



香港證券業協會
HONG KONG SECURITIES ASSOCIATION

24 January 2020

To: Ms. Julia Leung, SBS
Deputy Chief Executive Officer and Executive Director
Intermediaries Division
Securities Futures Commission

Cc: Ms. Irene Tsao
Director, Intermediaries Supervision Department
Intermediaries Division
Securities and Futures Commission

Mr. Kenneth Lai
Director
Enforcement Division
Securities and Futures Commission

Dear Julia,

Circular on the Use of External Electronic Data Storage

As you are aware, the undersigned industry associations represent a substantial proportion of the regulated entities potentially affected by the above Circular. We and our members are keen to identify practical solutions to meet the SFC's concerns, and we appreciate the SFC's willingness to explore alternatives with the industry in order to agree on a workable Circular with which the industry can comply.

Section 130 of the SFO was conceived at a time when records were predominantly preserved in physical form, and this is reflected in the wording used in the section: it talks about the "use" of "premises" for "keeping" records.

Since the implementation of the SFO, there has been an explosion in the use of electronic data in all aspects of business. Storage of and access to electronic data on computers and on the cloud are pervasive, principally because of the enhanced technological, cyber security, business continuity and disaster recovery protections afforded by electronic data in comparison with physical, hard copy storage. In addition to more obvious record keeping systems, intermediaries use numerous applications in their businesses, some of which are web-based, and analysis needs to be done to determine whether such applications generate records for the purposes of the SFO, and how they are kept.

We understand that the SFC takes the view that data resides where the servers on which the data is stored are situated. Whilst this is the SFC's view, the view widely held by our members is that under section 130 of the SFO, servers are not premises and customers do not "use" the premises of EDSPs where the latter keep their servers in any conventional sense. There are even arguments whether

“keep” in this context means “store” or “create”. Many in the industry believe that ready and unfettered access to decrypted data and records from their Hong Kong office should meet the section 130 requirement and the overriding objectives of the SFC for such access.

Maintaining records in electronic form has many benefits, from reducing storage volumes to enhanced search functions, improved cyber resiliency and more efficient retrieval capabilities. Clearly, therefore, it should not be discouraged. Increasingly high rents in Hong Kong have led many businesses to seek economies by storing data with service providers which may now be classed as EDSPs and whose servers may be in or outside Hong Kong.

One of the major issues for the industry has been the requirement for an undertaking from overseas EDSPs. This is a matter outside the control of our members, and we have been unable thus far to obtain a clear indication from any of the major EDSPs whether they would be prepared to sign such an undertaking in its current form, a revised form or at all.

We are eager to find mutually acceptable solutions to the issues that concern the SFC, which we believe pertain to the preservation of records and the prevention of tampering with records as well as ensuring there is prompt access to these records and senior management accountability for such access.

A great many minds are being devoted to resolving the implementation problems at an industry-wide level, among them some of the most experienced legal practitioners in Hong Kong. We believe we can come up with appropriate and workable solutions addressing the SFC’s concerns but considering the technical challenges and global nature of the problems and solutions, it is likely to take considerable time.

In light of the foregoing, we would ask the SFC to take into account the time required for the industry to propose alternative solutions that are workable, to reach agreement with the SFC on those alternatives and to implement the agreed solutions that would achieve the SFC’s objectives and defer the Circular’s effective date.

Kind regards,

Alternative Investment Management Association



Kher Sheng Lee
Managing Director
Co-Head of APAC
Deputy Global Head of Government Affairs

**Asia Securities Industry & Financial
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Mark Austen
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