



Operational Challenges

in the Hong Kong and Singapore Capital Markets due to
a Lack of Adoption of Electronic Means

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A. INTRODUCTION AND STRUCTURE OF REPORT

A.1 INTRODUCTION

The novel coronavirus (“COVID-19”) pandemic is continuing to have significant impact on businesses across all industries, including those in the financial services sector. Social distancing measures (including restrictions on public gatherings and mandatory quarantine periods) introduced by governmental authorities in Hong Kong and Singapore, have resulted in the temporary closure of offices of public authorities and commercial firms, work from home arrangements have been implemented and border controls/travel restrictions have been imposed. These measures, implemented to mitigate the risk of widespread public health catastrophe, have affected capital markets and, more broadly, the ways in which financial institutions operate their businesses.

In particular, financial institutions in Hong Kong and Singapore have encountered a number of operational challenges because certain processes could not be performed electronically. In particular, restrictions on social and physical interaction have made it difficult for firms to comply with some laws and regulations. For example, certain laws and regulations require the submission of original documents with “wet-ink” signatures¹ rather than electronic signatures or acknowledgements. Other laws and regulations require that individuals are physically present to perform a task or function at a certain place and time (e.g., witnessing the execution of a document).

The aim of this report is to identify:

- (i) the operational challenges identified by members of ASIFMA (“**Members**”) in Hong Kong and Singapore during the COVID-19 pandemic; and
- (ii) the solutions proposed by Members to address or alleviate these operational challenges in the short-term and/or the long-term.

While this report focuses on the operational challenges faced by Members as a result of the COVID-19 pandemic, Members generally support the increased promotion, availability and use of electronic solutions as a strategic objective for the Hong Kong and Singapore authorities. Development of electronic solutions in Hong Kong and Singapore ultimately enhances the

¹ For the purpose of this report, the terms “originals” and “wet-ink” signatures are used interchangeably, and refer to physically signed signatures of an individual.

accessibility of Hong Kong and Singapore markets and their reputation as leading international financial centers.

In Hong Kong, the further development of digital solutions is consistent with the objectives articulated in the Smart City Blueprint (the “**Blueprint**”), which was published by the Innovation and Technology Bureau in 2017.² In the Blueprint, the Hong Kong government outlines its intention “to embrace innovation and technology to build a world-famed Smart Hong Kong”.

In Singapore, the Digital Government Blueprint³, which was published in 2018, is “a statement of the government’s ambition to better leverage data and harness new technologies, and to drive broader efforts to build a digital economy and digital society, in support of Smart Nation”. The Digital Government Blueprint states that digitalization is a key pillar of the Singapore government’s public service transformation efforts.

Regulatory authorities in Hong Kong and Singapore also have expressed the importance of digitizing their processes. For example, Mr. Eddie Yue, the Chief Executive of the Hong Kong Monetary Authority (“**HKMA**”) stated at the Hong Kong Fintech Week in 2019 that the HKMA has embarked on a digitalization programme, and will be overhauling its information technology and data infrastructure.⁴ The Hong Kong Securities and Futures Commission (“**SFC**”) has also previously announced that digitization and process automation are key components of its information technology solution⁵, and the SFC conducts regular reviews on its internal operations to keep up with the latest technological developments and innovative business practices to ensure they are adopted effectively and securely.⁶ In Singapore, the Monetary Authority of Singapore (“**MAS**”) has previously stated that it is developing its own supervisory technology (or SupTech) to improve and sharpen its surveillance and analytical capabilities.⁷

² Please see the Innovation and Technology Bureau’s “Hong Kong Smart City Blueprint” (https://www.smartcity.gov.hk/blueprint/HongKongSmartCityBlueprint_e-flipbook_EN/mobile/index.html#p=27)

³ Please see The Smart Nation & Digital Government Office’s “Digital Government Blueprint” (https://www.tech.gov.sg/files/digital-transformation/dgb_booklet_june2018.pdf)

⁴ Please see paragraphs 28 to 30 of the “Keynote Speech at Hong Kong Fintech Week 2019” by Mr. Eddie Yue (<https://www.hkma.gov.hk/eng/news-and-media/speeches/2019/11/20191106-1/>)

⁵ Please see page 11 of the SFC’s “Annual Report 2018-2019” (https://www.sfc.hk/web/files/ER/Annual%20Report/2018-19/Annual%20Report%202018-19_EN.pdf)

⁶ Please see page 9 of the SFC’s “Annual Report 2019-2020” (https://www.sfc.hk/web/EN/files/ER/Annual%20Report/2019-20/EN/02_Strategic%20Priorities_EN.pdf)

⁷ Please see “Banking Supervision – The Path Ahead - Opening Address by Mr Ong Chong Tee, Deputy Managing Director (Financial Supervision), Monetary Authority of Singapore, at 13th Asia-Pacific High Level Meeting on Banking Supervision on 28th February 2018” (<https://www.mas.gov.sg/news/speeches/2018/banking-supervision>).

It is also noteworthy that governmental and regulatory authorities in other jurisdictions, such as the Financial Conduct Authority (“FCA”) in the United Kingdom (“UK”), have already embraced electronic solutions for market participants in the financial sector, and accordingly some of the operational challenges experienced by financial institutions in Hong Kong and Singapore (as described in more detail later in this report) have not been experienced by financial institutions in the UK.⁸

A.2 STRUCTURE OF THIS REPORT

The key themes emerging from the feedback received from Members are set out in Part B of this report.

Part C of this report describes the specific challenges and solutions identified by Members through the following six subject categories:

1. Regulatory correspondence, including regulatory applications, notifications or submissions (“**Regulatory Submissions**”) and day-to-day communications;
2. Customer onboarding process;
3. Corporate meetings;
4. Listing and initial public offering (“**IPO**”) process;
5. Tax and stamp duty process; and
6. Post-trade matters.

The solutions identified by Members in Part C of this report require:

1. amendments to laws and regulations;
2. the issuance of regulatory guidance from regulatory authorities;
3. changes to existing practices of regulatory authorities; and/or
4. support from industry bodies.

A consolidated list of Members’ suggested solutions is set out in the Annex to this report and is sorted by reference to the relevant regulatory or public/governmental authority for the reader’s ease of reference.

In addition, in Part D of this report, Members have separately noted the development of tokenisation as being of relevance because of certain challenges that are inhibiting the adoption of

⁸ Please see the FCA’s “Digital Regulatory Reporting” (<https://www.fca.org.uk/innovation/regtech/digital-regulatory-reporting>)



tokenised securities under current legal and regulatory frameworks (though Members acknowledge that this is not an operational challenge arising from the COVID-19 pandemic).

While Members have not conducted an exhaustive international benchmarking exercise to compare Hong Kong and Singapore laws and regulations to the laws and regulations of all other major financial centers, Members have considered the equivalent position in the UK, Hong Kong and Singapore (as applicable) for certain operational challenges in Parts C and D of this report.

B. KEY THEMES

Four key themes have emerged from our review of the operational challenges identified by Members.

Firstly, there are certain requirements in Hong Kong and Singapore for firms to physically deliver original documents with “wet-ink” signatures and/or certified true copies of documents to regulatory authorities or other persons.

Secondly, there are certain requirements in Hong Kong and Singapore for physical meetings to be held and/or for an individual’s physical presence at a certain place and time.

Thirdly, the rules and regulations in Hong Kong in relation to electronic signatures and electronic records arguably are too narrow, and restrict wider usage/acceptance of electronic signatures.

Fourthly, in Hong Kong there are some situations in which payments must be made using bank cheques or bank cashier orders within a prescribed time period.

When viewed in isolation, these themes and underlying issues do not appear to be material. However, when aggregated together they present real operational challenges that could be alleviated by the implementation of electronic solutions.

Theme (1) Requirements to deliver originals or certified true copies

In Hong Kong and Singapore, there are certain legal and regulatory requirements that require an original document signed with “wet-ink” signatures, or a certified true copy of a document, to be delivered to a regulatory authority or another person. For example, certain regulatory authorities require the physical submission of original Regulatory Submissions physically signed with “wet-ink” signature(s). These “wet-ink” signatures may be required from individuals of the firm itself or from third parties such as accountants, witnesses or persons certifying a document or customers of a financial institution, who may be required to deliver originals or certified copies of certain documents to the financial institution as part of the financial institution’s anti-money laundering and know-your-client (“**AML/KYC**”) requirements.

During the COVID-19 pandemic, firms have found it difficult to fulfil these requirements. In particular, due to the social distancing measures, it has been challenging for signatories to sign and arrange for the physical delivery of “wet-ink” signatures or for persons (such as public notaries or lawyers) to certify documents and arrange for the physical delivery of certified true copies. Social distancing measures and reduced transportation services also have resulted in a delay in the delivery of documents being delayed.

To address the challenges above, regulatory authorities may wish to consider modifying current requirements or practices (as the case may be) to permit Regulatory Submissions to be submitted electronically instead of physically. In addition, regulatory authorities may also wish to consider providing further guidance on and promoting the use of electronic signatures for the certification of documents for AML/KYC purposes.

Theme (2) Requirement for physical meetings and presence

In Hong Kong and Singapore, there are certain legal and regulatory requirements and market conventions requiring physical meetings to be held and/or for an individual's physical presence at a certain place and time. For example, in Hong Kong and Singapore, a company's articles of association may require the company to hold its annual general meetings and extraordinary general meetings at physical premises. In Hong Kong, there also is a regulatory expectation and market practice that sponsors will need to be physically present to conduct due diligence on an applicant that is applying for its securities to be listed on the Stock Exchange of Hong Kong Limited ("SEHK").

During the COVID-19 pandemic, firms have found it challenging to meet these requirements. In particular, due to social distancing measures, it has been difficult or impossible to require individuals to be physically present at a particular place and time.

Theme (3) Restrictiveness of rules and regulations on electronic signatures

In Hong Kong, the Electronic Transactions Ordinance (Cap. 553) ("ETO") accords electronic records and electronic signatures the same legal status as that of their paper-based counterparts. In general, a signature requirement under Hong Kong law can be met by any form of electronic signature so long as it is reliable, appropriate and agreed by the recipient of the signature. There are, however, a number of exceptions that omit the application of the ETO:

- (a) For transactions involving government entities, a digital signature must be supported by a recognized digital certificate issued by a certification authority recognized under the ETO. Currently, there are only two certification authorities recognized under the ETO, namely, the Postmaster General and Digi-Sign Certification Services.⁹
- (b) A number of matters are excluded from the scope of the ETO, including:

⁹ Please see the Office of the Government Chief Information Officer's "Disclosure Records of Recognized Certification Authorities" (https://www.ogcio.gov.hk/en/our_work/regulation/eto/ca/disclosure_records/)

- (i) the making, execution or making and execution of any instrument which is required to be stamped or endorsed under the Stamp Duty Ordinance (Cap. 117) (“**SDO**”) other than a contract note;
- (ii) any assignment, mortgage or legal charge within the meaning of the Conveyancing and Property Ordinance (Cap. 219) or any other contract relating to or effecting the disposition of immovable property or an interest in immovable property; and
- (iii) a document effecting a floating charge referred to in section 2A of the Land Registration Ordinance (Cap. 128).

These exceptions have restricted firms from being able to execute certain documents (e.g., stock borrowing agreements) electronically, and the physical execution of such documents may be challenging and difficult during the COVID-19 pandemic. To address this, the Financial Services and the Treasury Bureau (“**FSTB**”) may wish to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and dispensing with the requirement that transactions involving government entities require a digital signature supported by a digital certificate issued by a recognized certification authority.

In Singapore, there are also a number of exclusions (“**Schedule 1 Exclusions**”) to the Electronic Transactions Act (Cap. 88) (“**ETA**”). These include:

- (a) negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money;
- (b) the creation, performance or enforcement of an indenture, declaration of trust or power of attorney, with the exception of implied, constructive and resulting trusts;
- (c) any contract for the sale or other disposition of immovable property, or any interest in such property; and
- (d) the conveyance of immovable property or the transfer of any interest in immovable property.

The Infocomm Media Development Authority of Singapore (“**IMDA**”) is currently reviewing the ETA and is mindful that Singapore’s legislative framework should continue to be facilitative and not hinder the development and adoption of practical and commercially viable electronic means of

communications and transactions.¹⁰ Some of the changes contemplated by IMDA include removing the Schedule 1 Exclusions entirely or removing certain items from the list of excluded matters.

Theme (4) Restrictiveness on the means of payments

In Hong Kong, there are certain legal requirements for tax payments to be made within prescribed periods of time. For example, the payment of stamp duty in Hong Kong in relation to transfer of Hong Kong stock is to be settled within the prescribed time period (i.e., 2 days or 30 days depending on the location of execution of the transactions) after the submission of the original contract notes, instrument of transfers and the relevant supporting documents to the Hong Kong Inland Revenue Department (“IRD”). Currently, the payment of the relevant stamp duty to the IRD is made via cheque or a bank cashier order. The only e-payment channels made available by the IRD are Visa, Master, UnionPay and PPS, which most of the firms cannot adopt in practice.

During the COVID-19 pandemic, firms have found it operationally difficult to meet certain tax payment obligations. In particular, due to the social distancing measures, it has been challenging for a cheque or a bank cashier order to be arranged and physically delivered to the IRD in payment of the stamp duty within the prescribed time periods.

To address the challenges above, authorities may wish to consider allowing payments by direct debit and/or bank remittance as an additional payment method to the existing e-payment methods (e.g., PPS, credit cards).

¹⁰ Please see the IMDA’s “Consultation Paper on Review of the Electronic Transactions Act (ETA) (Cap.88)” (<https://www.imda.gov.sg/-/media/Imda/Files/Regulation-Licensing-and-Consultations/Consultations/Consultation-Papers/Public-Consultation-on-the-Review-of-the-Electronic-Transactions-Act/Public-Consultation-Paper-on-the-Review-of-the-Electronic-Transactions-Act-27-Jun-2019.pdf?la=en>)

C. OPERATIONAL CHALLENGES AND SUGGESTED SOLUTIONS

C.1 REGULATORY CORRESPONDENCE

C.1.1 Regulatory applications and notifications

In Hong Kong, Members have identified that certain Regulatory Submissions are required to be signed with “wet-ink” signatures and physically delivered to the relevant regulatory authority. In addition, “wet-ink” signatures from third parties, such as accountants and witnesses, may also be required for certain types of Regulatory Submissions. Due to social distancing measures implemented during the COVID-19 pandemic, firms have found it challenging to obtain “wet-ink” signatures from the relevant signatories. While certain regulatory authorities in Hong Kong have relaxed their processes during the COVID-19 pandemic (e.g., the SFC has committed to start reviewing regulatory applications as soon as a scanned copy of the application form has been received).¹¹ Members have noted that the original documents signed with “wet-ink” signatures will still need to be physically submitted to the regulatory authorities in order for the Regulatory Submissions to be finalised/approved.

To address this challenge, Members invite the SFC and the HKMA to consider transitioning to electronic Regulatory Submissions and permitting the use of scanned copies of signatures/digital signatures instead of requiring the physical submission of Regulatory Submissions with “wet-ink” signature pages.

The specific operational challenges and solutions identified by Members are set out in the table below:

| Item | Regulator | Specific Example |
|------|-----------|--|
| 1. | SFC | <p>Physical submission of originals of licensing application and forms</p> <p><u>Operational Challenge:</u> Currently, firms submitting a licensing application to the SFC under Part V of the Securities and Futures Ordinance (“SFO”) are required by the SFC to physically submit an original of the licensing application to the SFC. For example:</p> <ul style="list-style-type: none"> Form A (Application for Licence – Corporation) requires (i) the “wet-ink” signatures of two directors/persons authorized by the board; and (ii) witnessing of the signatures of the directors/persons authorized by the board by certain persons (practicing solicitor, notary public or |

¹¹ Please see the SFC’s “Frequently Asked Questions on Application Procedures for Authorization of Unit Trusts and Mutual Funds under the Revamped Process” as an example (https://www.sfc.hk/web/files/PCIP/FAQ-PDFS/FAQs%20on%20Application%20Procedures_20200807.pdf)

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <p>a director/responsible officer of the licensed corporation/corporation applying for a licence) in the vetting authorization section of the form.</p> <ul style="list-style-type: none"> • “Wet-ink” signatures and/or witnessing are also required for other licensing forms such as Form D (New Substantial Shareholder Application), Supplement A (Information on Corporation), Supplement B (Personal Information) and Supplement C (Responsible Officer or Temporary Licensed Representatives). • For applications in relation to individuals, signatures of both candidates and responsible officers are required; and a vetting form is also required to be witnessed by responsible officers/directors/notary public/ practising solicitors. <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge. In general, the UK regulators have encouraged the move away from physical submissions. Under section 55U(4) of Financial Services and Markets Act 2000, an application for authorization must be made in such a manner as the regulator may direct. The two key financial services regulators are the FCA and the Prudential Regulation Authority (“PRA”), both of which direct the submission of electronic applications (this may be via scanned signature pages or digital signatures). Further, variations or cancellations to the authorisation of a firm must be notified via the FCA’s online “Connect” platform.¹² • Singapore: There is, to a lesser extent, a similar operational challenge in Singapore. Licence applications can be submitted to the MAS online.¹³ However, most applications, and application forms or forms to be submitted in connection with a change in shareholders or control of a regulated entity, must be signed by “wet-ink”, and a scan of the signed page should be submitted to the MAS. Although the MAS does not require submission of the original signed page, it is inconvenient to obtain the scanned signed page in light of social distancing measures (as signatories may not have access to a scanner or a printer). <p>Proposed solution: SFC to consider amending its licensing forms pursuant to section 402 of the SFO so that the SFC can accept (i) licensing application forms that are signed with digital signatures; and (ii) electronic copies of signed licensing application forms.</p> |
| 2. | SFC | <p>Physical submission of originals of audited financial statements</p> <p><u>Operational Challenge:</u> Under section 156 of the SFO and the Securities and Futures (Accounts and Audit) Rules (Cap. 571P), SFC licensed corporations are required to submit financial statements and other documents, together with an auditor’s report, to the SFC no later than 4 months after the end of the financial year. Currently, the SFC does not accept digital signatures for audited financial statements that are submitted.</p> <p><u>Practice in the UK and Singapore:</u></p> |

¹² FCA: Supervision Manual (“SUP”) 6.3.15 of the FCA Handbook

¹³ Such submissions can be made through the Corporate e-Lodgment System.

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <ul style="list-style-type: none"> UK: The UK does not have an equivalent operational challenge. In response to the COVID-19 pandemic, the FCA¹⁴ and the PRA¹⁵ have each confirmed explicitly that firms may use electronic signatures for all interactions with them. Although it is noted that the PRA reserves the right to request “wet-ink” signatures in specific instances, this is the exception and not the rule. Singapore: There is a similar operational challenge in Singapore. Auditor’s reports may require physical “wet-ink” signatures, and it may be inconvenient to obtain such signatures in light of social distancing measures and office closures. <p>Proposed solution: Members recognize that the SFC has allowed for an extension of the submission period in its circular dated 7 February 2020.¹⁶ In the long term, the SFC should consider accepting the use of documents that are signed with digital signatures, electronic copies of signed documents or email approvals. In the short term, the SFC should consider accepting the same forms of signatures/approvals followed by “wet-ink” signatures as soon as practicable.</p> |
| 3. | HKMA | <p>Physical submission of originals of financial disclosures of authorized institutions</p> <p><u>Operational Challenge:</u> Returns require physical signatures of the accountant and chief executive of an authorized institution as evidence of review and that proper controls are in place. Digital signatures are not available for the returns at this point of time, and obtaining signed originals is difficult during the COVID-19 pandemic. For example, for financial disclosures of an authorized institution, “wet-ink” signatures of the chief executive are required.</p> <p><u>Practice in the UK and Singapore:</u> Please see the practice identified in item 2 above.</p> <p>Proposed solution: Please see the proposed solution in item 2 above.</p> |

C.1.2 Day-to-day regulatory communications

Another challenge encountered by licensed banks in Hong Kong is that their staff cannot access the “Submission Through Electronic Transmission” (“STET”) terminal of the HKMA remotely from home while social distancing measures are in effect, as the STET terminal is a private network portal that can only be accessed at designated office premises. As the STET terminal is used for certain key communications with the HKMA, this has resulted in difficulties for licensed banks (i.e., bank staff

¹⁴ Please see the FCA’s “FCA expectations for “wet-ink” signatures in light of coronavirus (Covid-19) restrictions” (<https://www.fca.org.uk/news/statements/expectations-wet-ink-signatures-coronavirus-restrictions>)

¹⁵ Please see the PRA’s “PRA Statement on the use of electronic signatures to evidence forms and other documents delivered to the PRA” (<https://www.bankofengland.co.uk/prudential-regulation/publication/2020/statement-on-electronic-signatures>)

¹⁶ Please see the SFC’s FAQ “Licensing related matters in light of the COVID-19 pandemic” (<https://www.sfc.hk/en/faqs/intermediaries/licensing/Licensing-related-matters-in-light-of-the-COVID-19-pandemic#87EAF31A0E5648EB93C72B50B2745739>)

would need to return to office premises to use the STET terminal despite social distancing measures).

The specific operational challenges and solutions identified by Members are set out in the table below:

| Item | Regulator | Specific Example |
|------|-----------|---|
| 4. | HKMA | <p>Certain regulatory submissions can only be made through STET terminal or by physical submission</p> <p><u>Operational Challenge:</u> Currently, various regulatory submissions and correspondences are submitted to the HKMA via the HKMA's STET terminal website, which cannot be accessed remotely. These include self-assessments, surveys and financial returns that authorized institutions are required to submit, such as the following:</p> <ul style="list-style-type: none"> • Registrations and/or de-registrations of relevant individuals, as required under section 20(4) of the Banking Ordinance and paragraphs 3.1.3 to 3.1.4 of Module SB-2 (Supervision of Regulated Activities of SFC-Registered Authorized Institutions) of the HKMA's Supervisory Policy Manual, can currently only be made by online submission via the HKMA's STET terminal, which cannot be accessed remotely. • Self-assessments such as those relating to the Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules, the Guideline on Information Required for Determining and Paying Compensation issued by the Hong Kong Deposit Protection Board and the Code of Banking Practice issued jointly by the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies. • Surveys such as those relating to new products and services launched, Intelligence-led Cyber Attack Simulation Testing (iCAST) and the implementation of the enhanced competency framework (ECF) for banking practitioners. • Financial returns and submissions such as surveys on selected balance sheet information and the Monthly Return of Renminbi Business Activities (MA(BS)16). <p>In addition, some submissions require encryption via a tool at STET terminal, while other submissions require original copies with "wet-ink" signatures.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge. For the registration/de-registration of relevant individuals, the UK equivalent regime is the Senior Managers and Certification Regime, which provides a number of different platforms for the submission of relevant notifications, including the FCA's online "Connect" platform, email and post.¹⁷ For regulatory submissions, under each of their equivalent rules¹⁸, the UK regulators may be notified or corresponded with via a number of different methods including but not limited to the FCA's online "Connect" platform, email, telephone and post. |

¹⁷ FCA: SUP 10C.15.11R, SUP 10C.15.14R and SUP 15.7.5AR of the FCA Handbook.

¹⁸ FCA: SUP 15.7.5AR of the FCA Handbook. PRA: Form and Method of Communication, 7.4(2) of the PRA Rulebook.

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <ul style="list-style-type: none"> Singapore: Singapore does not have an equivalent operational challenge. Regulatory submissions may be made via MAS's online portals, and correspondence with MAS is typically through email. In particular, notification to the MAS for the appointment or cessation of an appointed representative can be provided through electronic means (e.g., email, or one of the MAS's online portals). <p>Proposed solution: HKMA to consider (i) migrating the STET system to an online portal where banks can access the portal remotely from anywhere and not only from their designated office premises; and (ii) bringing the online portal in line with international standards.</p> <p>For other physical submissions, HKMA to consider accepting the use of email approvals and, in the interim, email approvals followed by "wet-ink" signatures as soon as practicable.</p> |

C.2 CUSTOMER ONBOARDING

In Hong Kong, social distancing measures have posed certain difficulties for Members in respect of the customer onboarding process due to requirements for the certification of documents and the restrictions on the use of Uniform Resource Locators or URLs (commonly known as web addresses). Members invite regulatory authorities to issue further guidance to address the operational challenges that Members have encountered in relation to the certification of documents and to consider permitting the use of URLs to facilitate customer onboarding.

The specific operational challenges identified by Members are set out in the table below:

| Item | Regulator | Specific Example |
|------|-----------|---|
| 5. | SFC | <p>Certification of corporate constitutional documents</p> <p><u>Operational Challenge:</u> Under section 4 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (the "AMLO") and paragraph 4.2 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) issued by the SFC (the "SFC AML Guideline"), SFC-licensed corporations are required to identify their customers and verify the customers' identity by reference to documents, data or information provided by a reliable and independent source. Where the AML risk of a customer is higher, an SFC-licensed corporation would need to enhance its due diligence on the customer under a risk-based approach. While there is no strict requirement under AMLO to obtain certified copies of a corporate customer's constitutional documents when verifying the identity of the corporate customer, it is often a requirement in the policies and procedures of SFC-licensed corporations to do so. Due to social distancing measures in effect during the COVID-19 pandemic:</p> |

| Item | Regulator | Specific Example |
|------|-----------|--|
| | | <ul style="list-style-type: none"> Members have found it difficult to obtain third-party certifications¹⁹; and Members have also found it difficult to obtain certifications from offshore clients (e.g., a Hong Kong bank dealing with a Singapore corporate client). Members are not aware of an e-certification tool that could be used for certification of corporate documents and noted that traditional certification requires an individual to certify the relevant document. <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: The UK does not have an equivalent operational challenge. The FCA has provided specific guidance to firms on complying with their financial crime systems and controls obligations during the COVID-19 pandemic.²⁰ Specifically, the FCA recommends that when performing customer due diligence (“CDD”) or KYC, firms continue to comply with their obligations to identify and verify the identity of clients but are more flexible in the evidence they obtain.²¹ Firms are therefore able to accept scanned PDF documentation, use digital photos and videos and third-party digital identity solutions etc., and not require certified hard copy documents. However, this does not represent a relaxation of current rules (which provide for this flexibility in any event). Singapore: There is a similar operational challenge in Singapore. Financial institutions are required to put in place robust AML/CFT controls, including verifying customers’ identities using independent source data. Due to office closures, it may be difficult to obtain certified true copies of corporate documents. The MAS’s guidelines, however, are silent on the requirement for employees to witness “wet-ink” signatures in relation to account openings and/or adding new signatories. Members also noted that the Office of the Government Chief Information Officer (“OGCIO”) is developing and promoting the use of iAM Smart accounts (a single digital identity and authentication to conduct government and commercial transactions online, for Hong Kong residents). This would appear to be a longer-term solution given that the programme is currently being tested in a sandbox.²² In addition, while iAM Smart accounts may be relevant to e-certifications by Hong Kong persons, there is some ambiguity on the status of e-certifications by overseas persons under other certification schemes.²³ <p>Proposed solution: SFC to consider whether there are any potential solutions to the challenges faced by the industry as identified above. In addition, the range of designated certifiers be expanded so that certifications could be done in-house (e.g., by SFC expanding the list of persons prescribed in Appendix A of the SFC AML Guideline).</p> |

¹⁹ Appendix A of the SFC AML Guideline generally restricts self-certification by the customer. However, this is subject to the exception that a financial institution may accept the copy documents certified by a professional person within a legal person customer if that professional person is subject to the professional conduct requirements of a relevant professional body, and has certified the copy documents in his or her professional capacity.

²⁰ Please see the FCA’s “Financial crime systems and controls during coronavirus situation” (<https://www.fca.org.uk/firms/financial-crime/financial-crime-systems-controls-during-coronavirus-situation>)

²¹ Please see the FCA’s “Financial crime systems and controls during coronavirus situation” (<https://www.fca.org.uk/firms/financial-crime/financial-crime-systems-controls-during-coronavirus-situation>)

²² Please see the OGCIO’s “iAM Smart (formerly known as Electronic Identity; eID)” (https://www.ogcio.gov.hk/en/our_work/business/tech_promotion/iam_smart/)

²³ While there are currently certain mutual recognition of electronic signature arrangements in Hong Kong, these are limited. Please see the OGCIO’s “Mutual Recognition of Electronic Signature Certificates issued by Hong Kong and Guangdong” (https://www.ogcio.gov.hk/en/our_work/business/mainland/cepa/mr_ecert/)

| Item | Regulator | Specific Example |
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| 6. | SFC | <p>Remote onboarding is only available for certain overseas clients</p> <p><u>Operational Challenge:</u> The remote onboarding approach set out in the SFC's circular dated 28 June 2019 entitled "Remote onboarding of overseas individual clients"²⁴ (the "Remote Onboarding Circular") for the purposes of complying with the account opening requirement under paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the "SFC Code of Conduct") is currently only available for clients that are based overseas. As there is no equivalent remote onboarding solution for Hong Kong-based clients, firms may find it difficult to onboard Hong Kong-based clients remotely.</p> <p>Proposed solution: SFC extending the principles in the Remote Onboarding Circular to Hong Kong-based clients.</p> |
| 7. | HKMA | <p>Restriction on sending URL to clients for onboarding purposes</p> <p><u>Operational Challenge:</u> Various guidance from the HKMA (such as paragraph 4.3.2 Module TM-E-1 (Risk management of e-banking) of the HKMA's Supervisory Policy Manual, the HKMA's reply to the Hong Kong Association of Banks on 20 September 2019 on Module TM-E-1 and an FAQ issued to licensed banks in October 2019) suggests that licensed banks should not send messages (e.g. emails or SMS messages) to their customers with embedded hyperlinks (including those presented as QR code) to their transactional websites or internet banking mobile apps, as the HKMA does not consider there to be effective and reliable methods to help bank customers distinguish phishing messages from genuine messages of licensed banks.</p> <p>Licensed banks have found this restriction onerous as they are unable to send URLs to their first time customers directing the customers to their digital portals, hindering their onboarding process. Customers, themselves, have also been requesting access to digital signing solutions. Members have noted that, once the customers access the digital portal, there are further customer authentication processes, and the URLs are simply used to direct customers to the access point.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge, as it does not have a similar restriction on performing CDD via online platforms or sending clients URLs to access those digital onboarding platforms. • Singapore: Singapore does not have an equivalent operational challenge as the MAS does not prohibit the sending of URLs to clients²⁵. |

²⁴ Please see the SFC's circular to intermediaries "Remote onboarding of overseas individual clients" (<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=19EC46>)

²⁵ The MAS encourages financial institutions to use technology that helps to improve the customer on-boarding experience while safeguarding against AML/CFT risks. The MAS has issued a circular to provide guidance to financial institutions on the use of innovative technology solutions to facilitate safe, non face to face customer on-boarding. Please see the MAS' circular titled "Use of MyInfo and CDD measures for non-face-to-face business relations" (Circular No.: AMLD 01/2018) (<https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Anti-Money-Laundering-Countering-the-Financing-of-Terrorism/Circular-on-MyInfo-and-CDD-on-NFTF-business-relations.pdf>) which provides guidance to financial institutions on the use of innovative technology solutions to facilitate safe, non-face to face customer on-boarding.

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <p><u>Proposed solution:</u> HKMA to consider permitting URLs for client onboarding in Hong Kong as a step to improve KYC in Hong Kong.</p> |

C.3 CORPORATE MEETINGS

In both Hong Kong and Singapore, social distancing measures resulting from the COVID-19 pandemic have posed difficulties in convening corporate meetings that are traditionally held in-person. Delaying corporate meetings often is not appropriate since certain corporate meetings, such as annual general meetings, are required to be convened within a specific time period as prescribed by laws and regulations. While technology to host virtual meetings is available on the market,²⁶ there are certain challenges with using this technology and it has not yet been widely adopted.

In Hong Kong, investors have two ways of holding shares in listed companies: paper share certificates or in an electronic form within the Central Clearing and Settlement System (“CCASS”). Shares held in paper form are registered in the company's register of members under the investor's own name or in the name of a chosen nominee. The registered holders have the legal right of owning the shares, and all corporate announcements and entitlements are delivered to the owner directly. Investors who hold shares in an electronic form through CCASS enjoy the convenience of trading and safe-keeping, as the shares are deposited either in their investor participant account directly opened with the CCASS, or with their broker and/or bank (where their securities accounts are opened) which is a CCASS Participant. As the shares deposited into CCASS are registered under the name of a CCASS nominee (i.e., HKSCC Nominees Limited, a wholly-owned subsidiary of HKEX), the non-registered holders will not have the legal title to the shares, but they hold the beneficial title to the shares. When a non-registered holder wishes to attend a general meeting of a listed company in person, they must notify their broker/bank or CCASS that they (or their nominee) will attend the general meeting as a proxy of HKSCC Nominees for the numbers of shares held by such non-registered holder. Upon receipt of all proxy instructions from the non-registered holders, HKSCC Nominees will usually provide a summary of proxy instructions to the listed company two to three days before the general meeting.

The key operational challenges identified by Members are as follows. Firstly, HKSCC Nominees only provide the addresses of their proxies to a listed issuer, and other details such as email address or

²⁶ We note that share registrar service providers in Hong Kong have developed different online systems for listed companies holding virtual corporate meetings.

phone number of such proxies are not provided. As listed issuers only have one or two days prior to the general meeting to provide virtual meeting IDs and passwords to the HKSCC proxies and such correspondence is by physical mail, the risk of delivery failure is high during times when the postal service is disrupted, meaning that HKSCC proxies may be unable to receive the meeting IDs and passwords before the general meeting. Secondly, there is a lack of regulatory guidance on how virtual meetings should be convened and there are certain ambiguities in this area.

To address these challenges, Members invite the relevant regulatory authorities to consider (i) implementing a system allowing both registered and non-registered holders of a listed issuer to attend the corporate meetings if they wish; and (ii) publishing regulatory guidance to clarify conditions and requirements for virtual meetings.

Specific operational challenges and solutions identified by Members are set out in the table below:

| Item | Regulator | Specific Example |
|------|---|---|
| 8. | Hong Kong Companies Registry (the "HKCR")/ Hong Kong Exchanges and Clearing Limited (the "HKEX")/SFC | <p>Practical challenges in relation to virtual meetings</p> <p><u>Operational Challenge:</u> There are a number of challenges with virtual meetings. In addition to the challenges mentioned above, they include:</p> <ul style="list-style-type: none"> • how to verify the identity of attendees; • how to administer the voting process; • private companies may be unable to effectively disseminate the notice of general meeting by electronic means if they do not have a company website or each member's email address; • the company's articles of association may not permit the sending of documents electronically and the company may face administrative difficulties coordinating the printing, packing and sending of the physical documents required to be sent to members, or laid or produced at a general meeting; • HKSCC Nominees may only be able to provide listed issuers with a list of non-registered holders who wish to attend a corporate meeting in person one or two days before the corporate meeting. The listed issuer and its share registrar may not have sufficient time to deliver the meeting ID and passwords for such non-registered holders; and • the company's articles of association may not allow for remote electronic voting. <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK. Since 23 March 2020, the UK has been subject to certain restrictions on public gatherings of varying degree. Whilst such restrictions have been in place, UK companies have faced similar difficulties in validly convening annual general meetings ("AGMs"). During this time, the Chartered Governance Institute and the Financial Reporting Council issued guidance as to how companies could safely convene AGMs in compliance with both: (i) the ongoing restrictions; and (ii) the rules on convening AGMs under the UK Companies Act 2006 and common law. The guidance suggested that a physical meeting could be convened with the fewest people possible to validly form a quorum, with attendees also being shareholders (or designated proxyholders). The meetings would take place quickly, and public attendance would be strongly discouraged. For a number of reasons, electronic meetings are not advisable under English law as there are doubts if such meetings are valid. |

| Item | Regulator | Specific Example |
|------|---|--|
| | | <p>To address the above issue, on 28 March 2020, the UK Government announced it would legislate to enable companies to hold AGMs more easily in light of the pandemic. On 26 June 2020, the Corporate Insolvency and Governance Act 2020 came into force, which, amongst other things enables companies to: (i) hold their meetings anywhere (i.e., no physical presence needed); and (ii) hold electronic AGMs.</p> <ul style="list-style-type: none"> • Singapore: There is a similar operational challenge in Singapore. Please see item 9. <p>Proposed solution: HKCR, HKEX and SFC to provide guidance on how virtual meetings can be convened in light of the challenges identified above. In addition, regulatory authorities to work towards a long term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. The relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies (e.g., HK Institute of Chartered Secretaries, and The Hong Kong Institute of Directors), etc.</p> |
| 9. | Accounting and Corporate Regulatory Authority (the "ACRA") (in relation to the Singapore Companies Act (Cap. 50) ("Companies Act")) | <p>Practical challenges in relation to virtual meetings</p> <p><u>Operational Challenge:</u> There are a number of challenges when holding corporate meetings through electronic means, including:</p> <ul style="list-style-type: none"> • companies that are not listed on the Singapore Exchange Securities Trading Limited (the "SGX-ST") (hence unable to publish the notice of general meeting on SGXNet) may be unable to effectively disseminate the notice of general meeting by electronic means if they do not have a company website, and each member's email address; • the company's constitution may not permit the sending of documents electronically and the company may face administrative difficulties coordinating the printing, packing and sending of the physical documents required to be sent to members, or laid or produced at a general meeting; • the company's constitution may not allow for remote electronic voting; and • the company may require certain employees to be present at the same physical location to facilitate the conduct of the meeting by electronic means. While this may be permitted under Singapore's safe distancing measures currently in effect, the COVID-19 situation remains fluid and it is uncertain what measures may be introduced in the future. <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK. Please see item 8. • Hong Kong: Please see item 8. <p>Proposed solution: If the company's constitution does not allow for remote electronic voting, shareholders must vote by proxy only and only the chairman of the meeting may be appointed as proxy. The Companies Act does not prescribe how the instrument for appointing a proxy should be submitted to the company, which is left to be stipulated by the company in its constitution.</p> <p>Shareholders should specify how they wish to vote (for/against/abstain) on the resolutions. Guidance from ACRA, MAS and the SGT-ST, prepared in light of the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020, clarifies that proxy forms may be submitted through electronic means (e.g., email). It is proposed that ACRA</p> |

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <p>accept that the publishing of the notice of general meeting in the Gazette and at least one English local daily newspaper would satisfy the requirement to disseminate such notice. In addition, it is proposed that the relevant bodies generally work towards a long-term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. Such relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies, etc.</p> <p>In addition, it is noted that ACRA had set up a Companies Act Working Group (“CAWG”) in January 2018 to review several areas of the Companies Act. The CAWG was chaired by a then-ACRA Board member and comprised eight members from local and international law firms, industry regulators and associations. The CAWG published a report on 15 May 2019 in which it proposed amendments to the Companies Act to give companies the flexibility to hold digital general meetings and board meetings. The CAWG recommended that it may be necessary to amend certain specific provisions in the Companies Act to address any ambiguity as to how shareholders’ rights may apply to digital meetings, and that the Companies Act be amended to make it mandatory for all companies to accept proxy instructions given by electronic means instead of leaving this to be stipulated in the company’s constitution.</p> <p>ACRA invited members of the public to provide feedback on CAWG’s proposed amendments to the Companies Act from 20 July 2020 to 17 August 2020. ACRA is currently reviewing comments provided and will publish a summary of the comments received.</p> |

C.4 LISTING AND IPO PROCESS

In Hong Kong and Singapore, social distancing measures and restrictions on cross-border travelling resulting from the COVID-19 pandemic have presented a number of practical difficulties for listing applicants and firms that are involved in the listing or public offering process.

Specifically, there are existing rules, regulations or other practices in Hong Kong or Singapore which require:

- (i) firms to conduct physical due diligence exercises on a listing applicant (such as site visits, third-party due diligence interviews, etc.);
- (ii) listing applicants and firms to attend physical meetings with regulatory authorities;
- (iii) listing applicants to arrange for the physical submission of application and other documents to regulatory authorities (which may be in the form of original documents or a certified copy of documents); and
- (iv) listing applicants to make available certain documents for physical inspection.

Social distancing measures in effect during the COVID-19 pandemic have posed operational challenges to industry participants as the measures have restricted firms and listing applicants from conducting physical meetings and mandatory quarantine requirements have prevented cross-border travel. Taken together, these requirements have resulted in significant challenges or delays in physical submission of documents (especially where the documents submitted are in original or certified form).

To address these challenges, Members invite regulatory authorities in Hong Kong and Singapore to consider issuing additional guidance on how virtual meetings can be conducted in place of physical meetings as well as providing electronic solutions for the submission of documents (such as the acceptance of scanned copies of documents or electronically signed documents) or dispensing with the requirement to physically submit certain documents altogether.

Specific operational challenges and solutions identified by Members are set out in the table below.

Members also note that in July 2020 the HKEX published a consultation paper on proposals to introduce a paperless listing and subscription regime, online display of documents and reduction of the types of documents on display (the “**Consultation Paper**”).²⁷ If the proposed paperless regime is adopted by the HKEX, certain operational challenges identified by Members below may potentially be addressed.

| Item | Regulator | Specific Example |
|------|-----------|--|
| 10. | HKEX | <p>Physical listing hearings</p> <p><u>Operational Challenge:</u> Rule 2B.11 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”) regulates the conduct of listing review hearings, including the invitation of the listing applicant and its directors to attend hearings. In particular, under Rule 2B.02 of the Listing Rules, the Listing Committee may at any time conduct a hearing in relation to any matter relating to or arising out of the Listing Rules and it may require the attendance at such hearing of such persons and the production to such hearing of such documents as it deems appropriate. Members understand that the HKEX has already implemented measures to allow attendance at Listing Committee hearings by telephone during periods where physical meetings are restricted. However, logistical and practical issues may still arise where physical meetings may still be required, such as for Listing Review Committee hearings or meetings on listing application returns.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: The UK does not have an equivalent operational challenge, as an applicant is not required to attend a listing hearing in person. LR3.2 of the UK Listing Rules sets out the requirements for an application for a listing of shares with the London Stock Exchange. |

²⁷ Please see the HKEX’s Consultation Paper on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display dated July 2020 (https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/July-2020-Paperless-Listing?sc_lang=en)

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <ul style="list-style-type: none"> Singapore: Singapore does not have an equivalent operational challenge. There is no specific requirement for the Singapore Exchange Limited (the "SGX") Listings Disciplinary Committee and Listings Appeal Committee to be held physically rather than remotely. Additionally, the Listings Advisory Committee operates through meetings which can be held physically or through teleconference. <p>Proposed solution: HKEX to enable participants to join listing hearings by way of virtual meetings.</p> |
| 11. | HKEX | <p>Physical submission of originals and/or certified copies of certain listing application-related documents</p> <p><u>Operational Challenge:</u> Under Rule 9.11 of the Listing Rules, physical copies of documents required for listing application currently need to be lodged with the HKEX (usually 2 sets of physical documents, one for HKEX and one for SFC).</p> <p>Chapter 9 of the Listing Rules also currently require a number of documents to be submitted as originals and/or certified copies. During the COVID-19 pandemic, this is difficult as it requires a director and the sponsors to sign or a qualified lawyer to certify documents in person. For example, (i) for H-share listing applicant, a certified copy of the acceptance of overseas listing application issued by the China Securities Regulatory Commission (commonly known as "Xiao Lu Tiao"(小路条)) must be submitted together with the listing application to the HKEX; (ii) each director and supervisor of a listing application must submit the original Form M110 as to accuracy and completeness of his/her biographical details disclosed in the application proof of the prospectus; and (iii) principals of sponsors must sign Form A1, together with the original written undertaking duly signed by a director for and on behalf of the board of directors of the listing applicant.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: The UK does not have an equivalent operational challenge, as no certified documents are required to be submitted to the FCA as part of an application for listing. LR3.3 of the UK Listing Rules sets out the documents required for an application for a listing of shares. Singapore: Singapore does not have an equivalent operational challenge. In relation to the listing application and more generally, the SGX does not require certified copies of documents to be submitted. Where certified copies are required, the SGX also gives the option to submit the original document instead. <p>Proposed solution: HKEX/SFC to implement the paperless regulatory regime as soon as possible. It is proposed that HKEX/SFC could accept (i) soft copies at the listing application, while reserving the right to request hard copies from the listing applicant when and where necessary after the listing application is made; (ii) documents to be submitted at the listing application electronically (e.g., email) or having the required documents uploaded onto a dedicated platform during the IPO process; and (iii) online payment for listing and application fees.</p> <p>In addition, it is suggested HKEX to remove the requirement for certified copies given that the same protection has been provided to the HKEX under section 384 of the SFO (which makes it a criminal offence for providing false and misleading information to the HKEX).</p> |

| Item | Regulator | Specific Example |
|------|---------------|--|
| 12. | HKEX/HKCR/SFC | <p>Making certain documents available for physical inspection</p> <p><u>Operational Challenge:</u> Certain documents, such as the Hong Kong underwriting agreements, materials contracts of an issuer for the two years prior to the date of prospectus, and reports of experts, are currently required under Appendix 1A to the Listing Rules and section 342(1)(a)(iii) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“C(WUMP)O”) to be made available for public inspection for a certain period of time. The social distancing measures introduced as a result of the COVID-19 pandemic have made it challenging to physically display documents, when offices and businesses are closed.</p> <p>The HKEX has also proposed in Part B of Chapter 2 of the Consultation Paper to amend the Listing Rules so that the listing applicant will only be required to display the requisite documents online on both the HKEX website and the listing applicant’s website.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge. Under the UK Disclosure Guidance and Transparency Rules, all regulated information (prospectuses, annual reports, announcements, etc.) need to be made available on the National Storage Mechanism, which is an online viewing facility. In addition, any statutory filings made to the UK Companies House can be inspected online. • Singapore: There is a similar operational challenge in Singapore in certain circumstances. Generally, the SGX does not require documents to be exclusively made available for inspection at a registered office. However, the SGX Listing Manual requires this in a few instances (e.g., Listing Rules 721, 857 and 1011). Additionally, the Companies Act also contains some requirements for certain documents to be available for inspection by members (e.g., section 76D). The Securities and Futures Act (the “SFA”) requires that some documents be available for inspection in relation to issue of prospectuses as well. <p>Proposed solution: It would be helpful for HKEX/HKCR/SFC to issue a practice note regarding how to address data privacy and the disclosure of confidential information, given that documents on an online platform can be more easily accessed by the public.</p> |
| 13. | HKEX | <p>Physical submission of certain Form B / Form H / Form I</p> <p><u>Operational Challenge:</u> Form B/Form H/Form I is required to be signed by each director/supervisor, the signature of which has to be certified by another director or company secretary of the listing applicant. In addition, Form B/Form H/Form I is accompanied by a sponsor’s certification (which shall be signed by a sponsor principal) and a solicitor’s certification. These can be administratively challenging during periods of office closures and work from home arrangements.</p> <p>For completeness, the HKEX has noted at paragraph 49 of the Consultation Paper that it still requires certain documents, such as Form B, in physical form notwithstanding its ongoing consultation.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge. Documents can be validly executed electronically (through methods such as DocuSign). With regards to the electronic execution of deeds, note that in the view of the Law Commission, signing in the presence |

| Item | Regulator | Specific Example |
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| | | <p>of a witness requires the physical presence of that witness and does not allow for remote witnessing of documents. As an alternative, section 44(2)(a) of the Companies Act 2006 permits the execution of deeds by two authorized signatories (e.g., two directors, rather than a director and a witness).</p> <ul style="list-style-type: none"> Singapore: Singapore does not have an equivalent operational challenge (i.e., Singapore does not have forms that are equivalent to Forms B, H and I). While, more generally speaking, forms and applications submitted to the MAS or SGX may require signatures, certification by another director or company secretary would not be required. <p>Proposed solution: HKEX to remove the requirement for submission of Forms B/H/I, which was previously considered and suggested by the HKEX in the HKEX's consultation paper on proposed changes to documentary requirements relating to listed issuers and other minor rules amendments in November 2017.</p> |
| 14. | HKEX/SFC | <p>Physical due diligence requirements</p> <p><u>Operational Challenge:</u> Pursuant to HKEX Practice Note 21 and paragraph 17 of the SFC Code of Conduct, there are general principles regarding due diligence work to be performed by sponsors and expected due diligence to be carried out by sponsors. In addition, based on the Circular to licensed corporations on expected standards for sponsor work issued by the SFC on 26 March 2018²⁸ and the SFC Regulatory Bulletin issued in February 2020, sponsors should independently arrange due diligence interviews which should be conducted at the interviewees' business premises. Enhanced verification measures should be conducted if the due diligence interviews are not conducted in person.</p> <p>However, certain due diligence requirements are difficult to fulfil in circumstances where local regulators are closed. For example, it is difficult to retrieve financial reports filed with the State Administration for Industry and Commerce in certain cities and to obtain tax filings in some locations where online access is not available. Also, there are difficulties in arranging site visits and due diligence interviews with major customers/suppliers in person.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: In the UK, nearly all diligence is conducted electronically and documents are accessed via a virtual data room. However, certain types of due diligence will be challenging (e.g., site visits) due to social distancing measures. In addition, in the event that certain staff are furloughed, access to management may be restricted. Singapore: There is a similar operational challenge in Singapore. Please see item 16. <p>Proposed solution: HKEX/SFC to provide clear requirements or guidance on virtual due diligence that could be acceptable and how the market can deal with the due diligence challenges that have been identified, such as guidance on (i) the use of video conferences</p> |

²⁸ Please see the SFC's "Circular to licensed corporations on expected standards for sponsor work" for more information (<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=18EC23>)

| Item | Regulator | Specific Example |
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| | | <p>and virtual site visits for due diligence purposes during times when restrictions are in place; and (ii) alternative non-physical face-to-face interviews.</p> |
| 15. | HKCR | <p>Physical submission of prospectus registration documents</p> <p><u>Operational Challenge:</u> Pursuant to sections 38D(3) and 342C(3) of the C(WUMPO), an application for authorization for registration of a prospectus shall be made in writing with certain documents to be submitted to the HKCR in person. Where social distancing measures are in effect, the filing of physical copies of these documents can be a challenge. Also, the registration fee is required to be paid to the HKCR by cheque, which may be difficult during times where access to cheques can be difficult.</p> <p>For completeness, the HKEX has clarified at paragraph 57 of the Consultation Paper that the proposals in the Consultation Paper will not change the prospectus registration requirement, that is, issuers are still required to present a hard copy of the prospectus and other required documents for registration by the Registrar of Companies under section 38D and section 342C of the C(WUMPO).</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: The UK does not have an equivalent operational challenge. Electronic submission of a prospectus will suffice under the Prospectus Regulation Rules (PRR 3.2.4). Accordingly, the FCA accepts soft copies of the final prospectus to be uploaded to the National Storage Mechanism. • Singapore: Singapore does not have an equivalent operational challenge, as listing applications to the SGX and the MAS are made electronically. <p><u>Proposed solution:</u> HKCR to (i) permit for electronic registration of prospectuses; (ii) vet the application at least one day in advance (to the extent possible, so that the only IPO documents pending should be the underwriting agreement and/or the printed version of the prospectus) to prevent last minute rush in vetting documents; and (iii) accept online payment of registration fees.</p> |
| 16. | MAS | <p>Physical site visits</p> <p><u>Operational Challenge:</u> Under sections 253 and 254 of the SFA, the company and its advisers (including the issue managers, underwriters, auditors and lawyers) will be subject to criminal and civil liabilities for false or misleading statements in or omissions from a prospectus. Physical site visits are often required under banks', auditors' and legal advisers' internal policies as part of the due diligence process to ensure the accuracy of information disclosed in the prospectus issued in connection with the IPO. However, during the COVID-19 pandemic, the advisors of a company seeking an initial public listing of its shares on the SGX-ST are unable to conduct physical site visits.</p> <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK. There are difficulties in conducting site visits while there are restrictions on movement. Employees are generally encouraged |

| Item | Regulator | Specific Example |
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| | | <p>to work from home where at all possible, meaning that site visits would be unlikely to be accommodated under the current guidance, particularly given the local restrictions on travel and movement in the UK.</p> <ul style="list-style-type: none"> Hong Kong: There is a similar operational challenge in Hong Kong. There are difficulties to conduct due diligence, including physical site visits and interviews, by the sponsors for the purpose of IPO during the COVID-19 pandemic. Please see item 14 for further details. <p>Proposed solution: MAS to provide clear requirements or guidance on virtual due diligence that could be acceptable and how the market can deal with the due diligence challenges that have been identified, such as guidance on the use of video conferences and virtual site visits for due diligence purposes during times when restrictions are in place.</p> |
| 17. | MAS | <p>Physical verification meetings</p> <p><u>Operational Challenge:</u> Under sections 253 and 254 of the SFA, the company and its advisers (including the issue managers, underwriters, auditors and lawyers) will be subject to criminal and civil liabilities for false or misleading statements in or omissions from a prospectus. Due to concerns of potential civil or criminal liability arising from inaccurate disclosure under sections 253 and 254 of the SFA, companies hold verification meetings before issuing a prospectus. Currently, verification meetings are still common and often conducted both physically and with many participants attending by teleconference. Physical attendance can be a challenge during the COVID-19 pandemic.</p> <p>In addition, a board member's ability to actively participate in the meeting may be affected during the COVID-19 pandemic, which may give rise to concerns around such board member's accountability, especially in respect of prospectus liability.</p> <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> UK: The UK does not have an equivalent operational challenge. In the UK, instead of holding verification meetings with the company and its responsible officers, a verification note will be prepared which will document the underlying documents for every material statement included in the prospectus. Hong Kong: Hong Kong does not have an equivalent operational challenge. Instead of holding verification meetings with the company and its responsible officers, a verification note will be prepared which will document the underlying documents for each and every statement included in the prospectus. <p>Proposed solution: MAS to provide guidance on how to conduct verification meetings by teleconference in order to ensure that the board remains informed and accountable for the contents of the prospectus, information memorandum and offering information statement. MAS to consider adopting the UK position and having the directors and advisers sign off on the verification note.</p> |
| 18. | MAS | <p>Non-deal road shows and investor meetings</p> |

| Item | Regulator | Specific Example |
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| | | <p><u>Operational Challenge:</u> Under section 251(4) of the SFA, the company and issue managers are permitted to share certain offering-related information with the following persons before a prospectus is registered by the MAS but after a preliminary prospectus is lodged with the MAS, subject to compliance with certain conditions.</p> <p>In an offering of its securities (“Offering”), companies often conduct non-deal roadshows and other investor presentations with potential investors (“Investor Meetings”) who are institutional and relevant persons under the SFA before a prospectus is registered by the MAS but after a preliminary prospectus is lodged with the MAS. These Investor Meetings are usually conducted in person. If Investor Meetings are conducted virtually, it is more difficult to ensure the confidentiality of information shared with potential investors, as compared to physical meetings. In physical meetings, the company typically checks that the Investor Meeting attendees do not leave with physical copies of any information disseminated to such investors and can better ensure that meeting attendees do not take pictures of the Offering-related information that is shared with them during the meeting, or record the Investor Meetings.</p> <p>In addition, it is more difficult to verify the status of persons with whom permitted information is shared during virtual Investor Meetings, as compared to physical meetings. At in-person Investor Meetings, the company is able to see all the attendees of the Investor Meetings and can take necessary steps to verify the identity and status of each attendee with whom Offering-related information is shared.</p> <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK where Investor Meetings are conducted either: (i) in person; or (ii) virtually. While the recommendation of the Government remains that people should work from home where possible, Investor Meetings will continue to take place virtually rather than in person. • Hong Kong: There is a similar operational challenge in Hong Kong. In Hong Kong, non-deal roadshows and Investor Meetings are conducted either (i) in person; or (ii) virtually. Where meetings are conducted virtually, similar operational issues also arise. <p><u>Proposed solution:</u> MAS to issue guidance on how to hold Investor Meetings virtually but with security protocols and standards that are equivalent to the requirements that apply to physical/in-person Investor Meetings.</p> |

C.5 TAX AND STAMP DUTY PROCESS

In Hong Kong and Singapore, social distancing measures resulting from the COVID-19 pandemic have presented a number of practical difficulties for tax and stamp duty payment or filings. For example:

- (i) submission of certain forms (such as Form SBUL1 for stock borrowing and lending transactions, profits tax returns and the applications for certificate of resident status (“**COR**”)) in Hong Kong must be made in paper form by post, fax or in person;

- (ii) tax payment is only allowed to be settled by cash/ bank cheque/ bank cashier order or limited online payment methods which cannot be adopted by most Members in practice;
- (iii) in Singapore, the Inland Revenue Authority of Singapore (the “IRAS”) does not issue any acknowledgement of receipt in relation to the filing of notices of objection; and
- (iv) in Singapore, the IRAS requires the hard copies of the tax declaration form in relation to Dividend Reinvestment Plan to be submitted to the Share Registrar.

To address these challenges, Members invite the IRD to consider speeding up the process of allowing payment by direct debit and/or bank remittance as an additional payment method and introducing electronic application processes and e-filings. In addition, Members also invite the IRAS to consider issuing an acknowledgement receipt upon the lodgment of the filing of notice of objection and allow e-submission of tax declaration form to replace the current paper-based submission of the form.

The specific operational challenges and solutions identified by Members are set out in the table below:

| Item | Regulator | Specific Example |
|------|-----------|--|
| 19. | IRD | <p>Hong Kong stamp duty payment for off exchange trades and options market making</p> <p><u>Operational Challenge:</u> Traditionally, for payment of stamp duty in Hong Kong in relation to Hong Kong stock, the original contract notes, instruments of transfer and the relevant supporting documents will need to be presented to the Stamp Office, followed by payment through cheque or a bank cashier order, within the prescribed time period.</p> <p>The Stamp Office has launched a new electronic service allowing stamping of contract notes and instruments of transfer of Hong Kong stocks in one single transaction via e-Stamping²⁹ on 16 December 2019.</p> <p>With effect from 29 August 2020³⁰, the Stamp Office has enhanced the e-Stamping regime which allows stamping of contract notes and instruments of transfer of Hong Kong stocks in bulk (up to 5,000 instruments at one time). The details are set out as follows:-</p> <ul style="list-style-type: none"> • Pursuant to the e-Stamping regime, it is only required to input details of the share transactions and upload the required supporting documents (if applicable). Upon successful payment of stamp duty, a stamp certificate will be generated. |

²⁹ Please see the IRD’s “Stamping Procedures and Explanatory Notes – e-Stamping of Share Transfer Instruments” (https://www.ird.gov.hk/eng/pdf/sog_pn10a.pdf)

³⁰ Please see the IRD’s “e-Stamping Circular No. 1/2020 – Enhancements to e-Stamping of Share Transfer Instruments” (https://www.ird.gov.hk/eng/pdf/e_stamping_cir_1-2020.pdf)

| Item | Regulator | Specific Example |
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| | | <ul style="list-style-type: none"> • Payment can be made online by PPS, VISA, MasterCard, JCB or UnionPay, or at the Stamp Office. • A stamp certificate will be available for download after payment is made, and attaching such stamp certificate to the original instrument is sufficient as an evidence of stamping. • Please note that e-stamping services do not apply to (i) adjudication cases, and (ii) stock transactions involving derivatives or share swaps, indebtedness incurred taken as whole or part of the consideration, or if the consideration is subject to adjustment. <p>Proposed solution: IRD to consider:</p> <ul style="list-style-type: none"> • allowing payment by direct debit and/or bank remittance as an additional payment method (to follow the current practices of other government departments in Hong Kong). For most, if not all, Members, the existing online payment methods (i.e., PPS, VISA, MasterCard, JCB or UnionPay) are not viable options; • updating the SDO to allow the Collector to have the power to extend the stamping due date under special circumstances. During the COVID-19 pandemic, whilst the Stamp Office has taken a practical approach to allow late payment of stamp duty and has not imposed penalty on such late payment, there is still a technical concern that the payment has been “late” in accordance with the law (although no financial consequences). Members are concerned about the technical breach; and • updating the ETO to extend digital signature to cover stamp duty-related documents (e.g., contract notes, stock borrowing and lending agreements, etc.) so that the dutiable documents can still be signed electronically by signatories when firms are working remotely. |
| 20. | IRD | <p>Physical submission of form for stock borrowing relief from stamp duty requirement</p> <p><u>Operational Challenge:</u> Under section 19(13) of the SDO and paragraphs 49 to 52 of the Stamp Office Interpretation and Practice Notes No. 2 (Revised) – Relief for Stock Borrowing and Lending Transactions, a borrower who has registered any stock borrowing and lending agreement with the Collector of Stamp Revenue should complete Form SBUL1:</p> <ul style="list-style-type: none"> • the Form SBUL1 should cover a period of 6 months ending on 30 June or 31 December; and • the Form SBUL1 shall be submitted to the Stamp Office no later than 1 month after the end of the period to which it relates. <p>A “NIL” return should be filed even if there is no failed transaction during the relevant period.</p> <p>Submission of the form can only be made by post, by fax or in person to the Stamp Office. During the COVID-19 pandemic, it is difficult to submit in such manner.</p> <p>Proposed solution: IRD to consider the following measures to reduce the administrative burden (especially in a similar situation to the COVID-19 pandemic in the future) on preparing/filing Form SBUL 1 in addition to physical submission of Form SBUL 1:</p> |

| Item | Regulator | Specific Example |
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| | | <ul style="list-style-type: none"> • as the first step, the IRD to accept electronic filing of Form SBUL 1 with e-signature (by leveraging on the current e-stamping system); and • the IRD to remove the requirement of filing Form SBUL 1 semi-annually where there are no failed transactions during the relevant period. |
| 21. | IRD | <p>Certified true copy of stock borrowing agreement</p> <p><u>Operational Challenge:</u> Under section 19(12A) of the SDO, an executed copy or a true copy of the stock borrowing and lending agreement is required to be provided to the Stamp Office for registration any time after the stock borrowing and lending agreement is executed but before the expiry of 30 days after the stock borrowing is effected in order to qualify for the stamp duty relief. However, there are difficulties providing the original stock borrowing agreement to the appropriate personnel for the purpose of certifying as true copy, in particular when most firms (including banks) are still adopting work from home arrangements. For example, the relevant entity to the stock borrowing agreement may be based in the United States (the “US”) and the US office of the bank has adopted a work from home arrangement.</p> <p>In addition, under paragraph 4 of the Schedule 1 to the ETO, digital signatures are not allowed for the stock borrowing agreement since it is a document subject to Hong Kong stamp duty.</p> <p><u>Proposed solution:</u></p> <ul style="list-style-type: none"> • To update the ETO to extend digital signature to cover stamp duty-related documents (e.g., stock borrowing and lending agreements). Whilst the stock borrowing and lending agreements can be registered online, the fact that the agreement cannot be certified by “e-signature” does not help to relieve the practical challenges. • In addition to physical submission of stock borrowing agreement for registration, the IRD to consider the following measures to reduce the administrative burden:- <ol style="list-style-type: none"> 1. as the first step, the IRD to accept electronic registration of stock borrowing agreements with e-signature; 2. the next step is to allow a simplified registration method by removing the requirement of submitting the stock borrowing agreement. The registration can be done by filling a simple registration form; and 3. the final goal is to change the SDO to remove the registration requirement entirely, on the basis that the registration does not serve any substantive purposes of ensuring the exempted transactions are genuine stock loan transactions (rather than disguised sale and purchase transactions) and the borrowed stocks are used for specified purposes. The registration requirement is simply an administrative step which should not affect the qualification of the stock loan transactions for stamp duty exemption. |
| 22. | IRD | <p>Physical applications for certificate of resident status</p> <p><u>Operational Challenge:</u> Applications for COR must be made in paper form with physical signatures. Only one COR will be issued with respect to each Comprehensive Double Taxation</p> |

| Item | Regulator | Specific Example |
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| | | <p>Agreements/Arrangements for each year. From the IRD website³¹, application forms of COR shall be sent to the IRD office by post, and it will normally take 21 working days to process the application. The COR will also be sent to the applicant by post, unless the applicant prefers to collect in person, in which case a written request shall be made when submitting the application.</p> <p>Proposed solution:</p> <ul style="list-style-type: none"> The IRD to allow application of COR through electronic application process instead of the current paper form process. As the IRD currently does not issue duplicated COR, in order to facilitate the applicants' needs on duplicated CORs for multiple treaty benefit applications with overseas tax authorities, the IRD to upload the COR (after issuance) to the IRD website and allow the applicants to download the issued CORs from the IRD website. |
| 23. | IRD | <p>Physical filing of profits tax return</p> <p><u>Operational Challenge:</u> Filing of profits tax returns is required to be done in paper form with “wet-ink” signature, supported by originally signed audited accounts.</p> <p>Proposed solution: IRD to consider allowing e-filing of profits tax return (with e-signature) and copy of signed audited accounts.</p> |
| 24. | IRAS | <p>No acknowledgement of receipt from filing of notice of objection</p> <p><u>Operational Challenge:</u> While the lodgment of the objection to the Notice of Assessment can now be submitted via the online Tax Portal, by post or by email, the problem with submitting by email is that no acknowledgement will be issued by the IRAS.</p> <p>Proposed solution: IRAS to consider issuing an acknowledgement receipt similar to the one issued upon the electronic filing of tax return.</p> |
| 25. | IRAS | <p>IRAS notices</p> <p><u>Operational Challenge:</u> For corporate tax and goods and services tax-related letters and notices, while IRAS will upload them onto the taxpayers' tax portal, logging into IRAS portal to check if there are any new notices every day would not only be inconvenient for taxpayers, but also bring challenges to the IRAS website.</p> <p>Proposed solution: IRAS to offer the option for CorpPass users to elect if they want to be notified via email.</p> |

³¹ Please see the IRD's "Certificate of Resident Status" (https://www.ird.gov.hk/eng/tax/dta_cor.htm)

| Item | Regulator | Specific Example |
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| 26. | IRAS | <p>Tax declaration form for Dividend Reinvestment Plan</p> <p><u>Operational Challenge:</u> IRAS requires hard copies of the tax declaration form in relation to Dividend Reinvestment Plan to be submitted to the Share Registrar.</p> <p>Proposed solution: IRAS to allow e-submission of the tax declaration form to replace the paper-based submission.</p> |

C.6 POST-TRADE MATTERS

In both Hong Kong and Singapore, due to social distancing measures resulting from the COVID-19 pandemic, Members have identified that certain regulatory authorities or share registrars require “wet-ink” signatures of documents or physical delivery or receipt of documents post-trade. While certain regulatory authorities and share registrars have started migrating their processes online, Members have noted that there are instances where “wet-ink” forms and letters are still required to be physically submitted. In addition, in Hong Kong, certain documents may need to be executed in “wet ink” because they are excluded from the scope of the ETO.

To address these challenges, Members invite the relevant regulatory authorities and share registrars to consider permitting the electronic submission of the relevant documentation, establishing online portals or expanding existing online solutions, and amending the ETO.

The specific operational challenges and solutions identified by Members are set out in the table below:

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| 27. | HKEX | <p>Physical submission of indemnity letter in relation to warrants and callable bull/bear contracts</p> <p><u>Operational Challenge:</u> Although HKEX has started migrating certain processes to Client Connect, which has removed the need for the submission of physical forms, there are certain instances where the HKEX still requires physical forms to be sent by courier to it.³² For example, in relation to the expiry and mandatory call event of warrants and callable bull/bear contracts that are traded on the SEHK, custodians and issuers are required to send HKSCC a physical indemnity letter with a “wet-ink” signature. When social distancing</p> |
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³² [https://www.hkex.com.hk/Services/Rules-and-Forms-and-Fees/Forms/Securities-\(Hong-Kong\)/Clearing/Participantship-Membership?sc_lang=en](https://www.hkex.com.hk/Services/Rules-and-Forms-and-Fees/Forms/Securities-(Hong-Kong)/Clearing/Participantship-Membership?sc_lang=en)

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| | | <p>measures are in effect, it can be challenging to arrange for the physical signing and delivery of indemnity letters to HKSCC.</p> <p>Proposed solution: HKEX to consider allowing soft copies of the indemnity letter with e-signatures to be sent to HKSCC for the expiry and mandatory call event of warrants and callable bull/bear contracts, custodians and issuers. By allowing e-signatures, both issuers and custodians can avoid the cost and logistical effort of sending forms to HKEX by courier, especially when social distancing measures are in effect.</p> |
| 28. | HKEX | <p>Lack of online portal solution for submission of placee list</p> <p><u>Operational Challenge:</u> Under Rules 9.23 and 13.28 of the Listing Rules, each placing agent is required to submit a placee list to the HKEX, setting out the names, addresses and identity cards or passport numbers (if individuals) and the names, addresses and business registration numbers (if companies) of all its placees, the names and addresses of the beneficial owners of the securities (in the case of nominee companies) and the amounts taken up by each of its placees. Currently, the placee list in relation to a placement of shares can be sent by each placing agent to the HKEX in the form of an Excel document by email. However, if the submission of the placee list can be made through an online portal, this would be even more convenient. Certain information (e.g., placee's address, placee's Hong Kong identity card number/passport number/business registration number/certificate of incorporation number) can be saved and retrieved from the online portal without the need for such information to be re-populated.</p> <p>In addition, another challenge is that if there are any changes to the allotment or mistakes in the submission of other placing agent syndicate members, all parties will need to resubmit the allocation breakdown again. The reconciliation of the allocations is currently performed by the HKEX, and the investigation and resolution of the errors are performed separately among the placing agents. If the allocation details can be entered in a centralised system of the HKEX, this would save time on the reconciliation for the syndicate members and the settlement agent would also know exactly which syndicate member is missing their submission or has errors in their input.</p> <p>Proposed solution: HKEX to consider an online portal solution for the submission of the placee list.</p> |
| 29. | HKEX | <p>Physical submission of letter of independence of placing agent</p> <p><u>Operational Challenge:</u> Under Rules 9.23 and 13.28 of the Listing Rules, each placing agent should submit a letter of independence to the HKEX, confirming that all placees and their beneficial owners (where applicable) are not connected persons of the listed issuer as defined in the Listing Rules. Currently, the placing agent is required to submit a letter of independence to the HKEX. In connection with this requirement, an original letter of independence is required to be submitted to the HKEX. When social distancing measures are in effect, the submission of the physical original of the letter of independence can be a challenge.</p> <p>Members note that the HKEX is consulting on where it can reduce the use of paper and improve efficiency by streamlining processes, and one of the areas is the communication with market practitioners and listed issuers.</p> |

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| | | <p>Proposed solution: HKEX to consider accepting electronic submissions for letters of independence of placing agents.</p> |
| 30. | FSTB/ Hong Kong share registrars | <p>Physical submission of share transfer forms to share registrars in relation to shares listed on the SEHK</p> <p><u>Operational Challenge:</u> Currently, in relation to the transfer of physical share certificates of a company listed on the SEHK from one person to another, the share registrar of the listed company would require the transferor and the transferee to physically sign a standard transfer form in “wet-ink” and for such form to be physically delivered to the share registrar. If there is a change in beneficial ownership, the transfer form would also need to be stamped by the Stamp Office as it is a stampable instrument under the SDO. If there is no change in beneficial ownership, an application for stamp duty exemption will need to be made to the Stamp Office. As the ETO specifically excludes from its scope the execution of an instrument which is required to be stamped or endorsed under the SDO (e.g., the transfer form), share registrars may be reluctant to accept transfer forms that are signed electronically. When social distancing measures are in effect, it can be challenging to arrange for the physical signing and delivery of the share transfer form to the share registrars.</p> <p>Proposed solution: FSTB to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and share registrars to consider accepting electronically signed share transfer forms.</p> |
| 31. | HKEX | <p>Physical submission of deposit, withdrawal and re-registration forms to HKSCC</p> <p><u>Operational Challenge:</u> Currently, certain physical forms are required to be submitted to HKSCC for the deposit, withdrawal and re-registration of shares listed on the SEHK. Some examples are set out below:</p> <p>(a) Stock deposit – Under section 7.3.1 of the CCASS Operational Procedures, a CCASS participant must complete a Stock Deposit Form (CCASS-Form 14) for each type of eligible security that it intends to deposit into CCASS. The Stock Deposit Form must be signed by a person authorised by the depositing CCASS participant, which includes the authorized person affixing or making a stamped impression of his signature on the Stock Deposit Forms.</p> <p>(b) Stock withdrawal – Under section 7.4.8 of the CCASS Operational Procedures, CCASS participants may produce the Stock Collection Authorisation Form (CCASS-Form 12) to withdraw the relevant share certificate.</p> <p>When social distancing measures are in effect, it can be difficult to arrange for the physical signing and delivery of these forms to HKSCC.</p> <p>Proposed solution: HKEX to consider expanding Client Connect services to cover the types of forms set out above.</p> |
| 32. | Hong Kong share registrars | <p>Physical submission of signed transfer deed and cheques to share registrars for the conversion of dual-listed shares</p> |

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| | | <p>Operational Challenge: Currently, shareholders who would like to convert shares of a company that is listed on the HKEX into shares of the same company that is listed on another exchange are required to submit a physical transfer deed, signed in “wet-ink”, and to deliver a cheque to the relevant registrar in Hong Kong (e.g., Computershare, except for conversions done through xSettle). When social distancing measures are in effect, it can be challenging to arrange for the physical signing and delivery of the transfer deed and physical delivery of the cheque to the share registrars.</p> <p>Proposed solution: Share registrars to consider accepting electronic submissions or an electronic copy of the original form.</p> |
| 33. | SGX | <p>Physical submission of buy-in withdrawal approval form to CDP</p> <p>Operational Challenge: Settlement of securities executed on SGX occurs on the second market day after the trade date (i.e., T+2). Where a seller does not have enough shares for settlement by 1:30pm on T+2, the Central Depository Pte Limited (“CDP”), which is a wholly owned subsidiary of SGX that provides integrated clearing, settlement and depository services for a range of products in the Singapore securities market, will conduct buy-in of the securities on that afternoon, and securities bought in will be used to fulfil the seller’s obligation on the next business day. If, for example, a market maker cannot deliver shares by this deadline but can deliver on the next business day, the market maker could submit a Form BI-W (Request for Withdrawal of Buying-In) to the CDP to request for withdrawal from the buy-in process. Currently, Form BI-W can be submitted to the CDP in soft copy by email followed by a hard copy signed in “wet ink”. When social distancing measures are in effect, it can be challenging to arrange for the physical signing and delivery of Form BI-W to CDP.</p> <p>Proposed solution: SGX to consider dispensing with the requirement for the physical submission of Form BI-W signed in “wet-ink”.</p> |
| 34. | SGX | <p>Sending of physical contract notes by a Trading Member to its customers</p> <p>Operational Challenge: It is uncertain whether the sending of contract notes electronically by an entity that has been approved as a trading member of SGX in accordance with SGX-ST’s rules (“Trading Member”) to its customers would satisfy the Trading Member’s obligation to send contract notes to its customers. Rule 4.24.1 of the SGX-ST Rules states that a Trading Member must send its customer a contract note for any purchase or sale of securities or futures contracts. Regulatory Notice 4.24.1, paragraph 2.1(a) states that a Trading Member is required to communicate directly with its customers in respect of contract notes (among others), whether in writing or electronically, unless the customer has authorised otherwise in writing. Regulatory Notice 4.24.1, paragraph 2.1(b) states that a Trading Member is required to send contract notes to the customer’s residential address or any other address authorised by the customer. It is uncertain whether “any other address” includes an electronic mail address provided by the customer for the sending of contract notes. When social distancing measures are in effect, it can be challenging to arrange for the physical delivery of contract notes to customers.</p> <p>Proposed solution: SGX to consider making it optional for a Trading Member to post physical contract notes to Singapore domestic clients in addition to the electronic trade confirmation.</p> |

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| 35. | Share registrars | <p>Physical submission of signed transfer deed and cheques to share registrars for the conversion of dual-listed shares</p> <p><u>Operational Challenge:</u> Currently, shareholders who would like to convert shares of a company that is listed on the SGX into shares of the same company that is listed on another exchange are required to submit a physical transfer deed, signed in “wet ink”, and to deliver a cheque to the relevant registrar in Singapore before such conversion can be processed by the registrar. When social distancing measures are in effect, it can be challenging to arrange for the physical signing and delivery of the transfer deed and physical delivery of the cheque to the share registrars.</p> <p>Proposed solution: Share registrars should be engaged to permit electronic submission of transfer deeds that have been e-signed, and to review alternative fee payment arrangements.</p> |
| 36. | ACRA/share registrars in Singapore | <p>Receipt of cheques from delisted companies</p> <p><u>Operational Challenge:</u> For shareholders that hold shares in physical share certificates for delisted stocks, cheques will be sent from the share registrar/ issuer to the shareholder’s broker, who will have to clear the cheques and process payment to the relevant shareholder in respect of corporate action that pay out cash (e.g., cash dividends). When social distancing measures are in effect, it can be challenging to arrange for clearance of the physical cheques by the broker.</p> <p>Proposed solution: Share registrars/issuers to consider making such payments electronically rather than by cheques. ACRA to consider promoting electronic payments by registrars.</p> |

D. TOKENISED SECURITIES

As technological solutions continue to evolve at a rapid pace, the need for Hong Kong and Singapore laws and regulations to keep up with and address different technological solutions is becoming increasingly important. One area that Members have identified as being an area that merits further attention of governmental and regulatory authorities is the adoption of tokenised securities. Although the adoption of tokenised securities is not an operational challenge that stems from the COVID-19 pandemic, Members note the development of tokenisation as being of relevance because of certain legal and regulatory challenges that are inhibiting the adoption of tokenised securities as a technological solution and urge government and regulatory authorities to consider implementing a conducive framework for tokenised securities.

In November 2019, ASIFMA published a paper entitled “Tokenised Securities – A Roadmap for Market Participants and Regulators”³³ (the “**Tokenised Securities Paper**”), setting out what tokenised securities are, the benefits that tokenised securities can bring and the obstacles to a more widespread adoption of tokenised securities. Focusing on traditional shares and bonds of a company, Members contributing to the Tokenised Securities Paper noted that “tokenised securities” (defined as traditional, regulated securities, but with a digital wrapper)³⁴ can bring the benefits of blockchain into the securities lifecycle. In particular, tokenised securities can create an innovative new financing and capital raising model that can bring efficiencies, is scalable and could provide liquidity and compliance opportunities that are evolutionary to traditional finance. For example, the adoption of tokenised securities would increase the speed of settlement of securities transactions, allow around the clock trading and enable programmable features (e.g., automated dividend payouts and automated compliance features) to be built into the tokenised securities smart contract. Given the inherent digitalised nature of tokenised securities and the related issuance /trading infrastructure, many types of issues that have been identified by Members in Part C above would be avoided by tokenisation.

Although there are benefits to the use of tokenised securities, Members contributing to the Tokenised Securities Paper have identified that certain ambiguities under the laws and regulations in Hong Kong and Singapore have limited the adoption of tokenised securities. Some of the specific challenges identified and solutions proposed by Members contributing to the Tokenised Securities Paper are set out in further detail below.

³³ Please see the ASIFMA’s “Tokenised Securities – A Roadmap for Market Participants and Regulators” (<https://www.asifma.org/wp-content/uploads/2019/11/tokenised-securities-a-roadmap-for-market-participants-final.pdf>)

³⁴ This is to be contrasted with “security tokens”, which are tokens with specific characteristics that mean they meet the definition of a “security” (e.g., participation in companies or earnings streams, or an entitlement to dividends or interest payments, or a combination thereof packaged into one).

| Item | Regulator | Specific Example |
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| 37. | FSTB | <p>Applicability of electronic transaction rules in Hong Kong</p> <p><u>Current position in Hong Kong:</u> It is unclear whether the ETO is suitably broad to apply to all blockchain transactions. Under section 17 of the ETO, a contract is not to be denied validity or enforceability on the sole ground of an electronic record. However, there are certain exceptions under the ETO as set out in Schedule 1 to the ETO. These include instruments that are required to be stamped or endorsed under the SDO (e.g., share transfer documents). In addition, where a signature is required under a rule of law and one of the parties to the document is or is acting on behalf of a government entity, section 6 of the ETO provides that digital signatures are required to be supported by recognized certificates (currently only issued by Digi-Sign Certification Services Limited and the Hongkong Post Certification Authority).</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: There is a similar operational challenge in the UK and the topic has recently been considered comprehensively by: (i) the England and Wales Law Commission³⁵; and (ii) the UK Jurisdiction Taskforce (“UKJT”) of the LawTech Delivery Panel.³⁶ Each body has recently published a statement³⁷ seeking to clarify the treatment of electronic contracts and transactions under English law (the UKJT statement being focused in particular on cryptoassets and smart contracts), with a view to providing market confidence, legal certainty and predictability in this area. The respective statements record the results of each body’s review of the relevant sources of English law (including legislation governing electronic communications and execution of various kinds of commercial documents) and constitute persuasive, but ultimately non-binding, statements of the English law position in this area. <p>In summary, the statements conclude that electronic records (including blockchain records and smart contracts) and electronic signatures (including signatures created by cryptographic means) will generally be valid and enforceable under English law, including in many cases where formalities are imposed by statute (such as requirements for documents to be “in writing” or “signed”). However, the statements also acknowledge that certain contexts remain in which English law imposes formalities that cannot presently be met by electronic records or electronic signatures.</p> <p>Accordingly, whilst the statements seek to clarify that English law is already capable in principle of accommodating the use of electronic records and electronic signatures in many areas, the key remaining challenge is greater adoption by commercial parties. Greater</p> |

³⁵ The statutory independent body charged with keeping the law of England and Wales under review and to recommend reform where needed.

³⁶ A body established by the UK government and judiciary to promote the use of technology in the UK’s legal sector.

³⁷ Please see: (i) the Law Commission report “Electronic execution of documents (Law Com No 386)” published on 4 September 2019 (<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/09/Electronic-Execution-Report.pdf>); and (ii) the UK Jurisdiction Taskforce “Legal statement on cryptoassets and smart contracts” published on 18 November 2019 (https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_11119-1.pdf).

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <p>adoption is likely to drive further legal certainty as commercial parties, regulators and other authorities become comfortable with the use of novel technologies, and as accepted practices develop around their application in particular contexts (such as capital markets).</p> <p>In a ministerial statement responding to the Law Commission statement, whilst the UK government confirmed its view that electronic signatures are permissible and can be used with confidence in commercial transactions and consumer documents, it also acknowledged that, notwithstanding the position in law, there are issues on the security and technology of electronic signatures that require further consideration from suitably experienced experts. Accordingly, the government committed to establish an industry working group to consider the practical use of electronic signatures in further detail.</p> <ul style="list-style-type: none"> • Singapore: There is currently a similar operational challenge in Singapore, but there is an ongoing consultation to amend the relevant electronic transaction legislation. Please see item 40. <p>Proposed way forward: FSTB to review electronic transaction legislation, and if necessary, be revised, in light of new technology. In particular, FSTB may wish to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and dispensing with the requirement that transactions involving government entities require a digital signature supported by a digital certificate issued by a recognized certification authority.</p> |
| 38. | FSTB | <p>Documentary formalities in Hong Kong</p> <p><u>Current position in Hong Kong:</u> In Hong Kong, there does not appear to be any specific laws or regulations governing the securities to be issued by a Hong Kong company upon its incorporation. However, in general, the articles of association will set out (i) the number of shares to be issued upon incorporation; and (ii) the manner on the issuance of share certificate. Issuers of tokenised securities will require documents in place to support its legal structure, for example, articles of association, shareholders' agreements, director agreements and the applicable registry filings and the Hong Kong laws and regulations should support this.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> • UK: As discussed in item 37, electronic records and electronic signatures are generally effective under English law except where applicable formalities effectively prevent their use in certain contexts. In the context of an English company's constitutional and related documents (such as articles of association, shareholder agreements, director service contracts, etc.) there is nothing that would prohibit the use of electronic documentation provided that such documentation is written in natural language. As for required filings with Companies House, electronic filings are the norm. • Singapore: There is a similar operational challenge in Singapore. Please see item 41. <p>Proposed way forward: FSTB to consider legal framework providing for the recognition of tokenised security issuers and electronic records and signatures, and ensuring that they have the same legal status as their paper counterparts.</p> |

| Item | Regulator | Specific Example |
|------|-----------|--|
| 39. | FSTB | <p>Register formalities in Hong Kong</p> <p><u>Current position in Hong Kong:</u> There is no specific legislation or regulations that specifically restrict the issuance of tokenised securities by a company, and the same rules and requirements in Hong Kong relating to the issuance of securities would apply. For example, the register of members will need to be updated in line with the shareholding records on a distributed ledger.</p> <p><u>Practice in the UK and Singapore:</u></p> <ul style="list-style-type: none"> UK: There is a similar operational challenge in the UK. For example, title to shares in an English company may only be effectively evidenced and transferred in dematerialised form in compliance with the Uncertificated Securities Regulations 2001 (“USRs”). In summary, the USRs provide that shares in an English company may be evidenced and transferred using a computer-based system which conforms to certain prescribed system requirements and which is operated by an “operator”. Only an authorised central securities depository (“CSD”) is capable of being an operator for these purposes. Accordingly, not all blockchain ledgers are capable of providing a legally effective register of title to shares in an English company. In order for a blockchain ledger to do so, it would need to be operated by an authorised CSD and, even then, would need to conform to the system requirements prescribed in the USRs (and also any other requirements applicable to the CSD – for example, in the EU, the requirements imposed by the Central Securities Depositories Regulation (Regulation (EU) No 909/2014)). Whilst such requirements are ostensibly drafted in a technology-neutral manner, there may nevertheless be certain requirements that are not compatible with the design of certain blockchain systems. <p>More generally, and as outlined in the UKJT statement referred to in item 37 above, a blockchain ledger cannot be treated as a definitive record of legal rights under English law unless statute (such as the USRs) has given it binding legal effect. There is at present no such statute generally applicable to blockchain ledgers. This means that if an English court is required to consider who owns a particular tokenised security then it will not necessarily be bound by the position in the ledger (unless the ledger is a part of a system operated by an operator in compliance with the USRs). It is possible, therefore, to establish a proprietary right in a tokenised security outside the ledger (for example an interest under a trust or security arrangement, an interest acquired by tracing, or a title acquired “off-chain” by contract or by succession). The absence of a record of such an interest may, however, affect its enforceability against someone who has acquired the tokenised security in good faith. It is also possible for participants in a particular system to agree that the ledger will be treated as the definitive record of legal rights or title as between the participants in that system. However, such an agreement would not bind third parties who had not agreed to the rules of the system (and may also be vulnerable to challenge or rendered invalid under certain rules applicable in insolvency).</p> <ul style="list-style-type: none"> Singapore: There is a similar operational challenge in Singapore. Please see item 42. <p>Proposed way forward: FSTB to consider a legal framework providing for the recognition of blockchain-based electronic registers in a technologically agnostic manner.</p> |
| 40. | IMDA | <p>Applicability of electronic transaction rules in Singapore</p> <p><u>Current position in Singapore:</u> The ETA is underpinned by three principles:</p> <ol style="list-style-type: none"> 1. Non-Discrimination - An electronic document should not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. |

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <p>2. Functional Equivalence - Electronic records or communications are treated as fulfilling a traditional paper-based requirement if specified conditions are met.</p> <p>3. Technological Neutrality - Provisions are drafted to be neutral with respect to the technology used.</p> <p>Certain kinds of documents and transactions (listed in the First Schedule to the ETA) are excluded from the scope of operation of the ETA, meaning that for such excluded documents and transactions, the provisions in the ETA cannot be relied on to satisfy the legal requirements for writing and signature. These excluded documents include negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money; and the creation, performance or enforcement of an indenture, a declaration of trust or power of attorney. However, the IMDA issued a consultation paper in June 2019 for the purposes of reviewing the ETA to make it relevant for the digital economy. One of their proposals was to remove these excluded documents. The public consultation closed in December 2019 and the IMDA are to provide an update.</p> <p>In relation to blockchain specifically, the IMDA confirms in the consultation paper that it takes the preliminary view that because the ETA is drafted in a technology neutral manner and focuses on functional equivalence, distributed ledger technology is not inconsistent with ETA concepts such as “electronic record”, “in writing”, “electronic signature”, “secure electronic record” and “secure electronic signature”.</p> <p>In relation to automated contract formation (or smart contracts), IMDA notes that in addition to contracts concluded via electronic communications, the contract formed is unlikely to be denied validity or enforceability by sole virtue of its automatic formation and is of the preliminary view that the ETA does not prevent the use and formation of smart contracts by organisations.</p> <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK. Please see item 37. • Hong Kong: There is a similar operational challenge in Hong Kong. Please see item 37. <p>Proposed way forward: IMDA to clarify the position of the ETA in its consultation conclusions.</p> |
| 41. | MAS | <p>Ambiguity on document formalities in Singapore</p> <p><u>Current position in Singapore:</u> It is necessary to conduct a regulatory analysis of the digital token to determine if it is regulated by the MAS before an offer or issue of such digital tokens is made in Singapore. The offer or issue of digital tokens in Singapore will be regulated by the MAS if the digital tokens are capital market products and constitute products regulated under the SFA or other securities legislation. If the digital token is a payment token, it is regulated by the Payments Services Act (No. 2 of 2019). Where digital tokens fall under the SFA, the offeror of the tokens would be required to lodge and register a prospectus with the MAS (unless otherwise exempted). It is possible that issuers of the same digital token may characterize the token differently.</p> <p><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> • UK: There is a similar operational challenge in the UK. Please see item 38. |

| Item | Regulator | Specific Example |
|------|-----------|---|
| | | <ul style="list-style-type: none"> <li data-bbox="548 327 1333 352">Hong Kong: There is a similar operational challenge in Hong Kong. Please see item 38. <p data-bbox="565 384 1370 443">Proposed way forward: MAS to consider maintaining a database of different digital tokens and their legal characterization.</p> |
| 42. | MAS | <p data-bbox="548 506 959 531">Ambiguity on register formalities in Singapore</p> <p data-bbox="548 562 1377 764"><u>Current position in Singapore:</u> There is currently no specific laws or restrictions on use of blockchain and the view to date has been that existing laws may be applicable. It was only recently, in February 2020, that the MAS granted iSTOX permission to begin operations; iSTOX is the first one-stop digitised securities issuance, custody and trading platform to be approved and licensed by a major regulator. It is uncertain whether Singapore regulators would require companies using blockchain to maintain specific registers for different types of securities, and if so, the types of registers.</p> <p data-bbox="548 800 846 825"><u>Practice in the UK and Hong Kong:</u></p> <ul style="list-style-type: none"> <li data-bbox="548 856 1227 882">UK: There is a similar operational challenge in the UK. Please see item 39. <li data-bbox="548 913 1333 938">Hong Kong: There is a similar operational challenge in Hong Kong. Please see item 39. <p data-bbox="565 970 1370 1029">Proposed way forward: MAS to consider legal framework providing for the recognition of blockchain-based electronic registers in a technologically agnostic manner.</p> |

There are other legal and regulatory considerations in respect of tokenised securities (such as licensing and AML/KYC requirements) identified by Members contributing to the Tokenised Securities Paper, and these are discussed in further detail in the Tokenised Securities Paper.

E. CONCLUSION

In light of the social distancing measures implemented during the COVID-19 pandemic, firms in Hong Kong and Singapore have encountered a number of operational challenges due to a lack of adoption of electronic solutions. Restrictions on social and physical interaction, in particular, have made it difficult for firms to comply with certain laws and regulations that require some form of physical interaction.

Four key themes have emerged from the operational challenges identified by Members.

Firstly, there are certain requirements in Hong Kong and Singapore for firms to physically deliver original documents with “wet-ink” signatures or certified true copies of documents to regulatory authorities or other persons.

Secondly, there are certain requirements in Hong Kong and Singapore for physical meetings to be held and/or for an individual’s physical presence at a certain place and time.

Thirdly, the rules and regulations in Hong Kong in relation to electronic signatures and electronic records arguably are too narrow, and restrict wider usage/acceptance of electronic signatures.

Fourthly, in Hong Kong there are some situations in which payments must be made using bank cheques or bank cashier orders within a prescribed time period.

When viewed in isolation, these themes and underlying issues do not appear to be material. However, when aggregated together they present real operational challenges that could be alleviated by the implementation of electronic solutions. Members generally support the broader movement towards the adoption of more electronic solutions and believe that taking steps to embrace electronic solutions is both necessary and desirable for 21st century international financial centres.

In addition to advocating for the adoption of more electronic solutions, Members also wish to take this opportunity to urge regulatory authorities to promote other measures that could address some of the operational challenges faced by firms when social distancing measures are in effect, including:

- (a) the use of technology by firms, such as artificial intelligence and robotic process automation, that is focused on exception management;
- (b) the increase in operational processing resources of firms to address any volume spikes in operational activity and remote working needs;



- (c) the use of e-signatures for agreements;
- (d) the adoption of “follow the sun” processing models; and
- (e) the well-being of staff while “work from home” arrangements are in effect.

Having identified the specific challenges that firms are facing during the COVID-19 pandemic in this report, Members would be grateful if regulatory authorities in Hong Kong and Singapore could consider the proposed solutions summarized in the Annex to this report. ASIFMA is looking forward to engaging with regulatory authorities in Hong Kong and Singapore to discuss the operational challenges and solutions identified by Members in this report.

F. ANNEX

Consolidated table of requests to Hong Kong and Singapore regulatory authorities

A. HONG KONG

Securities and Futures Commission (SFC)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 1 | <p>Physical submission of originals of licensing application and forms</p> <p>SFC to consider amending its licensing forms pursuant to section 402 of the SFO so that the SFC can accept (i) licensing application forms that are signed with digital signatures; and (ii) electronic copies of signed licensing application forms.</p> |
| Item 2 | <p>Physical submission of originals of audited financial statements</p> <p>Members recognize that the SFC has allowed for an extension of the submission period in its circular dated 7 February 2020. In the long term, the SFC should consider accepting the use of documents that are signed with digital signatures, electronic copies of signed documents or email approvals. In the short term, the SFC should consider accepting the same forms of signatures/approvals followed by “wet-ink” signatures as soon as practicable.</p> |
| Item 5 | <p>Certification of corporate constitutional documents</p> <p>SFC to consider whether there are any potential solutions to the challenges faced by the industry as identified above.</p> <p>In addition, the range of designated certifiers be expanded so that certifications could be done in-house (e.g., by SFC expanding the list of persons prescribed in Appendix A of the SFC AML Guideline).</p> |
| Item 6 | <p>Remote onboarding is only available for certain overseas clients</p> <p>The SFC to extend the principles in the Remote Onboarding Circular to Hong Kong-based clients.</p> |
| Item 8 | <p>Practical challenges in relation to virtual meetings</p> <p>HKCR, HKEX and SFC to provide guidance on how virtual meetings can be convened in light of the challenges identified above. In addition, to work towards a long term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. The relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies (e.g., HK Institute of Chartered Secretaries, and The Hong Kong Institute of Directors), etc.</p> |
| Item 12 | <p>Making certain documents available for physical inspection</p> <p>It would be helpful for HKEX/HKCR/SFC to issue a practice note regarding how to address data privacy and the disclosure of confidential information, given that documents on an online platform can be more easily accessed by the public.</p> |
| Item 14 | <p>Physical due diligence requirements</p> |

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| | The HKEX/SFC to provide clear requirements or guidance on virtual due diligence that could be acceptable and how the market can deal with the due diligence challenges that have been identified, such as guidance on (i) the use of video conferences and virtual site visits for due diligence purposes during times when restrictions are in place; and (ii) alternative non-physical face-to face interviews. |
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Hong Kong Monetary Authority (HKMA)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|---|
| Item 3 | <p>Physical submission of originals of financial disclosures of authorized institutions</p> <p>In the long term, the HKMA should consider accepting the use of documents that are signed with digital signatures, electronic copies of signed documents or email approvals. In the short term, the HKMA should consider accepting the same forms of signatures/approvals followed by “wet-ink” signatures as soon as practicable.</p> |
| Item 4 | <p>Certain regulatory submissions can only be made through STET terminal or by physical submission</p> <p>HKMA to consider (i) migrating the STET system to an online portal where banks can access the portal remotely from anywhere and not only from their designated office premises; and (ii) bringing the online portal in line with international standards.</p> <p>For other physical submissions, the HKMA to consider accepting the use of email approvals and, in the interim, email approvals followed by “wet-ink” signatures as soon as practicable.</p> |
| Item 7 | <p>Restriction on sending URL to clients for onboarding purposes</p> <p>HKMA to consider permitting URLs for client onboarding in Hong Kong as a step to improve KYC in Hong Kong.</p> |

Hong Kong Companies Registry (HKCR)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 8 | <p>Practical challenges in relation to virtual meetings</p> <p>HKCR, HKEX and SFC to provide guidance on how virtual meetings can be convened in light of the challenges identified above. In addition, to work towards a long term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. The relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies (e.g., HK Institute of Chartered Secretaries, and The Hong Kong Institute of Directors), etc.</p> |
| Item 12 | <p>Making certain documents available for physical inspection</p> <p>It would be helpful for HKEX/HKCR/SFC to issue a practice note regarding how to address data privacy and the disclosure of confidential information, given that documents on an online platform can be more easily accessed by the public.</p> |
| Item 15 | <p>Physical submission of prospectus registration documents</p> <p>HKCR to (i) permit for electronic registration of prospectuses; (ii) vet the application at least one day in advance (to the extent possible, so that the only IPO documents pending should be the underwriting agreement and/or</p> |

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| | the printed version of the prospectus) to prevent last minute rush in vetting documents; and (iii) accept online payment of registration fees. |
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Hong Kong Exchanges and Clearing Limited (HKEX)

| Cross-reference | Operational challenge and suggested solution |
|------------------------|---|
| Item 8 | <p>Practical challenges in relation to virtual meetings</p> <p>HKCR, HKEX and SFC to provide guidance on how virtual meetings can be convened in light of the challenges identified above. In addition, to work towards a long term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. The relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies (e.g., HK Institute of Chartered Secretaries, and The Hong Kong Institute of Directors), etc.</p> |
| Item 10 | <p>Physical listing hearings</p> <p>HKEX to enable participants to join listing hearings by way of virtual meetings.</p> |
| Item 11 | <p>Physical submission of originals and/or certified copies of certain listing application-related documents</p> <p>HKEX/SFC to implement the paperless regulatory regime as soon as possible. It is proposed that HKEX/SFC could accept (i) soft copies at the listing application, while reserving the right to request hard copies from the listing applicant when and where necessary after the listing application is made; (ii) documents to be submitted at the listing application electronically (e.g., email) or having the required documents uploaded onto a dedicated platform during the IPO process; and (iii) online payment for listing and application fees.</p> <p>In addition, it is suggested HKEX to remove the requirement for certified copies given that the same protection has been provided to the HKEX under section 384 of the SFO (which makes it a criminal offence for providing false and misleading information to the HKEX).</p> |
| Item 12 | <p>Making certain documents available for physical inspection</p> <p>It would be helpful for HKEX/HKCR/SFC to issue a practice note regarding how to address data privacy and the disclosure of confidential information, given that documents on an online platform can be more easily accessed by the public.</p> |
| Item 13 | <p>Physical submission of original Form B / Form H / Form I</p> <p>HKEX to remove the requirement for submission of Forms B/H/I, which was previously considered and suggested by the HKEX in the HKEX's consultation paper on proposed changes to documentary requirements relating to listed issuers and other minor rules amendments in November 2017.</p> |
| Item 14 | <p>Physical due diligence requirements</p> <p>HKEX/SFC to provide clear requirements or guidance on virtual due diligence that could be acceptable and how the market can deal with the due diligence challenges that have been identified, such as guidance on (i) the use of video conferences and virtual site visits for due diligence purposes during times when restrictions are in place; and (ii) alternative non-physical face-to-face interviews.</p> |
| Item 27 | <p>Physical submission of indemnity letter in relation to warrants and callable bull/bear contracts</p> |

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| | HKEX to consider allowing soft copies of the indemnity letter with e-signatures to be sent to HKSCC for the expiry and mandatory call event of warrants and callable bull/bear contracts, custodians and issuers. By allowing e-signatures, both issuers and custodians can avoid the cost and logistical effort of sending forms to HKEX by courier, especially when social distancing measures are in effect. |
| Item 28 | Lack of online portal solution for submission of placee list HKEX to consider an online portal solution for the submission of the placee list. |
| Item 29 | Physical submission of letter of independence of placing agent HKEX to consider accepting electronic submissions for letters of independence of placing agents. |
| Item 31 | Physical submission of deposit, withdrawal and re-registration forms to HKSCC HKEX to consider expanding Client Connect services to cover the types of forms set out in this item. |

Financial Services and the Treasury Bureau (FSTB)

| Cross-reference | Operational challenge and suggested solution |
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| Item 30 | Physical submission of share transfer forms to share registrars in relation to shares listed on the SEHK FSTB to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and share registrars to consider accepting electronically signed share transfer forms. |
| Item 37 | Applicability of electronic transaction rules in Hong Kong FSTB to review electronic transaction legislation, and if necessary, be revised, in light of new technology. In particular, FSTB may wish to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and dispensing with the requirement that transactions involving government entities require a digital signature supported by a digital certificate issued by a recognized certification authority. |
| Item 38 | Documentary formalities in Hong Kong FSTB to consider legal framework providing for the recognition of tokenised security issuers and electronic records and signatures, and ensuring that they have the same legal status as their paper counterparts. |
| Item 39 | Register formalities in Hong Kong FSTB to consider legal framework providing for the recognition of blockchain-based electronic registers in a technologically agnostic manner. |

Inland Revenue Department (IRD)

| Cross-reference | Operational challenge and suggested solution |
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| Item 19 | Hong Kong stamp duty payment for off exchange trades and options market making IRD to consider: |

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| | <ul style="list-style-type: none"> allowing payment by direct debit and/or bank remittance as an additional payment method (to follow the current practices of other government departments in Hong Kong). For most, if not all, Members, the existing online payment methods (i.e. PPS, VISA, MasterCard, JCB or UnionPay) are not viable options; updating the SDO to allow the Collector to have the power to extend the stamping due date under special circumstances. During the COVID-19 pandemic, whilst the Stamp Office has taken a practical approach to allow late payment of stamp duty and has not imposed penalty on such late payment, there is still a technical concern that the payment has been “late” in accordance with the law (although no financial consequences). Members are concerned about the technical breach; and updating the ETO to extend digital signature to cover stamp duty-related documents (e.g., contract notes, stock borrowing and lending agreements, etc.) so that the dutiable documents can still be signed electronically by signatories when firms are working remotely. |
| <p>Item 20</p> | <p>Physical submission of form for stock borrowing relief from stamp duty requirement</p> <p>IRD to consider the following measures to reduce the administrative burden (especially in similar situation of COVID-19 pandemic in the future) on preparing / filing Form SBUL 1 in addition to physical submission of Form SBUL 1:</p> <ul style="list-style-type: none"> as the first step, the IRD to accept electronic filing of Form SBUL 1 with e-signature (by leveraging on the current e-stamping system); and the IRD to remove the requirement of filing Form SBUL 1 semi-annually where there are no failed transactions during the relevant period. |
| <p>Item 21</p> | <p>Certified true copy of stock borrowing agreement</p> <ul style="list-style-type: none"> To update the ETO to extend digital signature to cover stamp duty-related documents (e.g., stock borrowing and lending agreements). Whilst the stock borrowing and lending agreements can be registered online, the fact that the agreement cannot be certified by “e-signature” does not help to relieve the practical challenges. In addition to physical submission of stock borrowing agreement for registration, the IRD to consider the following measures to reduce the administrative burden:- <ol style="list-style-type: none"> as the first step, the IRD to accept electronic registration of stock borrowing agreements with e-signature; the next step is to allow a simplified registration method by removing the requirement of submitting the stock borrowing agreement. The registration can be done by filling a simple registration form; and the final goal is to change the SDO to remove the registration requirement entirely, on the basis that the registration does not serve any substantive purposes of ensuring the exempted transactions are genuine stock loan transactions (rather than disguised sale and purchase transactions) and the borrowed stocks are used for specified purposes. The registration requirement is simply an administrative step which should not affect the qualification of the stock loan transactions for stamp duty exemption. |
| <p>Item 22</p> | <p>Physical applications for certificate of resident status</p> <ul style="list-style-type: none"> The IRD to allow application of COR through electronic application process instead of the current paper form process. As the IRD currently does not issue duplicated COR, in order to facilitate the applicants’ needs on duplicated CORs for multiple treaty benefit applications with overseas tax authorities, the IRD to upload the COR (after issuance) to the IRD website and allow the applicants to download the issued CORs from the IRD website. |

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| Item 23 | <p>Physical filing of profits tax return</p> <p>IRD to consider allowing e-filing of profits tax return (with e-signature) and copy of signed audited accounts.</p> |
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Hong Kong share registrars

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 30 | <p>Physical submission of share transfer forms to share registrars in relation to shares listed on the SEHK</p> <p>FSTB to consider the feasibility of removing the exceptions under Schedule 1 to the ETO and share registrars to consider accepting electronically signed share transfer forms.</p> |
| Item 32 | <p>Physical submission of signed transfer deed and cheques to share registrars for the conversion of dual-listed shares</p> <p>Share registrars to consider accepting electronic submissions or an electronic copy of the original form.</p> |

B. SINGAPORE

Accounting and Corporate Regulatory Authority (ACRA)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 9 | <p>Practical challenges in relation to virtual meetings</p> <p>If the company's constitution does not allow for remote electronic voting, shareholders must vote by proxy only and only the chairman of the meeting may be appointed as proxy. The Companies Act does not prescribe how the instrument for appointing a proxy should be submitted to the company, which is left to be stipulated by the company in its constitution.</p> <p>Shareholders should specify how they wish to vote (for/against/abstain) on the resolutions. Guidance from ACRA, MAS and the SGT-ST, prepared in light of the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020, clarifies that proxy forms may be submitted through electronic means (e.g., email). It is proposed that ACRA accept that the publishing of the notice of general meeting in the Gazette and at least one English local daily newspaper would satisfy the requirement to disseminate such notice. In addition, it is proposed that the relevant bodies generally work towards a long term solution to advocate for changing corporate governance norms to permit and provide for virtual meetings to take place. Such relevant bodies to approach may include the share registrar service providers on market and directors and corporate secretarial bodies, etc.</p> <p>In addition, it is noted that ACRA had set up a CAWG in January 2018 to review several areas of the Companies Act. The CAWG was chaired by a then-ACRA Board member and comprised eight members from local and international law firms, industry regulators and associations. The CAWG published a report on 15 May 2019 in which it proposed amendments to the Companies Act to give companies the flexibility to hold digital general meetings and board meetings. The CAWG recommended that it may be necessary to amend certain specific provisions in the Companies Act to address any ambiguity as to how shareholders' rights may apply to digital meetings, and that the Companies Act be amended to make it mandatory for all companies to accept proxy instructions given by electronic means instead of leaving this to be stipulated in the company's constitution.</p> |

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| | ACRA invited members of the public to provide feedback on CAWG's proposed amendments to the Companies Act from 20 July 2020 to 17 August 2020. ACRA is currently reviewing comments provided and will publish a summary of the comments received. |
| Item 36 | Receipt of cheques from delisted companies Registrars/issuers to consider making such payments electronically rather than by cheques. ACRA to consider promoting electronic payments by registrars. |

Monetary Authority of Singapore (MAS)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|---|
| Item 16 | Physical site visits MAS to provide clear requirements or guidance on virtual due diligence that could be acceptable and how the market can deal with the due diligence challenges that have been identified, such as guidance on the use of video conferences and virtual site visits for due diligence purposes during times when restrictions are in place. |
| Item 17 | Physical verification meetings MAS to provide guidance on how to conduct verification meetings by teleconference in order to ensure that the board remains informed and accountable for the contents of the prospectus, information memorandum, offering information statement. MAS to consider adopting the UK position and having the directors and advisers sign off on the verification note. |
| Item 18 | Non-deal road shows and investor meetings MAS to issue guidance on how to hold Investor Meetings virtually but with security protocols and standards that are equivalent to the requirements that apply to physical/in-person Investor Meetings. |
| Item 41 | Ambiguity on document formalities in Singapore MAS to consider maintaining a database of different digital tokens and their legal characterization. |
| Item 42 | Ambiguity on register formalities in Singapore MAS to consider a legal framework providing for the recognition of blockchain-based electronic registers in a technologically agnostic manner. |

Singapore Exchange Limited (SGX)

| Cross-reference | Operational challenge |
|-----------------|---|
| Item 33 | Physical submission of buy-in withdrawal approval form to CDP SGX to consider dispensing with the requirement for the physical submission of Form BI-W signed in "wet-ink". |
| Item 34 | Sending of physical contract notes by a Trading Member to its customers SGX to consider making it optional for a Trading Member to post physical contract notes to Singapore domestic clients in addition to the electronic trade confirmation. |

Inland Revenue Authority of Singapore (IRAS)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|---|
| Item 24 | No acknowledgement of receipt from filing notice of objection IRAS to consider issuing an acknowledgement receipt similar to the one issued upon the electronic filing of tax return. |
| Item 25 | IRAS notices IRAS to offer the option for CorpPass users to elect if they want to be notified via email. |
| Item 26 | Tax declaration form for Dividend Reinvestment Plan IRAS to allow e-submission of the tax declaration form to replace the paper-based submission. |

Infocomm Media Development Authority (IMDA)

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 40 | Applicability of electronic transaction rules in Singapore IMDA to clarify the position of the ETA in its consultation conclusions |

Singapore share registrars

| Cross-reference | Operational challenge and suggested solution |
|-----------------|--|
| Item 35 | Physical submission of signed transfer deed and cheques to share registrars for the conversion of dual-listed shares Share registrars should be engaged to permit electronic submission of transfer deeds that have been e-signed, and to review alternative fee payment arrangements. |
| Item 36 | Receipt of cheques from delisted companies Share registrars/issuers to consider making such payments electronically rather than by cheques. ACRA to consider promoting electronic payments by registrars. |

G. GLOSSARY OF DEFINED TERMS

| Defined term | Name |
|----------------------------|---|
| ACRA | Singapore Accounting and Corporate Regulatory Authority |
| AGM | Annual general meeting |
| AML/KYC | Anti-money laundering and know-your-client |
| AMLO | Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the Laws of Hong Kong) |
| ASIFMA | Asia Securities and Financial Markets Association |
| Blueprint | Hong Kong Smart City Blueprint |
| CAWG | Singapore Companies Act Working Group |
| CCASS | Hong Kong Central Clearing and Settlement System |
| CDD | Customer due diligence |
| CDP | Singapore Central Depository Pte Limited |
| CIGB | United Kingdom Corporate Insolvency and Governance Bill |
| Companies Act | Companies Act (Cap. 50 of the Laws of Singapore) |
| Consultation Paper | Consultation paper on proposals to introduce a paperless listing and subscription regime, online display of documents and reduction of the types of documents on display published by HKEX in July 2020 |
| COR | Certificate of resident status |
| COVID-19 | The novel coronavirus |
| CSD | Central securities depository |
| C(WUMPO) | Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) |
| ETA | Electronic Transactions Act (Cap. 88 of the Laws of Singapore) |
| ETO | Electronic Transactions Ordinance (Cap. 553 of the Laws of Hong Kong) |
| FCA | United Kingdom Financial Conduct Authority |
| FSTB | Hong Kong Financial Services and the Treasury Bureau |
| HKCR | Hong Kong Companies Registry |
| HKEX | Hong Kong Exchanges and Clearing Limited |
| HKMA | Hong Kong Monetary Authority |
| IMDA | Infocomm Media Development Authority of Singapore |
| Investor Meetings | Non-deal roadshows and other investor presentations with potential investors |
| IPO | Initial public offering |
| IRAS | Inland Revenue Authority of Singapore |
| IRD | Hong Kong Inland Revenue Department |
| Listing Rules | The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited |
| MAS | Monetary Authority of Singapore |
| Members | Members of the Asia Securities and Financial Markets Association |
| Offering | Offering of a company's securities |
| OGCIO | Hong Kong Office of the Government Chief Information Officer |
| PRA | United Kingdom Prudential Regulation Authority |
| Regulatory Submissions | Regulatory correspondence, including regulatory applications, notifications or submissions |
| Remote Onboarding Circular | The SFC's circular dated 28 June 2019 entitled "Remote onboarding of overseas individual clients" |
| Schedule 1 Exclusions | Exclusions to the Singapore Electronic Transactions Act |
| SDO | Stamp Duty Ordinance (Cap. 117 of the Laws of Hong Kong) |
| SEHK | Stock Exchange of Hong Kong Limited |
| SFA | Securities and Futures Act (Cap. 289 of the Laws of Singapore) |
| SFC | Hong Kong Securities and Futures Commission |
| SFC AML Guideline | Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) issued by the SFC |



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|----------------------------|---|
| SFC Code of Conduct | Code of Conduct for Persons Licensed by or Registered with the SFC |
| SFO | Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) |
| SGX | Singapore Exchange Limited |
| SGX-ST | Singapore Exchange Securities Trading Limited |
| STET | Submission Through Electronic Transmission |
| SUP | FCA Supervision Manual |
| Trading Member | An entity that has been approved as a trading member of SGX in accordance with SGX-ST's rules |
| UKJT | United Kingdom Jurisdiction Taskforce |
| USRs | United Kingdom Uncertificated Securities Regulations 2001 |