

## Annex 2 Proposed Code

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### 1. Introduction

#### 1.1. Purpose

- 1.1.1. This Code of Practice for Trust Business (“the Code”) sets out the general principles and practical standards to govern the conduct of trustees in their trust business in Hong Kong.
- 1.1.2. The Code does not have the force of law and should not be interpreted in a way that would override the provision of the law.
- 1.1.3. Trustees should observe applicable legal requirements and other regulatory requirements as relevant to their trust business and other business, including but not limited to other conduct requirements, prudential requirements, and anti-money laundering and counter-terrorist financing requirements.

#### 1.2. Terminology

For the purpose of the Code -

- 1.2.1. “Trustee” refers to a person as follows that conducts trust business –

- (a) an individual carrying on business as a sole proprietor;
- (b) a partnership; or
- (c) a corporation.

This term captures a relevant party by whatever name called that performs the functions of a trustee.

- 1.2.2. "Trust" refers to an obligation imposed on a person to hold or control and administer assets for the benefit of others (i.e. the beneficiaries) or for a specified purpose (e.g. charitable purpose, wills or estate planning).
- 1.2.3. "Trust business" refers to provision of the following services by a trustee: (i) setting up a trust; (ii) acting as trustee for a trust; (iii) arranging for any person to act as trustee for a trust; (iv) managing the assets held on trust; (v) administration services for a trust; and / or (vi) eventual transfer of assets to beneficiaries. In other words, it is not confined to services involving fiduciary duties.
- 1.2.4. "Relevant staff" refers to staff engaged by a trustee to assist in the provision of trust business (including customer-facing staff, operations staff, and supervisors of such staff), other than those solely acting as an accountant for the overall book-keeping at the corporate level, general secretarial support or information technology support at the corporate level.

### **1.3. Applicability**

- 1.3.1. The Code applies to authorized institutions<sup>1</sup> ("AIs") that conduct trust business in Hong Kong.
- 1.3.2. Locally incorporated AIs with subsidiaries that conduct trust business in Hong Kong ("AI subsidiaries") should also ensure the business conduct, practices and controls of such subsidiaries are in line with the Code.
- 1.3.3. Any other trustees that conduct trust business in Hong Kong are encouraged to adopt the Code to the extent applicable.

### **1.4. Exemptions**

- 1.4.1. Depositories licensed or registered for Type 13 regulated activity ("RA13") under Schedule 5 to the Securities and

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<sup>1</sup> as defined by the Banking Ordinance (Cap. 155).

Futures Ordinance (Cap. 571) (“SFO”) are exempted from the scope of the Code when RA13 comes into effect insofar as the trust services provided relate to a collective investment scheme authorized by the Securities and Futures Commission under section 104 of the SFO and form part of the regulated functions for RA13 under the SFO.

1.4.2. Companies approved by the Mandatory Provident Fund Schemes Authority under section 20 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”) are also exempted from observing the Code insofar as the trust services provided relate to the mandatory provident fund (“MPF”) products mentioned below:

- (a) a registered scheme or its constituent fund (*as defined in section 2(1) of the MPFSO*) (“MPF schemes”); and
- (b) an approved pooled investment fund (“APIF”) (*as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)*) which is or is intended to be offered only to:
  - (i) professional investors for the purposes of MPF products;
  - (ii) employers (*as defined in section 2(1) of the MPFSO*);
  - (iii) MPF schemes;
  - (iv) occupational retirement schemes (*as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426)*) (“ORSO”);
  - (v) pooled agreements (*as defined in section 2(4) of the ORSO*); or
  - (vi) other APIFs.

1.4.3. For accountancy firms and law firms that are subject to their own set of professional code or ethical standards, they are also excluded from adopting the Code.

## **1.5. Non-compliance**

1.5.1. The HKMA oversees the trust business of AIs and AI subsidiaries as part of its supervision of the businesses of the AIs as a whole. The HKMA will monitor their compliance with the Code in its ongoing supervision.

1.5.2. Where a trustee identifies that there is material non-compliance with the Code or it comes to its attention that

there is material non-compliance, the case should be promptly reviewed and timely reported to the senior management and relevant regulators as appropriate in accordance with the guidance under Principle 6 Co-operation with regulators in the Code.

- 1.5.3. Failure of a trustee to adhere to the Code may call into question the fitness and propriety of the trustee, whether the AI concerned continues to satisfy the minimum criteria for authorization in the Banking Ordinance (Cap. 155) (“BO”), and / or the fitness and propriety of the chief executive (including alternate chief executives), directors and shareholder controllers of the AI concerned.

## **2. General principles**

### **2.1 Principle 1: Fairness, honesty and integrity**

2.1.1 A trustee should act honestly, fairly, and with integrity in conducting its trust business.

### **2.2 Principle 2: Due skill, care and diligence**

2.2.1 A trustee, in conducting its trust business, should act with due skill, care and diligence, and in the interests of its customers. A trustee should ensure that the entity through which trust business is conducted and all relevant staff are fit and proper to perform their roles and functions.

### **2.3 Principle 3: Management and control of trust assets**

2.3.1 A trustee should exercise due care in understanding, managing and controlling all assets held within the trust in full conformity with its fiduciary obligations.

### **2.4 Principle 4: Corporate governance and internal controls**

2.4.1 A trustee should establish a proper corporate governance structure and implement adequate internal controls and risk management systems to ensure that its trust business is effectively managed.

### **2.5 Principle 5: Compliance with legal and regulatory requirements and standards**

2.5.1 A trustee should comply with relevant legal and regulatory requirements and standards applicable to the conduct of its trust business activities.

### **2.6 Principle 6: Co-operation with regulators**

2.6.1 A trustee should deal with relevant regulators in an open and co-operative manner.

### **3. Principle 1: Fairness, honesty and integrity**

- 3.1. A trustee should ensure that its actions comply with relevant requirements and standards applicable to the trustee and / or its staff, where appropriate. The higher standards should prevail.
- 3.2. A trustee should observe the following:
  - 3.2.1. A trustee should conduct its trust business with integrity. A trustee should not engage in any conduct involving fraud or dishonesty or commit any act that reflects adversely on its honesty, trustworthiness or that compromises its integrity.
  - 3.2.2. A trustee should not attempt to avoid its responsibilities under the Code and any other applicable requirements and standards.
  - 3.2.3. A trustee should act fairly and objectively when dealing with the settlors and beneficiaries of a trust (collectively “the customers”). In particular, a trustee should:
    - (a) act in accordance with the objects of a trust and work within the parameters and terms set out in the trust governing documents (i.e. contracts, agreements or any other documents setting out the general and specific terms associated with services provided / to be provided by a trustee, for example, trust deeds) and/or any directions from a relevant party where permitted, in accordance with applicable requirements and standards;
    - (b) treat its customers fairly at all stages of the relationship and act impartially between them (such as treating same classes of beneficiaries equally and treating different classes of beneficiaries fairly), while having regard to its legal and contractual obligations;
    - (c) take all reasonable steps to consider and strive for a balance between the different objects of the trust, and, where practicable, strive for a balance between the interests of the stakeholders; and
    - (d) provide objective advice where required and appropriate to its customers and exercise independent professional judgement in performing its duties.

### **3.3. Disclosure of information**

- 3.3.1. A trustee should make adequate and accurate disclosure of relevant information to help customers make an informed decision prior to entering into any contract or agreement (for example, key risks, terms and conditions, fees and charges).
- 3.3.2. A trustee should ensure that where appropriate customers have access to relevant and updated information concerning that trust. Where there are any material changes or updates relating to the trust from time to time, a trustee should timely provide notifications to those parties to the trust entitled to that information.

### **3.4. Fees and charges**

- 3.4.1. A trustee should ensure that fees and charges in relation to a trust are fair and reasonable.
- 3.4.2. A trustee should be open and transparent with customers about fees and charges, for example:
  - (a) prior agreement on fees and charges, and document the basis for such fees and charges;
  - (b) prior disclosure of any fees and charges, commissions, rebates, compensation, or benefits to be received from parties other than the customers;
  - (c) disclosure of the manner by which fees and charges will be collected;
  - (d) giving adequate notice before introducing any change in fees and charges; and
  - (e) disclosure of the arrangement of fees and charges in relation to the termination of services, such as whether fees paid in advance are refundable in the event of termination.

### **3.5. Representations**

- 3.5.1. A trustee should take reasonable steps to ensure that representations made, including invitations and advertisements, are accurate, and do not contain information that is false, misleading, or deceptive.

## **4. Principle 2: Due skill, care and diligence**

### **4.1. Prompt execution**

4.1.1. A trustee should take all reasonable steps to execute requests or instructions from customers promptly and effectively, including the establishment, transfer or closing of business relationships.

### **4.2. Acting in the interests of customers**

4.2.1. A trustee should act with proper purpose, and act with due skill, care, and diligence in performing its duties. A trustee should not take up outside duties or responsibilities that may pose undue influence on the trustee's decisions or compromise the trustee's ability to act in the interests of the trust.

4.2.2. A trustee should have a complete and updated understanding of the trust governing documents in each case, and seek legal or other professional advice where necessary.

4.2.3. A trustee should treat the interests of customers as paramount, subject to any legal obligations to other parties. Where there is more than one trustee, a trustee should consider whether it is appropriate to make decisions collectively, and only act on an individual basis if direction to do so may be given by an appropriate stakeholder or if otherwise to do so would clearly be in the interests of the customers.

4.2.4. When a trustee exercises power or discretion for or on behalf of its customers (such as the power to invest, manage or arrange for investment), it should act with due care and attention to ensure that it suitably exercises such power or discretion. For example, a trustee should:

- (a) act on a fully informed basis;
- (b) exercise power or discretion consistently in accordance with the objects and terms set out in the trust governing documents and applicable legal and regulatory requirements; and
- (c) evidence any decision made, in particular for decisions constituting a departure from the objects and terms set out in the trust governing documents.

### **4.3. Handling conflicts of interest**

4.3.1. A trustee should establish and implement effective policies and procedures to identify and manage actual or potential conflicts of interest.

4.3.2. A trustee should consider the circumstances in determining the appropriate actions to handle actual or potential conflicts of interest so that they can be avoided or prevented, and if not possible, at least appropriately managed. For example, a trustee should:

- (a) segregate duties adequately;
- (b) establish necessary information boundaries, such as physical separation of certain departments or data segregation;
- (c) identify the relationships, services, activities or transactions of the trustee in respect of which conflicts of interest may arise, and set out possible measures for preventing or managing these conflicts, such as;
  - ensuring that deliberations, voting and decision making on issues exclude those persons whose participation may give rise to a real or perceived conflict;
  - disclosing interests or conflicts to the customers and other impacted parties, and if appropriate, seeking customers' written consent;
  - advising customers to seek independent professional advice if needed; and
- (d) takes reasonable steps to ensure that customers are fairly treated.

4.3.3. If a trustee has involvement with any connected party, it should implement proper internal controls, including dealing with connected parties on an arm's length basis and in the interests of the trust, disclosure of connections, and maintaining proper documentation of the justifications for approving a transaction with a connected party.

### **4.4. Fitness and propriety of a trustee and its staff**

4.4.1. A trustee should possess and maintain sufficient skills, knowledge and expertise to conduct its trust business. It should only conduct those areas of trust services for which it has relevant professional knowledge and expertise.

- 4.4.2. A trustee should ensure relevant staff are and remain fit and proper for their roles and responsibilities. A trustee should also ensure that relevant staff and staff engaged in compliance, internal controls, risk management and internal audit functions possess the necessary technical knowledge and skills, ethics and compliance knowledge, qualifications and experience.
- 4.4.3. A trustee should establish and implement appropriate training policies, procedures and plans that take into account the following:
- (a) assessing the adequacy of relevant academic and professional qualifications, knowledge, skills, work experience and soundness of judgement of staff;
  - (b) assessing propriety of staff, such as any adverse records related to integrity, reputation and character, and require staff to update the trustee for any changes thereafter (e.g. convicted a criminal offence which is related to fitness and propriety, disciplined or disqualified by a professional or regulatory body in relation to the business or profession, bankruptcy order);
  - (c) providing adequate level of supervision to staff; and
  - (d) establishing a training plan and providing relevant and timely guidance and training to staff initially and on an on-going basis, including relevant induction and continuous training and development on technical knowledge and skills, industry developments, applicable legal and regulatory requirements (including ethics and compliance knowledge), and relevant internal control policies and procedures.
- 4.4.4. In order to maintain on-going professionalism and keep abreast of the latest development, relevant staff are expected to fulfil not less than 10 hours of trust-related continuous professional training (“CPT”) in each calendar year, of which at least 2 hours are on ethics and compliance. For the avoidance of doubt, trust-related professional training or development activities fulfilled by an individual under relevant professional qualifications can count towards the CPT hours in the same calendar year under the Code, provided that such training or development activities are achieved through the acceptable means mentioned below: (i) classroom training courses, workshops, lectures, seminars; (ii) distance learning or self-study which requires submission of assignments or assessments; (iii) industry research,

publication of paper, delivery of speeches or providing comments to industry consultation papers; and / or (iv) time spent in giving lectures or teaching (although repeatedly giving the same lecture or teaching will not satisfy the requirement). Trust-related training may be organised by relevant professional bodies, training providers or employing institutions. Relevant staff can choose relevant training that is suitable to their needs and circumstances.

- 4.4.5. A trustee should keep records to evidence the competence and on-going professional development of relevant staff and staff engaged in compliance, internal controls, risk management and internal audit functions.

## **5. Principle 3: Management and control of trust assets**

### **5.1. Ownership and entitlement of trust assets**

- 5.1.1. A trustee should exercise care in safekeeping assets held on trust. Where physical assets are held, physical storage should be secure.
- 5.1.2. Adequate procedures should be effectively implemented to minimise the risk of loss, theft, fraud, and other acts of misappropriation. Proper records should be maintained in respect of assets to evidence their registration, good title and security as appropriate and to ensure their availability for distribution in accordance with the trust deed and / or trustees' exercise of its discretion. Proper audit trails should be created to evidence the receipt, delivery and other movements of assets.
- 5.1.3. A trustee investing in and managing the assets of a trust should act in accordance with clearly defined authorities conferred by the creation of the trust and take into account the objects, terms, distribution requirements, other relevant directions and documents from customers, enforcers and protectors, applicable legal and regulatory requirements, and other circumstances of the trust.

### **5.2. Segregation of trust assets**

- 5.2.1. A trustee should ensure assets held on trust are clearly identified and segregated from one another and from the assets of the trustee and any delegate(s) or other party(ies) involved in the operations of the trust.

### **5.3. Reconciliation of trust assets**

- 5.3.1. Regular reconciliation of assets held on trust against third party records and verification of asset ownership should be conducted by independent staff of the trustee, subject to review and approval by appropriate management staff. For physical assets, regular audits should be conducted at the premises where the physical assets are kept.
- 5.3.2. Proper procedures should be implemented to follow up any issues or discrepancies identified, take any rectification and remedial measures, and report or escalate matters as appropriate.

## **6. Principle 4: Corporate governance and internal controls**

- 6.1. A trustee should establish and maintain robust corporate governance policies and practices as well as effective internal controls and risk management processes that are commensurate with the nature, scale and complexity of the trust business.
- 6.2. A trustee should implement processes to ensure the senior management could timely obtain updates and apprise the affairs of the trust business.
- 6.3. A trustee should ensure that reporting lines are clearly identified with supervisory and reporting responsibilities assigned to appropriate staff with separation of duties as appropriate.
- 6.4. A trustee should regularly review the effectiveness and appropriateness of the governance policies and practices, and the internal controls, taking into account the business activities, risk profile and market development.
- 6.5. A trustee should have proper oversight of all delegates and other parties (e.g. outsourcing service providers, nominees, agents) engaged for providing services related to its trust business activities. Among others, a trustee should have adequate internal control policies and procedures for ongoing monitoring of such delegates and other parties to be satisfied that the operations concerned are performed in compliance with relevant legal and regulatory requirements and the trust governing documents.
- 6.6. Management accountability**
  - 6.6.1. The ultimate responsibility for the operation and conduct of a trust business of a trustee lies with the board of that trustee.
  - 6.6.2. Senior management of a trustee are accountable to the board, and are responsible and accountable for running the trust business on a day-to-day basis, and should ensure that the business activities comply with applicable legal and regulatory requirements and internal procedures.

- 6.6.3. A trustee that is an AI should appoint (a) manager(s) under section 72B of the BO to supervise and be principally responsible (alone or with others) for its trust business under different lines of business (e.g. retail banking, private banking, corporate banking, or other business which is material to the institution). The AI is required to comply with the HKMA's Supervisory Policy Manual CG-2 on Systems of Control for the Appointment of Managers ("SPM CG-2"), which sets out, among others, the fit and proper criteria and respective controls to ensure fitness and propriety of individuals appointed as managers, and notification requirements and timeline to the HKMA.
- 6.6.4. A trustee that is an AI subsidiary should appoint appropriate individual(s) to supervise the trust business and be principally responsible (alone or with others) for the conduct of the trust business. It should notify, as signed by the chief executive, the HKMA in respect of the appointment of such individual(s):
- (i) the name of the individual;
  - (ii) the identify card or passport number of the individual;
  - (iii) the position or title of the individual; and
  - (iv) the date of new appointment, cessation of existing appointment or change in responsibilities,
- within 14 days of the appointment, cessation or change.
- 6.6.5. For appointing individual(s) to supervise the trust business in the above paragraph, the trustee concerned could draw reference from the attributes set in the paragraph 2.3.3 of SPM CG-2 and the fit and proper criteria as set out in section 3 of SPM CG-2 in assessing the fitness and propriety of individual(s).

## **6.7. Confidentiality**

- 6.7.1. A trustee should implement appropriate policies, procedures and controls on collection, use and transmission of trust related information and personal data.
- 6.7.2. Staff are required to hold in strict confidence all trust related information and customer data the trustee has collected or obtained from persons related to trusts (e.g. settlors, protectors, enforcers and beneficiaries). A trustee should not disclose such information to third parties unless required by applicable legal and regulatory requirements, or consent is given by the person

concerned. An institution should take all necessary steps to safeguard the confidentiality of customer information, including formulating internal policies for the collection, use and transmission of confidential data.

- 6.7.3. A trustee should implement adequate controls to prevent staff from benefiting in financial or non-financial terms from the improper use of confidential information which may lead to unfair, improper or illegal behaviour.

## **6.8. Outsourcing**

- 6.8.1. For the purpose of the Code, outsourcing refers to an arrangement under which another party (i.e. a service provider) undertakes to provide to a trustee a service previously carried out by the trustee itself or a new service to be launched by the trustee. The service provider may be another unit of the same entity (e.g. head office or an overseas branch in the case of an AI), another company with the group (e.g. holding company, subsidiary, affiliate), or an independent third party.
- 6.8.2. A trustee should assess and continually manage the risks associated with an outsourced activity. A trustee should not enter into, or continue, any outsourcing arrangements if this may result in its internal control systems or business conduct being compromised or weakened after the activity has been outsourced.
- 6.8.3. A trustee should establish adequate policies, procedures and controls in relation to the selection, appointment, monitoring, assessment and supervision of service providers, including:
- (a) setting selection criteria (taking into account the costs, quality of services, financial soundness, reputation, managerial skills, technical capabilities, operational capability, compatibility and other relevant factors) and perform appropriate due diligence of a service provider prior to engagement;
  - (b) executing an agreement which clearly sets out the type and level of services to be provided and the liabilities and obligations of the service provider; and
  - (c) implementing controls to monitor the performance, manage the relationship with the service provider on a continuous basis, and implementing safeguards to protect the integrity and confidentiality of customer information.

## **6.9. Internal controls on managing and administering the trust**

6.9.1. A trustee should implement adequate procedures and controls in managing and administering the trust. Among other things, the controls should include, as appropriate, cashflow monitoring, investment monitoring, safekeeping and valuation of assets, trust accounting, receipt and distribution of payments and assets in accordance with the trust governing documents and applicable legal and regulatory requirements.

6.9.2. A trustee should ensure it has in place an adequate business continuity plan and procedures to handle potential disruptions, failures, and other contingencies for its trust business activities. A trustee should also establish an appropriate contingency plan for the engagement of delegates and other parties.

## **6.10. Complaint handling**

6.10.1.A trustee should implement adequate policies and procedures for handling complaints lodged by customers or a third party on behalf of customers related to its trust business.

- (a) Policies and procedures should cover receiving complaints, investigation of complaints, responding to complaints, and availability of any redress or compensation in appropriate circumstances.
- (b) Complaints should be handled, investigated and addressed in a fair, prompt and appropriate manner. Staff assigned to handle the complaint should be independent and should not be involved in the subject of the complaint.
- (c) Details on where and how to lodge a complaint should be communicated and made available to customers.
- (d) Records of complaints should be maintained which show the complainant's name, details of the complaint, assessment result, correspondence between a trustee and the complainant, and any actions taken.

6.10.2.A trustee should set up effective procedures to monitor complaints and prepare regular reports with complaint related data to the senior management for review.

## **6.11. Risk management**

6.11.1.A trustee should establish an effective risk management framework and implement adequate procedures and internal controls to identify, monitor and manage risks in acting as a trustee.

## **6.12. Accounting and other record keeping**

6.12.1.A trustee should maintain adequate records and adequate internal controls of its records to demonstrate compliance with the Code, other applicable legal and regulatory requirements, and trust governing documents.

## **6.13. Professional indemnity insurance**

6.13.1.A trustee should maintain professional indemnity insurance with adequate coverage that is commensurate with its trust business to cover claims for liability related to its duties and obligations in the course of conducting trust business. Coverage may be taken at the entity or group level, so long as it is adequate.

## **7. Principle 5: Compliance with legal and regulatory requirements and standards**

7.1. A trustee should comply with applicable legal and regulatory requirements, regulatory standards, and internal policies and procedures relevant to its trust business.

### **7.2. Compliance policies and procedures**

7.2.1. A compliance policy should be established with proper approval from senior management of a trustee, and be subject to regular review to ensure adequacy and relevancy.

7.2.2. Adequate procedures and internal controls should be implemented to ensure compliance with relevant legal and regulatory requirements, regulatory standards, and internal policies and procedures.

### **7.3. Compliance function and review**

7.3.1. Senior management of a trustee should establish a compliance function comprising staff with relevant knowledge, skills, qualification and experience to execute their duties effectively.

7.3.2. The compliance function should be independent of all business and operational functions, and report to senior management directly. It should have unfettered access to all business and supporting units, as well as documentation, records and information necessary to properly discharge the roles and responsibilities.

7.3.3. The trustee should establish a compliance program for planning and conducting regular independent review of its trust business activities and operation. Effective systems and controls should be implemented to identify, monitor and manage any conduct issues, control deficiencies and non-compliance with relevant requirements (including the Code) and standards governing the trust business.

7.3.4. Appropriate remedial measures should be taken by the units concerned to rectify the issues and weaknesses identified and / or prevent similar occurrences in future. Such action plans and measures should be reviewed and monitored by relevant control and risk management functions and management, including the compliance function.

7.3.5. The trustee should observe relevant guidelines to escalate or report to senior management and regulators any material non-compliance and other relevant matters as appropriate.

## **8. Principle 6: Co-operation with regulators**

8.1. A trustee should deal with relevant regulators in an open and cooperative manner.

8.2. Communications made by a trustee with relevant regulators should be timely and accurate.

### **8.3. Notification or reporting to regulators**

8.3.1. Information or representations made to relevant regulators should be accurate, fair, not misleading, timely and within any prescribed timeline, and in accordance with any relevant requirements.

8.3.2. A trustee that is an AI or AI subsidiary (as the case may be) should promptly report to the HKMA or notify the HKMA of relevant matters on its trust business activities and operations, including significant changes in business plans, material non-compliance with any legal and regulatory requirements (including the Code), and any other matters that may have material impact on the fitness and propriety of the trustee.

8.3.3. For the matters mentioned in the above paragraph, the AI or AI subsidiary (as the case may be) should report to the HKMA and notify it of any rectification and remedial action plan within any prescribed timeline in accordance with the requirements applicable to AIs.