenance and technical assistance to enable the ASR to meet, as far as reasonably practicable, its service level commitments and obligations to issuer-clients and/or registered holders.

### 5.4 Outsourcing tasks outside Hong Kong

- (a) An ASR should, as far as reasonably practicable, avoid outsourcing tasks to a service provider that is located, or that will perform the tasks, outside Hong

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<sup>6</sup> See also section 5.1 above, which requires an ASR to regularly review its risk assessment of any outsourcing arrangements entered into.

Kong. Where this is unavoidable, the ASR should as far as reasonably practicable, ensure that the outsourcing arrangements are governed by Hong Kong law.

**Note:**

*In considering whether an overseas outsourcing arrangement is unavoidable, the Commission will take into account all relevant facts and circumstances, and all factors taken into account by the ASR (eg, economic considerations, security considerations, operational considerations, etc).*

- (b) An ASR should also consider the additional risks posed by engaging a service provider that is located, or that will perform the tasks, outside Hong Kong, and ensure that such risks are appropriately and adequately addressed. At a minimum, the ASR should consider and address the following:
- (i) whether the service provider is subject to conflicting requirements under the laws and regulations of a place outside Hong Kong that may materially affect its ability to perform the outsourced tasks as intended;
  - (ii) whether, in an emergency or contingency situation, it may be more difficult to monitor and control the outsourced task or to implement appropriate responses in a timely manner;
  - (iii) whether there are any applicable economic, social, or political conditions that might adversely impact the service provider's ability to perform the outsourced tasks effectively for the ASR;
  - (iv) whether the ASR or Commission may be denied prompt and direct access to any books, records, or other material in the possession or control of the service provider and relating to the ASR's business or operations;
  - (v) whether the regulatory environment for data security and protection is such as to require additional precautionary measures (such as introducing enhanced encryption) to safeguard any confidential information or data relating to the ASR's business or operations (including confidential information or data relating to the ASR, its issuer-clients or any registered holder) that the service provider has access to or control of;
  - (vi) whether confidential information or data belonging or relating to the ASR, its issuer-clients and/or any registered holders will be accessible by overseas authorities and/or regulators, and if so, whether such access is reasonable in the circumstances, requires authorisation by the ASR, issuer-client or registered holder involved (as appropriate), and (unless prohibited by applicable laws and regulations) will be notified to the SFC; and

**Note:**

*In general, where an overseas authority or regulator has sought access to such data, the ASR should notify the SFC immediately. The SFC may require the ASR to make alternative arrangements for the outsourced tasks if it considers the access request to be inappropriate or unjustified.*

- (vii) whether confidential information or data (including any personal data) belonging or relating to the ASR, its issuer-clients or any registered holder will be transferred and/or maintained outside Hong Kong, and if so, whether this will be done in accordance with relevant laws and regulations (including relevant provisions of the Personal Data (Privacy) Ordinance) and with the consent or authority of the ASR, issuer-client and/or registered holder (as appropriate).

**Note:**

*The matters listed in paragraphs (i) to (vii) above should be similarly considered and addressed when the ASR's service provider is seeking to appoint a sub-contractor that is located, or will perform the outsourced tasks, outside Hong Kong and/or outside the jurisdiction where the service provider is located.*

## **5.5 ASRs to remain responsible and liable for outsourced tasks**

Notwithstanding any outsourcing of an ASR's tasks to a service provider (or a sub-contractor), the ASR remains fully responsible in respect of any matter to which the outsourced tasks relates, and for ensuring compliance with obligations imposed on the ASR under applicable laws and regulations.

**Note:**

- (1) *This section 5 applies irrespective of whether or not the service provider is an affiliate within the same group of companies as the ASR.*
- (2) *When assessing the suitability of outsourcing arrangements between an ASR and an affiliated service provider, the Commission will generally take into account:*
- *the group's organisation and control structures, as well as the specific arrangements between the ASR and its affiliates;*
  - *the ASR's ability to control or influence the actions of the affiliated service provider;*
  - *whether the interests of the ASR (or of its issuer-clients or any registered holders) differ from those of the affiliated service provider;*
  - *whether the intra-group relationship may restrict the ability of the ASR to control or influence the affiliated service provider, and by extension, the ability of the Commission to effectively supervise the ASR; and*
  - *whether the ASR and/or its affiliate may choose not to enforce with rigour the provisions of the contract between them regarding the outsourcing arrangements.*



## 6. Computer systems and facilities

*An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.*

### 6.1 Systems integrity

- (a) An ASR should ensure that:
- (i) the computer systems and facilities used in connection with its business and operations have sufficient operational integrity, meet business needs, and operate in a secure and adequately controlled environment that seeks to minimise fraud and disruption; and
  - (ii) key components of its computer systems and facilities are adequately documented, and regularly reviewed and updated to ensure their continued suitability and adequacy taking into account any changes in its business and operations, and relevant regulatory developments.

**Note:**

*At a minimum the following is expected to be documented in respect of the computer systems and facilities:*

- (1) *its design, development, functions and detailed specifications; and*
  - (2) *all testing, reviews, modifications, upgrades and rectifications.*
- (b) An ASR should ensure that a periodic review programme is established to comprehensively plan, test and monitor the security, reliability and capacity of its computer systems and facilities.

### 6.2 Systems and data security

An ASR should ensure that the following key aspects of systems and data security are implemented in respect of its computer systems and facilities:

- (a) proper segregation of employee duties;
- (b) restricted and controlled access to the following, with clear audit logs:
  - (i) the computer systems and facilities, or any part thereof;
  - (ii) any programme or data stored in or accessible through or forming part of such systems or facilities; and
  - (iii) any premises where such systems or facilities are located;

**Note:**

*Restrictions and controls on access should cater for remote access as well and, at a minimum, require:*

- (1) *adoption of robust and effective password rules for access (including the use of multiple passwords and system-generated one-time passcodes, where necessary or appropriate);*
  - (2) *change of passwords at regular intervals; and*
  - (3) *use of an automatic time-out feature for access.*
- (c) implementation of policies and procedures for:

- (i) granting, modifying and removing user access rights to ensure access is on a need-to-have basis and approved by persons duly authorised to do so; and
- (ii) regularly reviewing access rights already granted to ensure they remain appropriate;
- (d) storage of data in a safe and secure systems environment protected against data leakage or loss due to system breakdown, cyber-attack or unauthorised access;
- (e) use of appropriate encryption technology to ensure secured communication with issuer-clients and registered holders, and to protect the confidentiality of information stored in and transmitted from the computer systems or facilities;
- (f) prompt and appropriate notification to users of the computer systems or facilities of material information relating to their (actual or purported) use of such systems or facilities (eg, system login, password resets, changes to personal particulars, etc);
- (g) maintenance of audit logs for logging details of user activities on the computer systems and facilities;

**Note:**

*At a minimum, audit logs should reflect, in respect of each user activity, the user ID of the user concerned; the date, time and duration of access and of the activity concerned; and the nature of the activity concerned.*

- (h) regular review of such audit logs by suitably qualified and independent persons to detect potential problems and plan preventive measures, and appropriate reporting of review results to senior management;
- (i) implementation of intrusion detection devices to monitor any unauthorised or abnormal access to the computer systems or facilities, and any unauthorised use or modification of any programme or data stored in or accessible through or forming part of such systems or facilities;
- (j) implementation of robust and effective fraud monitoring mechanisms to detect suspicious transactions and unusual activities in a timely manner to minimise fraud and forgery; and
- (k) deployment of a secure network infrastructure through proper network segmentation (ie, a Demilitarised Zone with multi-tiered firewalls) to protect critical systems and data.

### 6.3 Cybersecurity

- (a) An ASR should monitor and evaluate security patches or hotfixes released by software provider(s) on a timely basis and, subject to an evaluation of the impact, conduct testing as soon as practicable and implement the security patches or hotfixes as soon as practicable following the completion of testing.
- (b) An ASR should implement and update anti-virus and anti-malware solutions (including the corresponding definition and signature files) on a timely basis to detect malicious applications and malware on critical components of its computer systems and facilities.

- (c) To ensure appropriate contingency procedures<sup>7</sup> can be effectively executed when cybersecurity situations occur, an ASR should make all reasonable efforts to cover possible cyber-attack scenarios (such as distributed denial-of-service (DDoS) attacks, and total loss of business records and/or data belonging or relating to the ASR, its issuer-clients or registered holders resulting from cyber-attacks (eg, ransomware)) in its contingency plan.
- (d) An ASR should define a cybersecurity risk management framework and set out key roles and responsibilities of the staff involved.

**Note:**

*In general, the framework should, as far as reasonably practicable (taking into account the nature and extent of potential cybersecurity threats that might be faced given the structure of the ASR's computer systems and facilities), cover the following responsibilities:*

- (1) *conducting a self-assessment of the overall cybersecurity risk management framework on a regular basis;*
  - (2) *performing periodic security testing to detect security vulnerabilities in its computer systems and facilities;*
  - (3) *monitoring and logging suspicious activities on such systems and facilities to protect them and any data against cyber-attack;*
  - (4) *reviewing significant issues escalated from any cybersecurity incident reporting (whether actual or suspected);*
  - (5) *reviewing major findings identified from internal or external audits or from cybersecurity reviews, and endorsing and monitoring the completion of remedial actions;*
  - (6) *monitoring and assessing the latest cybersecurity threats and attacks; and*
  - (7) *where applicable, reviewing and approving contracts with service providers to whom any tasks have been outsourced.*
- (e) An ASR should establish written policies and procedures specifying the manner in which an actual or suspected cybersecurity incident should be escalated and reported internally and externally (eg, to issuer-clients, registered holders, the Commission, etc, as appropriate).
  - (f) An ASR should provide adequate cybersecurity awareness training to internal users of its computer systems and facilities on a regular basis. When designing the content of the training programme, the ASR should take into account the nature and extent of potential cybersecurity threats it might face.
  - (g) An ASR should take all reasonable steps to remind and alert issuer-clients and registered holders about cybersecurity risks, and to recommend preventive and protection measures when using any of its service facilities (eg, that login credentials should be properly safeguarded and cannot be shared).

#### **6.4 Use of authenticated messages**

An ASR should, as far as reasonably practicable, use and advocate the use of authenticated messages in its communications with registered holders where such communications are:

- (a) in electronic form;

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<sup>7</sup> See also section 4.6 above, which expands on requirements relating to contingency planning.

- (b) personal to a particular registered holder; and
- (c) material to that holder's rights, interests or obligations as a registered holder.

**Note:**

*In general, and as far as reasonably practicable, an ASR is expected to use and advocate the use of authenticated messages where these materially affect:*

- (1) any instructions regarding the transfer, dematerialization or rematerialization of prescribed securities;*
- (2) any corporate action entitlements relating to prescribed securities; and*
- (3) any proxy instructions relating to prescribed securities.*

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## 7. Information for issuer-clients and registered holders

*An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and registered holders.*

### 7.1 Client agreement

An ASR should enter into a written agreement with its issuer-clients before providing services to them. The written agreement should, at a minimum, include a description of the scope and nature of the services to be provided, the terms and conditions on which they are to be provided, and the terms and processes for varying, suspending or terminating such services.

**Note:**

*The terms and conditions must also be compliant with applicable laws and regulations. For example, any suspension or termination of a client agreement must also comply with Part 8 of the ASR Rules.*

### 7.2 User agreement

- (a) An ASR should enter into a written agreement with users of its service facilities before making such facilities available to them. The written agreement should set out the terms and conditions on which the facilities are to be made available and, at a minimum, include:
- (i) the identity, address and contact details of each party to the agreement;
  - (ii) a description of the service facilities to be made available to the user, and the purposes for which such facilities may be used (or not used, if applicable); and
  - (iii) sufficient details and information to ensure users are properly informed of how to use the service facilities, their rights and obligations when doing so, and the risks involved.

**Note:**

(1) *The address(es) provided in the agreement should include:*

- *in the case of the ASR, at least one place where users can attend physically to make enquiries with or submit instructions and documents to the ASR or its issuer-clients in person; and*
- *details of any appropriate channels for the parties to make enquiries to verify the identity of the sender of or the authenticity of any messages received.*

(2) *The details and information should include, for example:*

- *details of operating hours for using the facilities;*
- *details of any applicable pre-requisites, limitations and dependencies for using the facilities;*
- *where the facilities are to be used to send messages to, or receive messages from, the ASR or its issuer-clients, and/or to effect transactions in prescribed securities (eg, to effect transfers, submit dematerialization requests, etc), details of the processing procedure, applicable cut-off and turnaround times (and consequences of missing those times), different service levels, etc;*
- *details of any fees and charges to be borne by users;*

- *sufficient information for users to understand the risks and responsibilities involved in using the facilities; and*
  - *details of any contingency arrangements relating to the provision or use of the facilities.*
- (b) An ASR should provide a copy of the User Agreement (including any amendments and any other related or supporting documents) to users, and draw to their attention any relevant risks and risk disclosure statements.

**Note:**

*Where a User Agreement is entered into otherwise than on a face-to-face basis, there is generally a higher risk of impersonation. The ASR is expected to ensure that its checks and procedures are adequate in providing reasonable assurance of the identity of the person concerned. This may include, for example, relying on facial recognition technologies to confirm a person's identity.*

### 7.3 No circumvention of legal requirements

An ASR should ensure that it complies with its obligations under each Client Agreement and User Agreement, and that these agreements:

- (a) do not operate to remove, exclude or restrict any rights of an issuer-client or user of its service facilities, or obligations of the ASR, under the law; nor
- (b) include any clause, provision or term which is inconsistent with the ASR's obligations under this Code.

### 7.4 Disclosure of fees, charges and related information

- (a) An ASR should disclose to the relevant issuer-client and registered holder the basis and amount of any fees and charges payable for services provided to them or on their behalf.

**Note:**

- (1) *Where different levels of fees or charges are payable (eg, based on different service levels), all relevant details should be clearly specified.*
- (2) *Where a percentage-based fee or charge is payable, details of what the percentage is charged against should be clearly specified.*

- (b) As far as reasonably practicable, an ASR should make public any fees or charges payable by registered holders, including in particular fees or charges payable in connection with the following:
  - (i) any transactions in prescribed securities handled or processed by the ASR (including any transfer, dematerialization or transmission of prescribed securities); and
  - (ii) any enquiries or other matters handled by the ASR at the request of a registered holder and relating to securities issued by the ASR's issuer-client or to the ASR's service facilities.

### 7.5 Information about the ASR

An ASR should upon request provide its issuer-clients and registered holders adequate and appropriate information about its business and operations.

## 8. Conflicts of interest

*An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that issuer-clients and registered holders are treated fairly.*

### 8.1 Conflicts of interest

An ASR should act in the best interests of its issuer-clients, registered holders and the integrity of the market. An ASR should try to avoid conflicts of interest (whether actual or potential), and when conflicts cannot be avoided, it should ensure that the parties involved are informed of the conflict, that the interests of its issuer-clients or registered holders (as the case may be) are treated fairly, and that the integrity of the market is safeguarded.

**Note:**

*While an ASR may be contractually obligated to comply with requests or directions from its issuer-clients, it must also have due regard to safeguarding the integrity of the market. Where requests or directions from an issuer-client might jeopardise the integrity of the market, the ASR is expected to highlight its concerns to the issuer-client and endeavour, as far as reasonably practicable, to find an alternative solution that addresses conflicting interests and concerns.*

### 8.2 Policies and procedures

An ASR should establish, maintain and implement policies and procedures for identifying and dealing with conflicts of interest (whether actual or potential). Such policies and procedures should also specify steps for avoiding such conflicts.

### 8.3 Confidentiality

An ASR should take all reasonable steps to preserve confidentiality in respect of any personal or confidential information obtained by it in the performance of its functions and obligations as an ASR. In particular, it should not:

- (a) disclose information relating to any of its issuer-clients or any registered holder to any person; nor
- (b) use such information for any purpose,

other than in the performance of its functions and obligations as an ASR unless such disclosure or use is expressly or impliedly authorised by the relevant issuer-client or registered holder (as the case may be), or is required or permitted by or under any applicable laws and regulations.

## 9. Safeguarding of third-party assets

*An ASR should ensure that third-party assets are promptly and properly accounted for and adequately safeguarded.*

### 9.1 Establishment of review processes

An ASR should establish and maintain appropriate procedures (including, where appropriate, regular reconciliation) to prevent or detect errors, omissions, fraud and other unauthorised or improper activities in its business and operations as an ASR.

**Note:**

*The ASR is expected to:*

- (1) regularly reconcile its internal records and reports with those issued by relevant third parties (eg, HKSCC, banks, etc) to identify and highlight for action any errors, omissions or misplacement of assets; and*
- (2) ensure that such reconciliations are checked/reviewed and approved by appropriate senior staff member(s).*

### 9.2 Audit trails

Adequate audit trails should be maintained which will enable an ASR to detect and investigate suspected improprieties in its business and operations so as to assist the ASR in the prevention of any improprieties.

### 9.3 Safekeeping of documents and third-party assets

- (a) An ASR should properly store and safe-keep third-party assets. It should also establish appropriate procedures for the distribution of dividends, warrants and other entitlements, and for the handling of documentation (such as blank title instruments or cheques), securities, seals and impressions and information relating to issuer-clients and registered holders.
- (b) An ASR should also establish procedures to document the handling or movements of third-party assets. This may include procedures for:
  - (i) clear identification of staff members and representatives of issuer-clients with authority to make additions, deletions or changes or otherwise part with possession of third-party assets, and the parameters of such authority;
  - (ii) use of standardised and sequentially numbered documents or other appropriate methods to acknowledge and account for asset movements;
  - (iii) secure storage of the ASR's assets and third-party assets, as well as other important documents and controlled forms (eg, cheque books, title instruments, etc) which are kept at the ASR's premises;
  - (iv) prompt depositing of cheques, cashier orders and other negotiable instruments and securities into appropriate account(s);



**Note:**

*During the period when any title instrument or cash is held at the ASR's premises, routine audits should be conducted to ensure proper safeguarding of the ASR's assets and third-party assets.*

- (v) payments or refunds in relation to dividends, public offer applications, rights issues or other corporate actions, and whether payable to an issuer-client or registered holder;

**Note:**

*(1) In the case of application monies relating to public offers, the ASR is expected to have adequate arrangements to protect such monies until the allotment of the securities concerned to successful applicants and the despatch of refund monies to unsuccessful and partially successful applicants is completed. This includes holding the application monies in a separate account on trust for the applicants so as to ensure that the monies belong beneficially to the applicants, and that the issuer is entitled to receive only the amount representing payment for allotted securities.*

*(2) Where any payment is made by cheque, such cheque should be crossed "Account Payee Only" and made payable to the relevant registered holder or unsuccessful applicant in a public offer (as applicable).*

- (vi) maintenance and updating of registers of holders that it is responsible for in a timely and accurate manner;
- (vii) clear definition and communication of authorisation requirements and authorised signatories and applicable authority parameters to relevant banks.

**Note:**

*An ASR should consider the need to require two or more authorised signatories, and should not make any payment (whether by cheque or otherwise) unless the date, specified payee and amount portions of the cheque or other payment instruction (as the case may be) are properly filled in.*

## 10. Compliance

*An ASR should comply with all regulatory requirements applicable to the conduct of its business and operations so as to promote the best interests of its issuer-clients and the integrity of the market. In addition, an ASR should provide securities registrar services in a manner which enables its issuer-clients to comply with their obligations under applicable laws and regulations.*

### 10.1 Compliance

- (a) An ASR should comply with, and implement and maintain measures to comply with, all applicable laws and regulations. Such measures should also aim to ensure that the ASR's employees and agents comply with such laws and regulations.

**Note:**

*Compliance with applicable laws and regulations includes compliance with this Code, the Commission's Guidelines on Electronic Public Offers, and (where the ASR is a participant of HKSCC) the rules and operational procedures of HKSCC.*

- (b) In addition, an ASR should provide securities registrar services in a manner which complies with any related requirements imposed on its issuer-clients under applicable laws and regulations, and with the requirements set out in [Schedule 2](#) to this Code.

**Note:**

*Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from registered holders including instructions to transfer, dematerialize or rematerialize prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers (eg, requirements under relevant company law, the USM Rules, the rules of any exchange on which prescribed securities issued by the issuer are listed or traded, etc), or where there are reasonable market expectations as to how such functions or obligations are to be performed, the ASR is expected to:*

- (1) perform the functions and obligations in a manner that complies with such requirements and (as far as reasonably practicable) such expectations; and*
- (2) advise its issuer-client of any potential or actual breach of such requirements or expectations.*

- (c) An ASR will be responsible for the acts and omissions of its employees and agents in the conduct of the ASR's business and operations.

### 10.2 Maintenance of audit function

- (a) An ASR should maintain an audit function to evaluate and report on the adequacy and effectiveness of its management, operations and internal controls. The audit function should conduct regular reviews and audits to detect activities or conditions which may breach, or contribute to non-compliance by the ASR and/or its staff of, legal and regulatory requirements, or its own policies and procedures. The work and procedures of the internal audit unit should be periodically reviewed by external auditors.
- (b) Wherever possible, an ASR's compliance and internal audit functions should be effectively segregated from and independent of its operational and supervisory functions, and should report directly to senior management.

Where the size of the ASR does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors.

- (c) An ASR should ensure that:
- (i) there is adequate planning, control and recording of all audit and review work performed;
  - (ii) timely reporting of findings, conclusions and recommendations to senior management; and
  - (iii) matters or risks highlighted in relevant reports are followed up and resolved satisfactorily.

### 10.3 Handling of complaints and other requests

- (a) An ASR should have properly documented policies and procedures in relation to the timely handling of complaints and other requests from issuer-clients or registered holders. The ASR should also review such policies and procedures regularly, and update them as necessary, to ensure their continued suitability and adequacy taking into account changes in the ASR's business and operations, and relevant regulatory developments.

**Note:**

*In general, an ASR should have due regard to the following when assessing the suitability and adequacy of its policies and procedures for handling complaints and other requests:*

- (1) *whether there is sufficient senior management supervision of its complaints handling policies and procedures (including the setup, implementation and on-going monitoring of its complaints handling process);*
- (2) *taking into account the scale of the ASR's operations (eg, the number of issuer-clients it serves, or the number of issuer-clients with a significant number of registered holders, etc) and the nature and volume of complaints and requests received, whether there is a need to put in place dedicated resources to handle complaints and other requests or enquiries;*
- (3) *whether serious or high-impact complaints are properly escalated internally to senior management and/or reported to the Commission (eg, complaints regarding the same or similar issue and involving or affecting multiple registered holders, complaints concerning possible fraud or misconduct by the ASR's staff, etc);*
- (4) *whether key information about the ASR's policies and procedures for handling complaints and other requests (eg, information about how complaints or requests can be lodged, the expected processing timeframes under normal circumstances and when a response may be expected, etc) is disclosed or otherwise readily accessible to the ASR's issuer-clients and registered holders, and presented in clear and understandable language;*
- (5) *whether proper records of all complaints are kept (including details of the substance of each complaint, follow-up actions taken in respect of complaints relating to issuer-clients, registered holders and third-party assets, and how the complaint was resolved); and*
- (6) *whether clear and effective record retention policies are established and maintained to ensure that relevant documents and records are readily accessible and available to senior management, and (where applicable) to the Commission.*

- (b) An ASR should ensure that:
- (i) complaints from issuer-clients and registered holders are handled in a timely and appropriate manner;
  - (ii) steps are taken to investigate and respond to complaints in a timely and appropriate manner;
  - (iii) where a complaint cannot be dealt with promptly, the complainant is advised of any further steps which may be available to the complainant, such as advice that the complaint may be made to the Commission; and
  - (iv) if the complaint cannot be satisfactorily resolved between the ASR and the complainant, the complainant is advised of the option to escalate the complaint to the Commission.

**Note:**

- (1) *An ASR is expected to properly review the subject matter of each complaint and ensure that a complaint is investigated and assessed thoroughly, fairly and objectively taking into account all facts and circumstances of the complaint.*
- (2) *If the subject matter of a complaint relates (or may relate) to other issuer-clients and/or registered holders, or raises issues of broader concern, the ASR is expected to take steps to investigate and remedy such issues, notwithstanding that the other clients or holders may not have filed complaints with the ASR.*
- (3) *Where the ASR identifies any recurring or systemic problems, the ASR is expected to investigate to identify the root cause and rectify the problem accordingly.*
- (4) *The ASR is expected to ensure that investigation results are communicated to complainants clearly and promptly.*

- (c) An ASR should ensure that its policies and procedures for handling complaints and other requests are clearly communicated to all relevant staff and are strictly enforced. Relevant staff should also be provided with adequate training on such policies and procedures. Complaints should be investigated by staff who are not directly involved in the subject matter of the complaint.

**Note:**

*Frequent complaints against an ASR may raise concerns about the adequacy of the ASR's internal controls, conduct, operational capabilities and management supervision.*

## 10.4 Notification

- (a) An ASR should promptly notify the Commission of any occurrences of material non-compliance by the ASR, or its employees, agents or service providers, with applicable laws and regulations.
- (b) An ASR should establish and maintain policies and procedures for escalating incidences of material non-compliance to senior management and reporting them to the Commission.

## 10.5 Incidents management

An ASR should establish, maintain and implement incidents management policies and procedures for:

- (a) detecting occurrences of operational incidents and service facilities incidents;
- (b) assessing and classifying the severity of such incidents as **major**, **medium** or **minor**;

**Note:**

*In determining the severity of an operational incident or service facilities incident, the ASR is expected to consider, at a minimum, how great an impact the incident will (or is likely to) have on the following:*

- (1) *the ASR's continued smooth provision of securities registrar services (including its continued smooth operation of any service facilities);*
- (2) *the availability, reliability or integrity of information in critical databases (including any client and transaction databases);*
- (3) *the continued operation of fair and orderly markets;*
- (4) *the ASR's ability to comply, or to continue to comply, with its obligations under applicable laws and regulations (including this Code);*
- (5) *the nature and extent of any impact on the property, rights and interests of issuer-clients and/or registered holders, including the number of such clients or holders who are (or are likely to be) affected; and*
- (6) *the likelihood of attracting significant negative media attention, and its potential impact on the reputation of the ASR or the Hong Kong market.*

*The ASR is generally expected to classify an incident as "major" if its occurrence will have (or is likely to have) a serious or significant adverse impact on any of the above; and as "medium" if its occurrence will have (or is likely to have) an adverse impact on any of the above but not one which is serious or significant. Only incidents that are (or are likely to be) technical and easily rectified are expected to be classified as "minor".*

- (c) identifying and implementing response measures to mitigate damage arising from such incidents, and remedial or rectification measures for resolving issues or problems identified;
- (d) escalating to senior management, for information and/or decision, the occurrence of, and matters relating to, such incidents; and
- (e) keeping the Commission informed of the occurrence of, and matters relating to, such incidents.

**Note:**

*Section 18 of the ASR Rules deals with the reporting of operational incidents and service facilities incidents to the Commission. In determining whether, and how quickly, any such incident should be reported to the Commission, the ASR should take into account all relevant facts and circumstances, including in particular, the nature and severity of the incident. In general, the Commission expects that:*

- (1) *if the severity of an incident is classified as "major" or "medium", it will be reported to the Commission immediately upon the ASR becoming aware of it — ie, as soon as reasonably practicable after the key person-in-charge of monitoring the normal functioning of the service or service facility concerned has become aware and assessed that the time needed to investigate or make enquiries exceeds what might be considered reasonable in the circumstances;*
- (2) *if the severity of an incident is classified as "minor", it will be reported in the ASR's next quarterly returns to the Commission.*

## 11. Responsibilities of senior management

*The senior management of an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ASR.*

### 11.1 Responsibilities

The senior management of an ASR should:

- (a) understand the nature of the ASR's business and operations (including any outsourcing arrangements);
- (b) understand and properly manage the risks associated with the ASR's business and operations, including performing periodic evaluation of its risk management processes; and
- (c) ensure that appropriate and adequate internal control and risk management policies and procedures are in place in accordance with applicable laws and regulations and to guard against such risks.

**Note:**

*Internal control and risk management policies and procedures are expected to be updated on an on-going basis as necessary, and to seek to protect all aspects of the ASR's business and operations, maintain the continued smooth functioning of its services and facilities, and ensure compliance with its obligations under applicable laws and regulations (including this Code).*

### 11.2 Access to information and advice

The senior management of an ASR should clearly understand the extent of their authority and responsibilities, and in that respect:

- (a) have access to all relevant information about the ASR's business and operations on a timely basis; and
- (b) have available to them, and seek where appropriate, all necessary advice on such business and operations and on their own responsibilities.

### 11.3 Responsibility of individuals

In determining the degree of responsibility of a particular individual, the Commission will give due regard to the factors referred to in section 1.2(b) above.

## Schedule 1: Maximum levels for certain fees and charges

	<b>Description of service</b>	<b>Service level</b>	<b>Maximum fee / charge</b>
1.	Setting up of a USI facility with an ASR	[     ]	[     ]
2.	Dematerialization of prescribed securities	[     ]	[     ]
3.	Transfer of prescribed securities (held or to be held in uncertificated form)	[     ]	[     ]

Draft for Consultation

## Schedule 2: Requirements relating to obligations of issuer-clients

### 1. Maintenance of issuer-clients' register of holders

#### 1.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of how their registers of holders should be kept (**Issuers' ROH requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), the USM Rules and the Securities and Futures (Stock Market Listing) Rules (Cap 571V). In practice, such registers (where they relate to prescribed securities) are kept and maintained by the issuer's ASR. Where this is the case, the ASR must ensure that:

- (a) each register of holders is kept and maintained in Hong Kong;

**Note:**

- (1) *Insofar as the ASR is concerned, a register of holders will be regarded as being "maintained in Hong Kong" if any changes to the register are initiated and controlled in Hong Kong and by persons located in Hong Kong. Such changes should be final, and not dependent on the need for further input or adjustments elsewhere.*
- (2) *Where the servers that store data comprising a register of holders are physically located outside Hong Kong, the Commission will take into account all relevant facts and circumstances to determine if the register can still be regarded as being maintained in Hong Kong, including:*
- *the actual systems set-up, and any arrangements and interdependencies between the ASR's systems in Hong Kong and any systems outside Hong Kong;*
  - *the data that will be stored in Hong Kong, and the extent to which matters relating to maintenance of the register will be controlled and decided in Hong Kong;*
  - *the location of employees and agents responsible for the operation of systems used in connection with the maintenance of the register;*
  - *the respective roles of the ASR's senior management and IT personnel in Hong Kong and overseas; and*
  - *all related risk management and contingency arrangements.*
- A key focus will be to establish whether the register of holders will be fully accessible and controlled from Hong Kong at all times, and whether any systems issues that arise can be resolved promptly (notwithstanding any time zone differences) and with minimal impact to investors in Hong Kong.*
- (3) *The Commission will generally regard the following as indicating that a register of holders is not maintained in Hong Kong:*
- *if access to the register of holders can be controlled or denied by a person located or an event occurring outside Hong Kong;*
  - *if key processes (such as transfers, dematerialization, or corporate actions) affecting entries in the register are substantively conducted or handled by systems or persons located outside Hong Kong;*
  - *if changes to the register cannot be regarded as final pending some action or confirmation from a person located outside Hong Kong; or*



- *if key IT support is located outside Hong Kong, or if systems issues affecting accessibility or proper maintenance of the register cannot be identified or resolved without assistance from persons located outside Hong Kong and those persons cannot be reached promptly.*
- (b) each register of holders is kept and maintained properly, accurately and in a manner which complies with all applicable laws and regulations, including the Issuer's ROH requirements and this Code;  
**Note:**  
*In particular, the ASR should ensure that registers properly and accurately reflect prescribed securities as being in uncertificated form where this is the case. The ASR should also ensure that registers are kept for the duration required under applicable laws and regulations. Where different laws and regulations prescribe different durations, the ASR should ensure that the most stringent requirement (ie, longest duration) is fulfilled.*
- (c) each register of holders is updated in a timely manner, and the management of information in the register is assigned to qualified and experienced staff;
- (d) all reasonably necessary procedures are adopted to:
  - (i) guard against falsification of any entries in a register of holders, and to facilitate discovery of any such falsification; and
  - (ii) identify and promptly rectify any errors, inaccuracies or omissions of any entries in a register of holders;

**Note:**

*In this regard, the ASR is expected to take all reasonable steps to comply with arrangements agreed with HKSCC for ensuring the accuracy of HKSCC's records of prescribed securities held by it or its nominee (HKSCC records), including arrangements for:*

- (1) *notifying or confirming to HKSCC details of any changes to entries in a register of holders reflecting prescribed securities held by HKSCC or its nominee (eg, following a transfer, dematerialization, corporate action, etc); and*
  - (2) *facilitating HKSCC's reconciliation of entries in the HKSCC records with entries in relevant registers of holders.*
- (e) all reasonable assistance is rendered to facilitate the inspection and taking of copies of entries in any register of holders as permitted by applicable laws and regulations; and
  - (f) registers of holders are not closed for any period that is longer than that permitted by applicable laws and regulations.

## 1.2 External electronic data storage provider

Where an ASR uses the services of an external electronic data storage provider (ie, EDSP) to store data constituting or relating to a register of holders, the ASR must:

- (a) conduct:

- (i) proper initial due diligence on the EDSP, and the EDSP's controls vis-à-vis infrastructure, personnel and processes for delivering data storage services; and
- (ii) regular monitoring of the EDSP's service delivery,  
which due diligence and monitoring should be commensurate with the criticality, materiality, scale and scope of the EDSP's service, and take into account requirements under sections 5 and 6 of this Code (on, outsourcing and on computer systems and facilities, respectively);
- (b) ensure that the EDSP is suitable and reliable having regard to the EDSP's operational capabilities, technical expertise and financial soundness; and
- (c) ensure that all contents of registers of holders stored using the EDSP's services remain fully and promptly accessible at the ASR or Commission's reasonable request, and that an offline backup copy is maintained as required under section 4.6(b) of this Code.

### 1.3 Delisting

Where an ASR maintains the register of holders of prescribed securities and the listing status of such securities has been, or is in the process of being, cancelled, the ASR must take all reasonable steps to:

- (a) update the register to reflect that, upon such cancellation, the securities are no longer in uncertificated form; and
- (b) notify every person who immediately prior to the cancellation is registered in the register as a holder of the securities of the following:
  - (i) the number of units of the securities registered in their name immediately prior to the cancellation;
  - (ii) that such units ceased or will cease to be in uncertificated form upon such cancellation; and
  - (iii) whether the holder is entitled to obtain a title instrument in respect of such units, and if so, the process for doing so.

## 2. Transfer and dematerialization of prescribed securities

### 2.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of the processes for transferring or dematerializing prescribed securities (**Issuers' transfer and dematerialization requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), and the USM Rules. In practice, such processes will be handled by the issuer's ASR. Where this is the case, the ASR must ensure that:

- (a) all transfers and dematerialization requests submitted to the ASR for registration are acknowledged and processed promptly and in a

manner that complies with all applicable laws and regulations, including the Issuer's transfer and dematerialization requirements and this Code;

**Note:**

*In particular, the ASR should ensure that transfers to be effected without an instrument of transfer are processed only: (i) upon receipt of a valid specified request (as defined in section 2 of the USM Rules); and (ii) through the ASR's UNSRT system.*

- (b) transfers of prescribed securities in uncertificated form are, as soon as reasonably practicable, either registered in the register of holders, or rejected with reasons for the rejection notified to the transferor and transferee;

**Note:**

*In this regard, the Commission considers that "as soon as reasonably practicable" means:*

- (1) *in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is HKSCC or its nominee, within the time period agreed with HKSCC;*
- (2) *in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is not HKSCC or its nominee, either:*
  - *(where the transfer is to be registered) as soon as reasonably practicable after receiving confirmation from the Stamp Office that stamp duty payable in respect of the transfer has been received, and provided such confirmation is received within five business days after the transferor and transferee have submitted transfer instructions in the requisite form and manner; or*
  - *(where the transfer is to be rejected because no confirmation is received from the Stamp Office within five business days after the transferor and transferee submitted transfer instructions in the requisite form and manner) as soon as reasonably practicable after the expiry of such five business days;*
  - *(where the transfer is to be rejected for any other reason) as soon as reasonably practicable after the decision to reject is made; and*
- (3) *in respect of a transfer of prescribed securities held by the transferor in certificated form, and to be held by the transferee in uncertificated form, within five business days after receiving all relevant documents and information from the transferor and transferee, such period to be gradually reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong.*

- (c) all requests to dematerialize prescribed securities are, as soon as reasonably practicable, either accepted and the dematerialization reflected in the register of holders, or rejected with reasons for the rejection notified to the person requesting the dematerialization.

**Note:**

*In this regard, the Commission considers that "as soon as reasonably practicable" means:*

- (1) *in respect of a dematerialization of prescribed securities where the title instrument is submitted through HKSCC or its nominee (and irrespective of*

*whether or not the securities are registered in the name of HKSCC or its nominee), within the time period agreed with HKSCC; and*

- (2) in any other case, within five business days after receiving all relevant documents and information relating to the securities sought to be dematerialized, such period to be reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong.*

## 2.2 Dematerializing where possible

As far as reasonably practicable, an ASR should endeavour to dematerialize prescribed securities where feasible.

**Note:**

*The following are examples of situations where dematerialization should be considered:*

- (1) where a registered holder seeks to dematerialize some but not all of the units covered by the title instrument that has been submitted in connection with a transfer request, the ASR should consider dematerializing all units covered by the title instrument;*
- (2) where a transferee seeks to dematerialize some but not all of the securities that it is acquiring, the ASR should consider dematerializing all units to be acquired;*
- (3) where the title instrument submitted in relation to a transfer is for more units than are to be transferred, and the transferor has not requested to dematerialize the portion to be retained by the transferor, the ASR should consider dematerializing all units covered by the title instrument;*
- (4) where, following a corporate event or action (eg, a split or consolidation exercise or a change in name of the issuer or the holder), a registered holder, or other person entitled to do so, submits their existing title instruments and a request to replace such instruments, the ASR should consider dematerializing the units covered by the title instruments;*
- (5) where a registered holder, or other person entitled to do so, submits a request to replace a lost or damaged title instrument, the ASR should consider dematerializing the units represented by the lost or damaged instrument;*
- (6) where title instruments have not been issued, and are not required to be issued, in respect of any securities, the ASR should consider dematerializing them.*

## 3. Communications with holders

### 3.1 Distribution to registered and non-registered holders

An ASR should ensure that all communications that an issuer-client has instructed the ASR to distribute on its behalf to any person who is:

- (a) a registered holder of securities issued by such client; or
- (b) a person who holds such securities through HKSCC or its nominee, and who has requested to receive communications from the issuer directly (**non-registered holders**),

are distributed in a timely, accurate and appropriate manner. These communications may include the distribution of title instruments (eg, from an initial public offer or a rights issue), the company's interim/annual reports, notifiable transactions circulars, and documents relating to corporate activities (eg, bonus issues, mergers and acquisitions, cash offers, preferential share offers, meetings convened under the direction of the Courts, etc).

### 3.2 Procedures for handling communications, payments, etc

An ASR should ensure that it has documented procedures for the handling of communications and payments between an issuer-client and a registered holder, and that such procedures are properly followed and implemented. In particular, these procedures should:

- (a) address how the ASR handles changes of instructions in relation to payments to registered holders and the return of important communications; and
- (b) require any deviation from instructions to be supported by written documentation from the relevant registered holder or issuer-client (as the case may be).

**Note:**

*Procedures relating to the return of important communications should clarify the criteria and procedures for determining:*

- (1) *whether the address of a registered holder, as recorded in the relevant register of holders, may no longer be accurate; and if so*
- (2) *whether communications to such holder should no longer be sent to that address so as to avoid undue nuisance to new occupants at the address.*

### 3.3 Investigation in unusual or suspicious circumstances

The Commission expects an ASR to, as far as practicable, conduct reasonable investigations when important communications to a registered holder are returned in unusual or suspicious circumstances.

**Note:**

*The ASR's procedures for handling the return of important communications (as mentioned in paragraph 3.2 above) should clarify when circumstances should be regarded as unusual or suspicious and provide guidance as to the nature and extent of the investigation to be conducted.*

### 3.4 Arrangements for handling enquiries

An ASR should ensure that it has arranged to make available facilities, adequate resources and, as far as possible, documented procedures for the handling of enquiries (such as obtaining shareholding histories, dividend claims, lost items applications, title disputes, instructions to be taken in corporate actions and general questions about corporate announcements and dividend timetables) from registered holders and (to the extent appropriate) non-registered holders via telephone calls, letters, faxes, personal visits or other communication methods. An ASR should handle enquiries in a timely and appropriate manner as well as ensure that the reasonable instructions of registered holders and (to the extent appropriate) non-registered holders, relating to the enquiries, are properly carried out.

#### **4. Provision of ePO channel**

##### **4.1 Compliance with Guidelines for Electronic Public Offers**

When an ASR provides an ePO channel to collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities, it must display or provide access to the relevant prospectus and supplemental prospectus (if any) in accordance with the Commission's Guidelines for Electronic Public Offers.

Draft for Consultation

## Annex 3: Information and documents to be submitted when applying to become an ASR

An application to the Commission under section 101AAG(1) of the SFO for approval to provide securities registrar services will have to be made in the form specified by the SFC (if any) under section 402(1) of the SFO. At a minimum, this will include the following.

### Basic information

1. Basic information and relevant information (both as defined in section 1 of the Schedule to the ASR Rules) in respect of:
  - (a) the applicant;
  - (b) each person:
    - (i) who is, or is proposed to be, an officer or senior employee (as defined in section 101AAG of the SFO) of the applicant;
    - (ii) with whom the applicant is, or intends to be, associated in the course of providing securities registrar services; and
    - (iii) who is a director or substantial shareholder of the applicant, or of a substantial shareholder of the applicant that is a corporation;
  - (c) each subsidiary of the applicant that carries on any business activity that is or will be related to the applicant's provision of securities registrar services (**related business activity**);
  - (d) each related corporation (as defined in section 3 of Part 1 of Schedule 1 to the SFO) of the applicant that carries on any related business activity; and
  - (e) any other person in accordance with whose directions or instructions, the applicant or any of its directors, officers or senior employees is accustomed or obliged to act.
2. The name, correspondence address, contact telephone or fax number and email address of:
  - (a) each contact person appointed, or to be appointed, by the applicant as the person whom the Commission may contact in the event of market emergency or other urgent need;
  - (b) each person who is, or is to be, appointed by the applicant to handle complaints made to the applicant; and
  - (c) each person who is, or is to be, the ASR's designated signatory (as defined in section 17 of the ASR Rules).
3. In respect of each of the persons mentioned in paragraph 1 of this Annex 3:
  - (a) whether they are authorized to provide services similar to securities registrar services by an authority or regulatory organization outside Hong Kong, and if so, details of the authorization and of the authority or organization granting it; and

- (b) whether they are a member of any clearing house, central securities depository, stock exchange or futures exchange in Hong Kong or elsewhere, and if so, details of such membership and of the clearing house, depository or exchange concerned.
4. In respect of each of the persons mentioned in paragraph 1(b) of this Annex 3, their employment history, ie, including:
- (a) the name of each employer by whom they were employed;
  - (b) the position in which they are, or were, employed; and
  - (c) the dates of each such employment.

### **Business-related information**

5. A detailed description of the business and operations carried on, or to be carried on, by the applicant. This should include details of:
- (a) any services (including any securities registrar services) carried on, or to be carried on, by the applicant;
  - (b) any facilities (including service facilities) provided, or to be provided, by the applicant;
  - (c) the operations, functions, capabilities, performance, availability and security of any service facilities provided, or to be provided, by the applicant;
  - (d) the business hours during which the services and the facilities mentioned in paragraphs (a) and (b) above will be provided;
  - (e) the applicant's fee model or structure, including details of any fees proposed to be charged to registered holders or to members of the public;
  - (f) any outsourcing arrangements, including in particular in relation to its provision of securities registrar services or its provision or operation of service facilities; and
  - (g) the applicant's issuer-clients (as at the time of application), including their:
    - (i) place of incorporation;
    - (ii) (approximate) number of registered holders;
    - (iii) (approximate) issued share capital; and
    - (iv) (approximate) number of title instruments in circulation (ie, issued and uncanceled).

**Note:**

*The applicant is expected to keep the Commission informed of any material changes in respect of details relating to its issuer-clients where these occur after the application is submitted and while the application is still under consideration.*

6. A detailed description of the applicant's business history and business plan covering:
- (a) organisational, capital and shareholding structure (and where the applicant is a member of group of companies, details of the group structure);



**Note:**

*Details of any group structure should include information regarding the group's shareholding structure, ie, the percentage of shares held by shareholders (directly or indirectly) in each member of the group.*

- (b) human and technical resources;
- (c) operational procedures;
- (d) internal controls and risk management processes;
- (e) contingency measures and business continuity plans; and
- (f) other related matters.

**Note:**

- (1) *The information provided should be sufficient to demonstrate that the applicant will be able to competently conduct the business and operations that it conducts or proposes to conduct.*
- (2) *The information provided should also include information regarding:*
  - *the applicant's risk governance framework (including oversight by the board and senior management), and resources allocated to the risk management team;*
  - *the process for identifying key risks, the key risks identified, and the handling and management of those risks;*
  - *potential areas of conflict of interests, as well as the management and mitigation of those conflicts; and*
  - *how the business activities, risks and liabilities of each subsidiary or related corporation of the applicant are, or are proposed to be, segregated and ring-fenced from those of the applicant.*

## **Systems information**

7. A detailed description of the computer systems and facilities used, or proposed to be used, in connection with the applicant's proposed business and operations as an ASR. The description or information should include:
- (a) its written internal policies and procedures detailing the following:
    - (i) governance arrangements for overseeing IT functions;
    - (ii) cybersecurity framework for monitoring, detecting, preventing and blocking any potential cyber-attacks;
    - (iii) system and data security controls for preventing unauthorized access to, and ensuring the integrity of, systems and data;
    - (iv) system development and change management controls for ensuring the continued integrity and reliability of its computer systems and facilities following any modification, upgrades or rectifications;
    - (v) capacity planning and performance monitoring arrangements for ensuring the continued availability and maintaining the proper performance of its computer systems and facilities;
    - (vi) contingency plans for coping with emergencies and disruptions;
    - (vii) arrangements for problem and incident management, including efficient detection, handling, analysis and escalation;
    - (viii) arrangements for managing any technology related outsourcing; and

- (b) a list of the following components of the computer systems and facilities:
  - (i) all hardware and servers (including the location(s) of all servers);
  - (ii) all software (including the names of the vendor of such software if the software is developed and/or maintained by an external vendor);
  - (iii) all network infrastructure; and
  - (iv) all interfaces or other connections with other persons (whether within the same group as the applicant or otherwise).

**Note:**

*Applicants should have regard to the requirements of the ASR Code (in particular sections 4, 5, 6, 10 and 11 of the ASR Code) when compiling the description of its computer systems and facilities. Details of any systems tests that have been conducted (eg, in respect of change management, stress tests on capacity, etc) should also be included.*

- 8. An independent assessment on the adequacy of the applicant's computer systems and facilities (covering at a minimum the areas described under paragraph 7(a) of this Annex 3) for the purposes of its proposed business and operations as an ASR.

### Financial information

- 9. Information and documents showing the applicant's latest financial position, including:
  - (a) its audited annual financial statements (including auditor's report) for the preceding three years, ending on a date that is not more than nine months before the application;
  - (b) its monthly management accounts for the 12-month period immediately preceding the date of application, each such monthly management accounts to be approved by its senior management;
  - (c) unless reflected explicitly in the monthly management accounts mentioned in paragraph (b) above, details of the following:
    - (i) its available liquidity (as defined in section 2 of the ASR Rules) as at the end of each month covered by such accounts;
    - (ii) its total operating expenses (as defined in section 2 of the ASR Rules) and total capital expenses for each month covered such accounts;
    - (iii) its total borrowings as at the end of each month covered by such accounts, and the portion thereof that comprises borrowings from its shareholder; and
    - (iv) the total amount of its contingent liabilities or guarantees (if any), or (if there are no such liabilities or guarantees) an appropriate negative statement.
- 10. Information regarding the applicant's projected financial position, including:
  - (a) its projected total monthly operating expenses (as defined in section 2 of the ASR Rules) for each of the upcoming 12 months, together with a brief explanation of how such amounts are derived;
  - (b) its projected total monthly capital expenses for each of the following 12 months, together with a brief explanation of how such amounts are derived; and

- (c) a brief description of how the projected operating expenses and capital expenses will be funded and (where applicable) supporting documentation relating to such funding (eg, terms of any loan or capital injection, etc).
11. Whether any assets of the applicant are subject to any charge (including any pledge, lien or encumbrance), and if so, the following particulars:
- (a) the date on which the assets are subject to the charge;
  - (b) a description of the assets; and
  - (c) the amount secured under the charge.
12. The following particulars in respect of any bank account that an applicant has opened in relation to its provision of securities registrar services:
- (a) the name of the bank with which the account is opened;
  - (b) the status and purpose of the account (eg, whether it is a trust account);
  - (c) the number of the account; and
  - (d) the authorized signatory arrangements (eg, number of signatories required, seniority and functions of authorized signatories).
13. The name of the applicant's auditor and the date of its appointment or last re-appointment (whichever is the later).
14. The applicant's financial year end.

### Other information

15. The address of each of the premises where:
- (a) the business or operations of the applicant are, or are proposed to be, conducted;
  - (b) registered holders can attend physically to make enquiries or submit instructions;
  - (c) records or documents (including any backup records) required to be kept or maintained by an ASR under applicable laws and regulations are, or are proposed to be kept;
  - (d) computer systems and facilities used in connection with its business and operations as an ASR are, or are proposed to be, located (eg, servers, hardware, etc).

**Note:**

*Where the applicant proposes to outsource any task, similar details of the premises of the service provider performing such tasks should be included, to the extent reasonably practicable. (This applies even where the service provider is an electronic data service provider.)*

16. A brief description of why each of the premises mentioned in paragraph 15 of this Annex 3 are considered suitable having regard to the matters noted in section 4.3 of the ASR Code.
17. Details of insurance policies maintained, or proposed to be maintained, by the applicant in connection with its business and operations.



Annex 4 : Proposed ePO Guidelines (marked-up version)

Guidelines for Electronic Public ~~Offerings~~ **Offers**

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Hong Kong  
April 2003

[Date]

## 1. Introduction

- 1.1 For the purpose of these Guidelines, an electronic public offering (ePO) takes place where **electronic facilities** (particularly the Internet ~~(or other electronic means<sup>1</sup>)~~) **is** used to display or provide access to prospectuses<sup>2</sup>, ~~applications forms~~ and/or to collect applications ~~or application instructions~~ from the public (**applicants**) during an initial public offering (“IPO”) or a follow-on public offering.
- 1.2 These Guidelines aim at providing guidance to persons who offer ePO services **in respect of prescribed securities**.<sup>3</sup> Such persons should also refer to and comply with ~~the Guidance Note on the Regulation of Electronic Provision of Regulated Activities~~ **any other codes or guidance** issued by the Commission ~~(or, and applicable to such persons, in respect of their use of electronic systems or facilities to provide services parts of that Guidance Note as apply to them)~~.
- 1.3 The Commission would like to stress that investors should be encouraged to make informed investment decisions and takes the view that intermediaries<sup>4</sup>, **approved securities registrars (ASRs)** and other industry participants should assist investors in this respect, **including facilitating their access to relevant documents**. Therefore, persons offering electronic facilities to ~~distribute and/or~~ collect applications ~~or application instructions~~ in an ~~ePO securities offering~~ should ensure that ~~the application forms or~~ facilities enabling the collection of applications ~~instructions~~ (eg, in the case of the Internet, the application input screen) are accompanied by, **or provide ready access to**, a copy of the relevant prospectus (and any supplemental prospectus relating to the offering).
- 1.4 These Guidelines do not have the force of law. A failure by any person to comply with any provision of the Guidelines that applies to ~~it or him~~ **the person** may reflect adversely on the person’s fitness and properness to perform or offer relevant functions or services.
- 1.5 These Guidelines supersede the Guidelines for ~~Registered Persons Using the Internet to Collect Applications for Securities in an Initial~~ **Electronic Public Offerings** published by the Commission in ~~July 2000~~ **April 2003**.
- 1.6 **In these Guidelines, unless the context otherwise requires, terms defined in the Securities and Futures Ordinance (Cap 571, SFO) bear the same meaning when used here.**

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<sup>1</sup> ~~In these Guidelines, “other electronic means” refers to electronic trading mechanisms (e.g. hand held or wireless trading devices).~~

<sup>2</sup> In these Guidelines, “prospectus”:

- in the case of prescribed securities that are shares, bears the meaning given in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); and
- in the case of any other prescribed securities, refers to any equivalent document issued or proposed to be issued in connection with a public offer of such securities.

<sup>3</sup> The list of “prescribed securities” is set out in Schedule 3A to the Securities and Futures Ordinance (Cap 571).

<sup>4</sup> ~~In these Guidelines, “intermediaries” has the same meaning as in the Securities and Futures Ordinance.~~

## Background

- 1.6 There are various forms of ePO. The sections below describe the more popular methods currently used in the Hong Kong securities market.
- 1.7 In traditional public offerings, an applicant wishing to participate would collect a paper copy of the prospectus and application form published by the issuer of the prospectus, complete the application form<sup>5</sup> and deliver it with a cheque to receiving banks<sup>6</sup> in person. Alternatively, where an applicant uses the services of an intermediary, the application form may be completed and delivered with a cheque to the receiving bank by the intermediary. Receiving banks would send the application forms to the relevant share registrar for processing after the cheques have been honoured. ePOs differ from traditional public offerings in that all or some of the processes in the public offering are electronic rather than manual or paper-based.
- 1.8 In some ePOs, the interaction between the applicant and the intermediary (the front-end process of the public offering) may be done electronically, e.g., electronic prospectuses are made available or disseminated, and/or applications are collected electronically. The procedures between the intermediary, the receiving bank, share registrar and issuer (the back-end process of the ePO) may also be electronic, e.g., the application data from applicants are sent on a CD-ROM (or other media) with a completed bulk application form<sup>7</sup> by the intermediary to the receiving bank.
- 1.9 Alternatively, where the front-end process is electronic, the back-end process can be completed via the traditional method, e.g., by the manual delivery of completed paper application forms to the receiving bank in person. The Commission is aware that this method is common in respect of traditional yellow application forms.
- 1.7 In practice, the process for public offers of prescribed securities in Hong Kong is now largely electronic.<sup>8</sup>
- 1.7.1 The Listing Rules<sup>9</sup> no longer require paper prospectuses to be issued. Instead, it is sufficient for issuers to make available prospectuses in electronic form on both the issuer's website and on the website of Hong Kong Exchanges and Clearing Limited

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<sup>5</sup>In these Guidelines, "application forms" means paper copies of the application forms prescribed by the issuer of the prospectus, and where appropriate, electronic or scanned copies of such paper application forms. It does not include arrangements to collect application instructions or application instructions input screens, where these are not prescribed by the issuer.

<sup>6</sup>An exception is in cases where yellow/nominee forms are used. Investors would provide their application information to intermediaries, and the intermediary completes the yellow/nominee form on their behalf.

<sup>7</sup>Also referred to as "ESP application forms". These are paper application forms that are prescribed by the issuer and completed by ESPs when the submission of applications from the ESP to the receiving bank is done electronically.

<sup>8</sup> The only exception is when an issuer adopts a mixed media offer in which application forms are also printed and distributed.

<sup>9</sup> In these Guidelines, "Listing Rules" refers to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Main Board Listing Rules**) and the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (**GEM Listing Rules**).

(HKEX).<sup>10</sup>

1.7.2 Additionally, given that the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) requires application forms for shares to be issued together with the relevant prospectus, application channels also tend to be electronic.

1.8 With the implementation of a new regime for the regulation of securities registrars<sup>11</sup>, there are now the following two main forms of ePO.

~~1.401.8.1~~ An ePO can also be described as “issuer-driven” or “registrant-driven”. For the purposes of these Guidelines, an **Issuer-driven ePO**: An “issuer-driven” ePO is where the issuer decides to offer an ePO mechanism through ~~intermediaries who are eligible service providers (“ESPs”)<sup>12</sup>. This usually involves an ASR that acts as its agent.~~ Investors may subscribe for prescribed securities electronically via facilities made available by the ASR. The securities successfully subscribed for will then be held and registered in the investors’ own name. As the ASR acts as the issuer’s agent, the issuer will have some role in or control over the provision of this service. ~~an electronic prospectus by the issuer to ESPs, the electronic collection of application information from applicants by ESPs, and the electronic collection and transmission of application data from ESPs to receiving banks or share registrars.<sup>13</sup> Thus, in “issuer-driven” ePOs, both front-end and back-end processes of the ePO would normally be done electronically.~~

~~1.411.8.2~~ **Intermediary-driven ePO**: An “registrant-driven” “intermediary-driven” ePO is where an intermediary offers ePO services but is not part of an issuer’s syndicate. ~~differs in that an~~ The intermediary ~~may~~ collects applications from its clients (either electronically (or otherwise manually<sup>14</sup>) and then submits them (on behalf of the investors concerned) through HKEX’s FINI platform.<sup>15</sup> The prescribed securities successfully subscribed for will then be held on behalf of such investors but registered in the name of the central nominee (ie, HKSCC Nominees Limited). ~~but the applications may be delivered to the issuer or the receiving bank either in the traditional, paper-based manner or in any other way specified by the issuer (e.g., in recent public offering of retail bonds, applications can only be made through designated placing banks who have entered into a contractual arrangement with the issuer. Or, an online broker/intermediary who offers ePO services but is not part of the issuer’s syndicate).~~

<sup>10</sup> See Rules 12.11 and 12.11A of the Main Board Listing Rules and Rules 16.04C and 16.04D of the GEM Listing Rules.

<sup>11</sup> The regime is set out in the Securities and Futures (Approved Securities Registrars) Rules (Cap 571 sub leg [ ]). Under this regime, the provision of ePO services by ASRs as agents of an issuer constitutes a “securities registrar service”.

<sup>12</sup> ~~These are intermediaries who have passed the data conformity tests organized by the Federation of Share Registrars.~~

<sup>13</sup> ~~“The Operational Procedures for eIPO Applications Submitted Via Banks/Stockbrokers” is available at the Federation of Share Registrars’ website at [www.fedsrltd.com](http://www.fedsrltd.com).~~

<sup>14</sup> Where application data is collected ~~manually~~ otherwise than electronically (eg, by phone or in paper form), the ‘electronic’ element in the ePO process may be the electronic display or distribution of the prospectus via the Internet, on or through the intermediary’s ~~website~~ ePO channel.

<sup>15</sup> FINI stands for Fast Interface for New Issuance. It is an online platform, operated by HKEX, which enables market participants and regulators to manage workflows during the settlement process of a new listing.

Because the intermediary does not act as the issuer's agent, the issuer would will have little or no role in or control over the provision of this service. Thus, in "registrant-driven" ePOs, the front-end process of the ePO may be manual or electronic whilst the back-end process is normally manual.

## 2. Issuer-driven ePO

### 2.1 General

- 2.1.1 In an issuer-driven ePO, responsibility for the coordination, the capacity of back-end systems, testing, contingency planning and decision-making etc of all aspects of the ePO fall on the issuer, the sponsor and the issuer's ASR share registrar. In practice, where the issuer uses a sponsor, the sponsor would be expected to drive and coordinate the ePO.
- 2.1.2 The need for and the level of coordination, contingency planning and capacity testing etc will vary according to the scale of the ePO and the preferences of the issuer. These should be carefully considered by the issuer and the sponsor. Additionally, sponsors and ASRs acting for issuers should also refer to other SFC codes applicable to them (eg, paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Corporate Finance Adviser Code of Conduct and the Code of Conduct for Approved Securities Registrars) as amended from time to time for additional guidance in relation to public offerings.
- 2.1.3 The following sections set out some of the issues that an issuer, the sponsor or ASR share registrar should consider in an ePO. Issuers who collect set up a standalone website for a public offering through which applications instructions are collected from investors through their websites, including any standalone website for a public offer, should also have regard to the issues, where applicable, in paragraph 2.7 2.6.

### 2.2 Selection

- 2.2.1 It is the issuer's choice whether to have an issuer driven ePO in addition to the conventional, paper based public offering. If the issuer wishes to do so, it should invite suitable intermediaries to provide ePO services or facilities.
- 2.2.2 Only intermediaries who are ESPs (i.e., those who have passed the data conformity tests organised by the Federation of Share Registrars) are eligible to take part in an issuer driven ePO where the back-end of the ePO includes the electronic transmission of application data from the intermediary to a receiving bank and share registrar.
- 2.2.3 A list of current ESPs is available from the Federation of Share Registrars ([www.fedsrltd.com](http://www.fedsrltd.com)).

### 2.3.2 Preparation of Prospectus

- 2.3.12.2.1 The issuer should prepare the prospectus (and any supplemental prospectus) in electronic form. The electronic form of such documents should be prepared in a format that cannot be tampered with.



### 2.4.2.3 Information to ~~ESP~~ ASRs

2.4.12.3.1 The issuer should provide detailed instructions, a timetable and other information relevant to the ~~ESP's~~ ASR's role in the ePO to ~~ESPs~~ the ASR prior to the commencement of the ePO. Such information should include:

- (a) details of the documents that will be provided to the ~~ESP~~ ASR for displaying on the ASR's ePO channel<sup>16</sup> ~~ESPs website~~ (normally, the electronic prospectus and any supplemental prospectus and, where applicable, the application forms (all such documents, collectively, "the public offer documents"));
- (b) whether, and if so, the date on which, ~~a draft of~~ the public offer documents will be sent by the issuer to ~~ESPs~~ the ASR for the purposes of ~~formatting their websites~~ uploading the documents onto the ASR's ePO channel;
- (c) whether hyperlinking to the public offer documents on the issuer's website<sup>17</sup> is permitted and the issuer's requirements, if any, for hyperlinking;
- (d) the date, procedures and media (eg, CD-ROM, USB or other mass storage device, or file transfer) for ~~ESPs~~ the ASR to collect the public offer documents from the issuer;
- (e) specific instructions, if any, as to how ~~ESPs should post~~ the public offer documents and application input screen ~~should be made available or displayed on their websites~~ the ASR's ePO channel;
- (f) the date(s) and time(s) on which ~~ESPs~~ the ASR should post the public offer documents and application input screen on ~~their websites~~ its ePO channel;
- (g) disclosure statements, warnings or legends, if any, which the issuer requires ~~ESPs~~ the ASR to post on ~~their websites~~ the ASR's ePO channel; and instructions, if any, if ~~ESPs are~~ the ASR is required to obtain consent from the issuer to posting the issuer's logo on ~~their websites~~ such channel;
- (h) the dates and times from when the ASR:
  - (i) ~~on which ESPs may begin to collect applications; and the date and time when collections~~
  - (ii) must cease to collect applications;
  - (i) ~~timing, procedures and other details in relation to the share registrar's procedures for acknowledging receipt of electronic applications from ESPs;~~
  - (j) ~~details of pre-defined systems specifications, if required, for data submitted by ESPs to share registrars;~~
  - (k) ~~the dates and procedures for ESPs to collect the ESP application form/bulk application forms from the issuer;~~
  - (ii) details of how and when ~~ESPs should submit~~ relevant information (ie, regarding the completed ~~electronic~~ applications and payments) should be uploaded to

<sup>16</sup> In these Guidelines, a person's "ePO channel" refers to any electronic channel or facility used by the person to provide ePO services, and includes any website, mobile app or other electronic facility provided by the person and via which prospectuses may be displayed or accessed and applications collected.

<sup>17</sup> This will include any standalone website for the public offering which the issuer may set up for the duration of the offering.

HKEX's FINI platform and submitted to the issuer, the sponsor ~~to the relevant share registrar (and/~~ or the receiving bank (as applicable); and

- (m) procedures for the re-submission of application data<sup>18</sup>, if this is permitted.<sup>19</sup>; ~~and~~
- (n) ~~where there are exceptions (e.g., missing data, errors) to the data submitted by ESPs, the ESPs should be notified and the exceptions rectified.~~

#### 2.52.4 Information to the public

2.5.12.4.1 If the issuer has its own website (including any standalone website set up by the issuer for the public offering), it should consider posting ~~a list of the participating ESPs,~~ on such website details of the ASR appointed to provide ePO services, as well as a timetable and other procedural details of the public offering (including the ePO) ~~on its website.~~

2.5.22.4.2 The availability of ePO services and details ~~a list of the ASR appointed to provide such services participating ESPs~~ should also be set out in the prospectus, application form and in any formal notice or announcement detailing the application procedures for the public offering.

#### 2.62.5 Contingency and Planning

2.6.12.5.1 Issuers and sponsors should have a contingency plan to deal with emergency situations relating to the ePO.

2.6.22.5.2 Issuers and sponsors should also ensure that there is a central point for the coordination of all parties involved in the ePO. The coordination team should consist of representatives of all parties involved in the ePO.

2.6.32.5.3 The level of contingency planning and coordination may vary according to the scale of each public offering, the potential popularity of the public offering and the preferences of the issuer.

#### 2.72.6 ESP's ~~The ASR's~~ role

2.7.12.6.1 The ASR appointed to provide ePO services ~~ESP~~ is responsible for the compliance and system integrity ~~for the front-end process of the~~ of its ePO channel. This would include the processes for the collection and handling of applications received via such channel, and the electronic interface(s) of ~~its website~~ such channel.

2.7.22.6.2 ~~Where applicable, a~~ An ~~ESP~~ ASR should ensure that:

- (a) it adheres to the sponsor's ~~(or, where there is none, and the issuer's) and the share registrar's~~ instructions in relation to the overall coordination and timing of

<sup>18</sup> This would apply, for example, ~~in some ePOs, the issuer (or its sponsor or share registrar) may accept re-submission of application data~~ where the application information initially submitted is found to contain errors or incomplete information and the issuer, the sponsor or the ASR accepts re-submission of application data.

<sup>19</sup> Ideally this should be communicated prior to the commencement of the ePO. However, if subsequent to the commencement, it is decided that re-submission of application data is permitted, this should be communicated to ~~ESPs~~ the ASR as soon as possible.

- the ePO;
- (b) the public offer documents and the application input screen are readily accessible on its ~~website~~ **ePO channel**;
  - (c) ~~The public offer documents~~ **must be displayed or accessible on its ePO channel** are identical to those provided by the issuer;
  - (ed) the public offer documents and application input screen are complete, located close to each other and cannot be tampered with;
  - (de) where a hyperlink to the public offer documents on the issuer's website is provided, the matters in paragraph 4.2 are satisfied;
  - (ef) the public offer documents (or a hyperlink to these documents) ~~on the ESP's website~~ are first displayed or made available **on its ePO channel** at the same time as the prospectus is made available to the public by the issuer;
  - (fg) information on its ~~website~~ **ePO channel** relating to the ePO is in both English and Chinese;
  - (gh) a statement **is posted on its ePO channel** to the effect that no applications or monies can be accepted once the public offering closes, or where the ~~ESP-ASR~~ has any reason to believe that: (i) the electronic public offer documents or processes for collection and handling of applications have been tampered with; or (ii) where applicable), duplicate or multiple applications have been made to the issuer;
  - (hi) information reasonably required by the sponsor ~~(or, where there is none, or the issuer)~~ to enable it to monitor the ePO, including information in relation to the ~~level of application and volume the ESP processes during the ePO~~ **number and size of applications received**, is given to the sponsor ~~(or the issuer, as the case may be)~~ upon request;
  - (ij) the design ~~of its website~~ and ~~its~~ operation ~~should~~ **of its ePO channel**:
    - (i) gives applicants access to free software to download, extract compressed files (if necessary), view and print the public offer documents and ~~or~~ application input screen;
    - (ii) gives applicants contact information for technical support or enquiries in connection with the operation of the ePO **channel and** service ~~and the website~~;
    - (iii) gives applicants an opportunity to read or access the public offer documents before ~~being they are~~ given access to the webpages **or mobile app screens** where the particulars relating to their application (eg, number of **prescribed** securities to be applied for, selection of payment methods, **etc**) are collected;
    - (iv) requires applicants to confirm ~~separately each of~~ the following **separately** before ~~being they are~~ given access to the webpages **or mobile app screens** where their application information is collected, **ie**:
      - **that** they have been provided ~~with~~ sufficient opportunity to access the public offer documents and the information disclosed in the documents;

- that they have read and agree to be bound by the terms and conditions set out in the ~~ePO service provider's website~~ ASR's ePO channel; ~~and~~
  - that they are eligible to apply; and
  - that they consent to the use of their personal information in accordance with the personal information collection statement in the relevant prospectus;
- (v) requires the input and validation of applicants' HK identity card details, ~~(or other identity information,) of applicants~~ as required by the issuer and consistent with any related requirements for using HKEX's FINI platform;<sup>20</sup>
- (k) if the ASR intends to incorporate into an investor's application instructions any particulars or other information previously provided by the investor (eg, as part of a pre-registration service<sup>21</sup> provided by the ASR), the ASR has taken reasonable steps to ensure that such particulars and information are up-to-date;
- (j) a confirmation is given to the applicants as soon as possible once ~~it~~ the ASR has received the application submitted by them;
- (~~k~~m) ~~the~~ applicants are able to print a copy of the relevant webpages or mobile app screens containing the details of application information inputted by them and the confirmation message;
- (~~l~~n) the design ~~of the website~~ and presentation of ~~the~~ ePO information on the ePO channel encourages investors to make investment decisions based only on the contents of the public offer documents rather than other information, particularly promotional or marketing materials and media coverage;
- (~~m~~o) there are sufficient procedures to monitor the ePO service it provides, and to ensure the ePO service is offered in accordance with the sponsor's ~~(or, where there is none, and~~ the issuer's) instructions;
- (~~n~~p) there are reasonable measures to ensure that its computer systems have sufficient capacity and security to protect the integrity of ~~the~~ transactions. ~~Moreover, and that~~ documented contingency plans ~~should be put~~ are in place to deal with the situation where the securities application collection service or the display/download of the public offer documents provided through ~~the Internet its~~ ePO channel is disrupted;
- (~~o~~q) information is provided on its ~~website~~ ePO channel to enable potential applicants to determine whether the service is suitable for them. ~~This should~~ including:
- (i) the types of persons who are eligible to use the service (eg, existing clients);
  - (ii) a clear delineation of the area containing the public offer documents and

<sup>20</sup> These may require the use of specific identity document types when inputting identity information.

<sup>21</sup> "Pre-registration service" refers to any service provided by an ASR to an investor whereby the investor may submit personal particulars and other information to the ASR in advance in the expectation that such particulars and information will be incorporated by the ASR as part of the investor's application instructions when he/she next applies for prescribed securities in a public offer through the ASR's ePO channel.

a warning to applicants that any information falling outside those areas is not part of the public offer documents and the **prescribed** securities are offered solely on the basis of the information in the public offer documents;

- (iii) the procedures which an applicant must go through to make a valid application, including **accepting** the issuer's terms and conditions;
- (iv) dates and timing for various stages of the ePO, including deadlines for submitting applications and making payments;
- (v) detailed instructions and information in relation to the application procedures, including any requirements or arrangement which applicants must have in place so that they can use the service, eg:
  - a list of payment methods<sup>22</sup>;
  - limitations associated with the payment methods (such as service lead time, ~~or~~ transaction limits, etc)<sup>22</sup>;
  - circumstances and procedures for refunding monies to applicants<sup>22</sup>;
  - procedures for distributing and registering **prescribed** securities-~~certificates or crediting to applicant's account~~<sup>22</sup>;
  - description of the fees and charges that may be ~~made to the payable by~~ applicants<sup>22</sup>; and
  - deadlines for submission of the application;
- (vi) a statement that potential applicants should:
  - read the public offer documents prior to making an investment decision; and
  - ~~should~~ make their investment decision based on the public offer documents rather than on **other** information, particularly promotional or marketing materials and media coverage that may accompany the **public offering**; and
- (vii) warnings that, in using the ePO service, the applicant assumes the risks associated with conducting transactions over the Internet (eg, that ~~the~~ transactions may be subject to interruption, transmission blackout, delayed transmission due to Internet traffic or incorrect data transmission due to the public nature of the Internet)<sup>22</sup>;
- ~~(viii) a list of suggested alternative places where applicants can obtain copies of the public offer documents<sup>22</sup>; and~~
- ~~(ix) a prominent statement on its website informing applicants that the website belongs to the ESP and not the issuer and that in using the ePO service, the ESP is the applicant's (and not the issuer's) agent.~~

<sup>22</sup> ~~An ESP may point out in its website, the relevant pages containing this information in the electronic prospectus which is on the ESP's website (or accessible by hyperlink from the ESP's website).~~

### 3. ~~Registrant-driven~~ **Intermediary-driven** ePO

#### 3.1 **General**

- 3.1.1 An ~~registrant-driven~~ **intermediary-driven** ePO differs from an issuer-driven ePO in that the issuer has little or no responsibility towards the intermediary ~~and the need for coordinating the back-end of the ePO is absent.~~
- 3.1.2 The intermediary's responsibilities in this type of ePO are almost the same as an ~~ESP's~~ **ASR's** in an issuer-driven ePO (namely, the matters set out in paragraph ~~2.7.2.6~~ except ~~2.7.2.6.2(a)~~ and ~~(hi)~~). In addition, the intermediary proposing to display (or through a hyperlink to the issuer's website, provide access to) the electronic prospectus should seek the issuer's prior consent to do so.<sup>23</sup> This is to ensure that the intermediary displays or provides access to all necessary public offer documents and to ensure that the electronic version of the public offer documents are identical to those provided or ~~issues issued~~ by the issuer ~~(where they are so issued or provided)~~. An intermediary choosing to display or provide access to public offer documents without the issuer's consent should ensure that the documents displayed or to which access is given includes all relevant public offer documents and that these are **first displayed or made available on its website ePO channel** at the same time as **or as soon as practicable after** they are made available to the public by the issuer.
- 3.1.3 In **intermediary-driven** ePOs, ~~where~~ applicants submit application instructions to their intermediaries ~~by Internet or by other electronic means~~, **after which the intermediaries submit the applications on or through the HKEX's FINI platform** ~~these instructions are then aggregated (with instructions from other clients of the intermediary). The intermediary then submits one application~~ on behalf of all ~~its~~ clients **who have applied**. Intermediaries offering this type of service should ensure that the matters stated in paragraph ~~2.7.2.6~~ (except ~~2.7.2.6.2(a)~~ and ~~(hi)~~), are addressed and also provide a clear explanation as to the nature of the service being offered and of any particular risks associated with this type of application that do not normally arise under an issuer-driven ePO ~~or a the traditional paper-based application process that was previously used~~. Where applicable, it should explain that facilities enabling the collection of such application instructions may not result in any application being made on behalf of the investor and no legal relationship may exist between the investor and the issuer.

#### 3.2 ~~Other types of registrant-driven ePOs~~

- ~~3.2.1 The Commission is also aware that in some registrant-driven ePOs, electronic application forms<sup>24</sup> (in addition to the electronic prospectus) have been made available on intermediaries' websites for downloading and printing by applicants. The printed application forms are then handled in the traditional, paper-based method – i.e., they are completed manually by applicants and submitted to the intermediary who will then submit the paper forms to the receiving banks.~~

<sup>23</sup> ~~Whilst~~ **While** the SFC considers that it is good practice to obtain consent from the issuer (or third party) prior to creating a hyperlink, this is not an SFC requirement. Intermediaries who wish to create a hyperlink to other persons' websites, may also wish to consider whether there are any other legal issues involved (for example, whether there are any intellectual property issues).

<sup>24</sup> ~~For example, scanned copies of the paper application forms prescribed by the issuer.~~

~~3.2.2 In addition to the issues listed in paragraph 3.1, intermediaries who offer this type of ePO service should ensure that they have the issuer's consent to do so. They should also ensure that the application forms collected by the intermediary and delivered to the issuer, the share registrar or receiving bank (as the case may be) will not be rejected by them. These intermediaries should liaise with the issuer for details of the format of the downloaded and printed application forms that the receiving bank will accept. If the issuer's consent and the required information are not given, the intermediary will usually be unable to offer this service.~~

## 4. Other matters

### 4.1 *Electronic prospectus*

~~4.1.1 Public offer documents in both English and Chinese versions must be displayed or accessible by hyperlink on the intermediary's website.~~

4.1.24.1.1 The following enhancements or differences between the paper version and an electronic version of any public offer documents are acceptable:

- (a) a search facility for defined expressions;
- (b) hypertext links within the prospectus;
- (c) prompts to assist readers to use and find information in the document ~~which-~~ ~~The prompts~~ should not contain any information that does not appear in the registered paper document; and
- (d) a zoom facility so that readers may enlarge or reduce the information displayed.

4.1.34.1.2 ~~Whilst the~~ The issuer is expected to inform and provide ~~ESPs~~ its ASR with electronic supplemental prospectuses in an issuer-driven ePO. However, in a ~~registrant-driven~~ an intermediary-driven ePO, the intermediary is expected to ensure that a copy of any supplemental prospectus is provided or made available on its ~~website~~ ePO channel at the same time as or as soon as practicable after it is made available to the public by the issuer.

### 4.2 *Hyperlinking to electronic prospectuses*

4.2.1 As an alternative to providing a copy of the public offer documents on its ~~website~~ ePO channel, an ASR or intermediary providing ePO services may establish a hyperlink from its ~~website~~ ePO channel to the website of the issuer (or any standalone website set up by the issuer for the duration of the public offering) or that of a suitable third party. Any ASR or intermediary wishing to use this method should:

- (a) consider obtaining prior consent from the issuer (or the third party) to establish the hyperlink<sup>25</sup>. ~~The intermediary should,~~ and indicate on ~~its~~ the webpage or mobile app screen containing the hyperlink whether consent has been obtained;
- (b) ensure that the webpage or mobile app screen or ~~the~~ icon containing the hyperlink contains a clear message to inform applicants that they are leaving the

<sup>25</sup> Please refer to footnote ~~13~~ 23 above.

- ASR's or intermediary's ~~website ePO channel~~ and entering the website of the other person;
- (c) ensure that the webpage or mobile app screen or ~~the~~ icon containing the hyperlink clearly describes where the hyperlink leads;
  - (d) ensure that, ~~S~~subject to paragraph (b) above, a hyperlink described as leading to the prospectus (or other public offer document, as the case may be) ~~must~~ provides direct access to the front cover or table of contents of the relevant document;<sup>26</sup> ~~Hyperlinks described as leading to the prospectus (or other public offer document) which lead to webpages containing information other than the relevant document or to certain parts of the document are not acceptable for these purposes;~~
  - (~~e~~) put in place procedures to monitor the performance of the hyperlink to ensure that applicants using the ASR's or intermediary's webpage or mobile app screen can access the electronic public offer documents on the relevant website or mobile app screen for the duration of the public offer or for so long as applications are being accepted ~~through~~ by that ASR or intermediary; and
  - (~~e~~f) immediately cease to accept applications through its ~~website ePO channel~~ if the hyperlink fails to provide applicants with proper access to the public offer documents on the issuer's or third party's website.

### 4.3 Non-prescribed securities

- 4.3.1 Securities that are not prescribed securities may also be the subject of an ePO. Any person (including any intermediary or issuer) who chooses to provide ePO services in respect of such securities is also expected to comply with the requirements under these Guidelines. An ASR that intends to provide ePO services in respect of such securities will need to take measures to comply with the SFO, such as working with an intermediary which is licensed for Type 1 regulated activity, given that the provision of such services would constitute "dealing in securities" under Schedule 5 to the SFO. Such ASRs should approach the Commission as early as reasonably practicable.

<sup>26</sup> Hyperlinks described as leading to the prospectus (or other public offer document) but leading to webpages or mobile app screens containing information other than the relevant document, or to certain parts of the document, are not acceptable for these purposes.



## **Annex 5: Proposed ePO Guidelines (clean version)**

### **Guidelines for Electronic Public Offers**

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[Date]

## 1. Introduction

- 1.1 For the purpose of these Guidelines, an electronic public offer (**ePO**) takes place where electronic facilities (particularly the Internet) are used to display or provide access to prospectuses<sup>1</sup> and to collect applications from the public (**applicants**) during an initial public offer (**IPO**) or a follow-on public offer.
- 1.2 These Guidelines aim at providing guidance to persons who offer ePO services in respect of prescribed securities.<sup>2</sup> Such persons should also refer to and comply with any other codes or guidance issued by the Commission, and applicable to such persons, in respect of their use of electronic systems or facilities to provide services.
- 1.3 The Commission would like to stress that investors should be encouraged to make informed investment decisions and takes the view that intermediaries, approved securities registrars (**ASRs**) and other industry participants should assist investors in this respect, including facilitating their access to relevant documents. Therefore, persons offering electronic facilities to collect applications in an ePO should ensure that facilities enabling the collection of applications (eg, in the case of the Internet, the application input screen) are accompanied by, or provide ready access to, a copy of the relevant prospectus (and any supplemental prospectus relating to the offer).
- 1.4 These Guidelines do not have the force of law. A failure by any person to comply with any provision of the Guidelines that applies to the person may reflect adversely on the person's fitness and properness to perform or offer relevant functions or services.
- 1.5 These Guidelines supersede the Guidelines for Electronic Public Offerings published by the Commission in April 2003.
- 1.6 In these Guidelines, unless the context otherwise requires, terms defined in the Securities and Futures Ordinance (Cap 571, **SFO**) bear the same meaning when used here.

### **Background**

- 1.7 In practice, the process for public offers of prescribed securities in Hong Kong is now largely electronic.<sup>3</sup>
- 1.7.1 The Listing Rules<sup>4</sup> no longer require paper prospectuses to be issued. Instead, it is

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<sup>1</sup> In these Guidelines, "prospectus":

- in the case of prescribed securities that are shares, bears the meaning given in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); and
- in the case of any other prescribed securities, refers to any equivalent document issued or proposed to be issued in connection with a public offer of such securities.

<sup>2</sup> The list of "prescribed securities" is set out in Schedule 3A to the Securities and Futures Ordinance (Cap 571).

<sup>3</sup> The only exception is when an issuer adopts a mixed media offer in which application forms are also printed and distributed.

<sup>4</sup> In these Guidelines, "Listing Rules" refers to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Main Board Listing Rules**) and the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (**GEM Listing Rules**).

sufficient for issuers to make available prospectuses in electronic form on both the issuer's website and on the website of Hong Kong Exchanges and Clearing Limited (HKEX).<sup>5</sup>

- 1.7.2 Additionally, given that the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) requires application forms for shares to be issued together with the relevant prospectus, application channels also tend to be electronic.
- 1.8 With the implementation of a new regime for the regulation of securities registrars<sup>6</sup>, there are now the following two main forms of ePO.
- 1.8.1 **Issuer-driven ePO:** An "issuer-driven" ePO is where the issuer decides to offer an ePO mechanism through an ASR that acts as its agent. Investors may subscribe for prescribed securities electronically via facilities made available by the ASR. The securities successfully subscribed for will then be held and registered in the investors' own name. As the ASR acts as the issuer's agent, the issuer will have some role in or control over the provision of this service.
- 1.8.2 **Intermediary-driven ePO:** An "intermediary-driven" ePO is where an intermediary offers ePO services but is not part of an issuer's syndicate. The intermediary collects applications from its clients (either electronically or otherwise<sup>7</sup>) and then submits them (on behalf of the investors concerned) through HKEX's FINI platform.<sup>8</sup> The prescribed securities successfully subscribed for will then be held on behalf of such investors but registered in the name of the central nominee (ie, HKSCC Nominees Limited). Because the intermediary does not act as the issuer's agent, the issuer will have little or no role in or control over the provision of this service.

## 2. Issuer-driven ePO

### 2.1 General

- 2.1.1 In an issuer-driven ePO, responsibility for the coordination, the capacity of systems, testing, contingency planning and decision-making etc of all aspects of the ePO fall on the issuer, the sponsor and the issuer's ASR. In practice, the sponsor would be expected to drive and coordinate the ePO.
- 2.1.2 The need for and the level of coordination, contingency planning and capacity testing etc will vary according to the scale of the ePO and the preferences of the issuer. These should be carefully considered by the issuer and the sponsor. Additionally, sponsors

<sup>5</sup> See Rules 12.11 and 12.11A of the Main Board Listing Rules and Rules 16.04C and 16.04D of the GEM Listing Rules.

<sup>6</sup> The regime is set out in the Securities and Futures (Approved Securities Registrars) Rules (Cap 571 sub leg [ ]). Under this regime, the provision of ePO services by ASRs as agents of an issuer constitutes a "securities registrar service".

<sup>7</sup> Where application data is collected otherwise than electronically (eg, by phone or in paper form), the 'electronic' element in the ePO process may be the electronic display or distribution of the prospectus via the Internet, on or through the intermediary's ePO channel.

<sup>8</sup> FINI stands for Fast Interface for New Issuance. It is an online platform, operated by HKEX, which enables market participants and regulators to manage workflows during the settlement process of a new listing.

and ASRs acting for issuers should refer to other SFC codes applicable to them (eg, paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Corporate Finance Adviser Code of Conduct and the Code of Conduct for Approved Securities Registrars) for additional guidance in relation to public offers.

- 2.1.3 The following sections set out some of the issues that an issuer, sponsor or ASR should consider in an ePO. Issuers who collect applications from investors through their websites, including any standalone website for a public offer, should also have regard to the issues, where applicable, in paragraph 2.6.

## 2.2 *Preparation of Prospectus*

- 2.2.1 The issuer should prepare the prospectus (and any supplemental prospectus) in electronic form. The electronic form of such documents should be prepared in a format that cannot be tampered with.

## 2.3 *Information to ASRs*

- 2.3.1 The issuer should provide detailed instructions, a timetable and other information relevant to the ASR's role in the ePO to the ASR prior to the commencement of the ePO. Such information should include:
- (a) details of the documents that will be provided to the ASR for displaying on the ASR's ePO channel<sup>9</sup> (normally, the electronic prospectus and any supplemental prospectus and, where applicable, the application forms (all such documents, collectively, **the public offer documents**));
  - (b) whether, and if so, the date on which, the public offer documents will be sent by the issuer to the ASR for the purposes of uploading the documents onto the ASR's ePO channel;
  - (c) whether hyperlinking to the public offer documents on the issuer's website<sup>10</sup> is permitted and the issuer's requirements, if any, for hyperlinking;
  - (d) the date, procedures and media (eg, CD-ROM, USB or other mass storage device, or file transfer) for the ASR to collect the public offer documents from the issuer;
  - (e) specific instructions, if any, as to how the public offer documents and application input screen should be made available or displayed on the ASR's ePO channel;
  - (f) the date(s) and time(s) on which the ASR should post the public offer documents and application input screen on its ePO channel;
  - (g) disclosure statements, warnings or legends, if any, which the issuer requires the ASR to post on the ASR's ePO channel; and instructions, if any, if the ASR is required to obtain consent from the issuer to posting the issuer's logo on such

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<sup>9</sup> In these Guidelines, a person's "ePO channel" refers to any electronic channel or facility used by the person to provide ePO services, and includes any website, mobile app or other electronic facility provided by the person and via which prospectuses may be displayed or accessed and applications collected.

<sup>10</sup> This will include any standalone website for the public offer which the issuer may set up for the duration of the offer.

channel;

- (h) the dates and times from when the ASR:
  - (i) may begin to collect applications; and
  - (ii) must cease to collect applications;
- (i) details of how and when relevant information (ie, regarding the completed applications and payments) should be uploaded to HKEX's FINI platform and submitted to the issuer, the sponsor or the receiving bank (as applicable); and
- (j) procedures for the re-submission of application data<sup>11</sup>, if this is permitted.<sup>12</sup>

## **2.4 Information to the public**

- 2.4.1 If the issuer has its own website (including any standalone website set up by the issuer for the public offer), it should consider posting on such website details of the ASR appointed to provide ePO services, as well as a timetable and other procedural details of the public offer (including the ePO).
- 2.4.2 The availability of ePO services and details of the ASR appointed to provide such services should also be set out in the prospectus, application form and in any formal notice or announcement detailing the application procedures for the public offer.

## **2.5 Contingency and Planning**

- 2.5.1 Issuers and sponsors should have a contingency plan to deal with emergency situations relating to the ePO.
- 2.5.2 Issuers and sponsors should also ensure that there is a central point for the coordination of all parties involved in the ePO. The coordination team should consist of representatives of all parties involved in the ePO.
- 2.5.3 The level of contingency planning and coordination may vary according to the scale of each public offer, the potential popularity of the public offer and the preferences of the issuer.

## **2.6 The ASR's role**

- 2.6.1 The ASR appointed to provide ePO services is responsible for the compliance and system integrity of its ePO channel. This would include the processes for the collection and handling of applications received via such channel, and the electronic interface(s) of such channel.
- 2.6.2 An ASR should ensure that:

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<sup>11</sup> This would apply, for example, where the application information initially submitted is found to contain errors or incomplete information and the issuer, the sponsor or the ASR accepts re-submission of application data.

<sup>12</sup> Ideally this should be communicated prior to the commencement of the ePO. However, if subsequent to the commencement, it is decided that re-submission of application data is permitted, this should be communicated to the ASR as soon as possible.

- (a) it adheres to the sponsor's and the issuer's instructions in relation to the overall coordination and timing of the ePO;
- (b) the public offer documents and the application input screen are readily accessible on its ePO channel;
- (c) the public offer documents displayed or accessible on its ePO channel are identical to those provided by the issuer;
- (d) the public offer documents and application input screen are complete, located close to each other and cannot be tampered with;
- (e) where a hyperlink to the public offer documents on the issuer's website is provided, the matters in paragraph 4.2 are satisfied;
- (f) the public offer documents (or a hyperlink to these documents) are first displayed or made available on its ePO channel at the same time as the prospectus is made available to the public by the issuer;
- (g) information on its ePO channel relating to the ePO is in both English and Chinese;
- (h) a statement is posted on its ePO channel to the effect that no applications or monies can be accepted once the public offer closes, or where the ASR has any reason to believe that: (i) the electronic public offer documents or processes for collection and handling of applications have been tampered with; or (ii) where applicable, duplicate or multiple applications have been made to the issuer;
- (i) information reasonably required by the sponsor or the issuer to enable it to monitor the ePO, including information in relation to the number and size of applications received, is given to the sponsor or the issuer upon request;
- (j) the design and operation of its ePO channel:
  - (i) gives applicants access to free software to download, extract compressed files (if necessary), view and print the public offer documents and application input screen;
  - (ii) gives applicants contact information for technical support or enquiries in connection with the operation of the ePO channel and service;
  - (iii) gives applicants an opportunity to read or access the public offer documents before they are given access to the webpages or mobile app screens where the particulars relating to their application (eg, number of prescribed securities to be applied for, selection of payment methods, etc) are collected;
  - (iv) requires applicants to confirm each of the following separately before they are given access to the webpages or mobile app screens where their application information is collected, ie:
    - that they have been provided sufficient opportunity to access the public offer documents and the information disclosed in the documents;
    - that they have read and agree to be bound by the terms and conditions set out in the ASR's ePO channel;
    - that they are eligible to apply; and

- that they consent to the use of their personal information in accordance with the personal information collection statement in the relevant prospectus;
- (v) requires the input and validation of applicants' HK identity card details, or other identity information, as required by the issuer and consistent with any related requirements for using HKEX's FINI platform;<sup>13</sup>
- (k) if the ASR intends to incorporate into an investor's application instructions any particulars or other information previously provided by the investor (eg, as part of a pre-registration service<sup>14</sup> provided by the ASR), the ASR has taken reasonable steps to ensure that such particulars and information are up-to-date;
- (l) a confirmation is given to the applicant as soon as possible once the ASR has received the application submitted by them;
- (m) applicants are able to print a copy of the relevant webpages or mobile app screens containing the details of application information inputted by them and the confirmation message;
- (n) the design and presentation of ePO information on the ePO channel encourages investors to make investment decisions based only on the contents of the public offer documents rather than other information, particularly promotional or marketing materials and media coverage;
- (o) there are sufficient procedures to monitor the ePO service it provides, and to ensure the ePO service is offered in accordance with the sponsor's and the issuer's instructions;
- (p) there are reasonable measures to ensure that its computer systems have sufficient capacity and security to protect the integrity of transactions, and that documented contingency plans are in place to deal with the situation where the securities application collection service or the display/download of the public offer documents provided through its ePO channel is disrupted;
- (q) information is provided on its ePO channel to enable potential applicants to determine whether the service is suitable for them, including:
  - (i) the types of persons who are eligible to use the service (eg, existing clients);
  - (ii) a clear delineation of the area containing the public offer documents and a warning to applicants that any information falling outside those areas is not part of the public offer documents and the prescribed securities are offered solely on the basis of the information in the public offer documents;
  - (iii) the procedures which an applicant must go through to make a valid application, including accepting the issuer's terms and conditions;
  - (iv) dates and timing for various stages of the ePO, including deadlines for

<sup>13</sup> These may require the use of specific identity document types when inputting identity information.

<sup>14</sup> "Pre-registration service" refers to any service provided by an ASR to an investor whereby the investor may submit personal particulars and other information to the ASR in advance in the expectation that such particulars and information will be incorporated by the ASR as part of the investor's application instructions when he/she next applies for prescribed securities in a public offer through the ASR's ePO channel.

- submitting applications and making payments;
- (v) detailed instructions and information in relation to the application procedures, including any requirements or arrangement which applicants must have in place so that they can use the service, eg:
- a list of payment methods;
  - limitations associated with the payment methods (such as service lead time, transaction limits, etc);
  - circumstances and procedures for refunding monies to applicants;
  - procedures for distributing and registering prescribed securities;
  - description of the fees and charges that may be payable by applicants; and
  - deadlines for submission of the application;
- (vi) a statement that potential applicants should:
- read the public offer documents prior to making an investment decision; and
  - make their investment decision based on the public offer documents rather than on other information, particularly promotional or marketing materials and media coverage that may accompany the public offer; and
- (vii) warnings that, in using the ePO service, the applicant assumes the risks associated with conducting transactions over the Internet (eg, that transactions may be subject to interruption, transmission blackout, delayed transmission due to Internet traffic or incorrect data transmission due to the public nature of the Internet).

### **3. Intermediary-driven ePO**

#### **3.1 General**

- 3.1.1 An intermediary-driven ePO differs from an issuer-driven ePO in that the issuer has little or no responsibility towards the intermediary.
- 3.1.2 The intermediary's responsibilities in this type of ePO are almost the same as an ASR's in an issuer-driven ePO (namely, the matters set out in paragraph 2.6 except 2.6.2(a) and (i)). In addition, the intermediary proposing to display (or through a hyperlink to the issuer's website, provide access to) the electronic prospectus should seek the issuer's prior consent to do so.<sup>15</sup> This is to ensure that the intermediary displays or provides access to all necessary public offer documents and to ensure that the electronic version

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<sup>15</sup> While the SFC considers that it is good practice to obtain consent from the issuer (or third party) prior to creating a hyperlink, this is not an SFC requirement. Intermediaries who wish to create a hyperlink to other persons' websites, may also wish to consider whether there are any other legal issues involved (for example, whether there are any intellectual property issues).



of the public offer documents are identical to those provided or issued by the issuer. An intermediary choosing to display or provide access to public offer documents without the issuer's consent should ensure that the documents displayed or to which access is given include all relevant public offer documents and that these are first displayed or made available on its ePO channel at the same time as or as soon as practicable after they are made available to the public by the issuer.

- 3.1.3 In intermediary-driven ePOs, applicants submit application instructions to their intermediaries, after which the intermediaries submit the applications on or through the HKEX's FINI platform on behalf of all clients who have applied. Intermediaries offering this type of service should ensure that the matters stated in paragraph 2.6 (except 2.6.2(a) and (i)), are addressed and also provide a clear explanation as to the nature of the service being offered and of any particular risks associated with this type of application that do not normally arise under an issuer-driven ePO or the traditional paper-based application process that was previously used. Where applicable, it should explain that facilities enabling the collection of such application instructions may not result in any application being made on behalf of the investor and no legal relationship may exist between the investor and the issuer.

## **4. Other matters**

### **4.1 *Electronic prospectus***

- 4.1.1 The following enhancements or differences between the paper version and an electronic version of any public offer documents are acceptable:
- (a) a search facility for defined expressions;
  - (b) hypertext links within the prospectus;
  - (c) prompts to assist readers to use and find information in the document which should not contain any information that does not appear in the registered paper document; and
  - (d) a zoom facility so that readers may enlarge or reduce the information displayed.
- 4.1.2 The issuer is expected to inform and provide its ASR with electronic supplemental prospectuses in an issuer-driven ePO. However, in an intermediary-driven ePO, the intermediary is expected to ensure that a copy of any supplemental prospectus is provided or made available on its ePO channel at the same time as or as soon as practicable after it is made available to the public by the issuer.

### **4.2 *Hyperlinking to electronic prospectuses***

- 4.2.1 As an alternative to providing a copy of the public offer documents on its ePO channel, an ASR or intermediary providing ePO services may establish a hyperlink from its ePO channel to the website of the issuer (or any standalone website set up by the issuer for the duration of the public offer) or that of a suitable third party. Any ASR or intermediary wishing to use this method should:
- (a) consider obtaining prior consent from the issuer (or the third party) to establish

the hyperlink<sup>16</sup>, and indicate on the webpage or mobile app screen containing the hyperlink whether consent has been obtained;

- (b) ensure that the webpage or mobile app screen or icon containing the hyperlink contains a clear message to inform applicants that they are leaving the ASR's or intermediary's ePO channel and entering the website of the other person;
- (c) ensure that the webpage or mobile app screen or icon containing the hyperlink clearly describes where the hyperlink leads;
- (d) ensure that, subject to paragraph (b) above, a hyperlink described as leading to the prospectus (or other public offer document, as the case may be) provides direct access to the front cover or table of contents of the relevant document;<sup>17</sup>
- (e) put in place procedures to monitor the performance of the hyperlink to ensure that applicants using the ASR's or intermediary's webpage or mobile app screen can access the electronic public offer documents on the relevant website or mobile app screen for the duration of the public offer or for so long as applications are being accepted by that ASR or intermediary; and
- (f) immediately cease to accept applications through its ePO channel if the hyperlink fails to provide applicants with proper access to the public offer documents on the issuer or third party's website.

### **4.3 Non-prescribed securities**

4.3.1 Securities that are not prescribed securities may also be the subject of an ePO. Any person (including any intermediary or issuer) who chooses to provide ePO services in respect of such securities is also expected to comply with the requirements under these Guidelines. An ASR that intends to provide ePO services in respect of such securities will need to take measures to comply with the SFO, such as working with an intermediary which is licensed for Type 1 regulated activity, given that the provision of such services would constitute "dealing in securities" under Schedule 5 to the SFO. Such ASRs should approach the Commission as early as reasonably practicable.

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<sup>16</sup> Please refer to footnote 15 above.

<sup>17</sup> Hyperlinks described as leading to the prospectus (or other public offer document) but leading to webpages or mobile app screens containing information other than the relevant document, or to certain parts of the document, are not acceptable for these purposes.