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## **UNDERSTANDING SFC CIRCULAR ON EXTERNAL ELECTRONIC DATA STORAGE**

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# **SFC CIRCULAR TO LICENSED CORPORATIONS (LCs) ON USE OF EXTERNAL ELECTRONIC DATA STORAGE – 31 OCTOBER 2019**

## **Introduction**

LCs must remain in full compliance with the existing regulatory requirements when using external electronic data storage providers (EDSPs) for keeping Regulatory Records

Section 130 of the Securities and Futures Ordinance (SFO)

- LC requires SFC's prior written approval to use any premises for keeping records or documents relating to the carrying on of the regulated activity for which it is licensed

Intragroup storage of Regulatory Records

- Compliance with the regulatory requirements when keeping, storing and accessing the LC's data by overseas affiliate(s)

# SFC CIRCULAR TO LCS ON USE OF EXTERNAL ELECTRONIC DATA STORAGE – 31 OCTOBER 2019

## Requirements for LCs' records kept exclusively with EDSPs

### What is an EDSP?

- Public and private cloud services
- Servers or devices for data storage at conventional data centres
- Other forms of virtual storage of electronic information
- Technology services (i) information is generated in the course of using the services, and stored at such technology service providers or other data storage providers, and (ii) the information generated and stored can be retrieved by such technology service providers

### Regulatory Records

- Kept with a suitable and reliable EDSP
- Fully accessible upon demand by the SFC without undue delay, taking into account all pertinent political and legal issues in any relevant jurisdiction
- *Without giving the LC any notification*
- Can be reproduced in a legible form from premises of the LC in Hong Kong approved by the SFC

# **SFC CIRCULAR TO LCS ON USE OF EXTERNAL ELECTRONIC DATA STORAGE – 31 OCTOBER 2019**

## **Requirements for LCs' records kept exclusively with EDSPs (Cont'd)**

### Due diligence/suitability

- Proper due diligence on EDSPs
- Comprehensive information security policies and procedures
- Proper management of user access

### Audit trail

LC must ensure that it can provide audit trail information. The audit trail information should be:

- Detailed and complete regarding any access to the Regulatory Records
- Kept for the required period
- Restricted to read-only

### Governance

At least two Managers-In-Charge (MICs) of Core Functions in Hong Kong. Responsibilities include the following:

- Put in place all necessary policies, procedures and internal controls
- Ensure SFC has effective access to the Regulatory Records
- Ensure information security

# **SFC CIRCULAR TO LCS ON USE OF EXTERNAL ELECTRONIC DATA STORAGE – 31 OCTOBER 2019**

## **Requirements for LCs' records kept exclusively with EDSPs (Cont'd)**

### Premises approval (under section 130 of SFO)

*Before* keeping records exclusively with an EDSP, the LC should:

- Apply for approval for the data centre(s) used by the EDSP where the Regulatory Records will be kept
- Provide details of the premises, being the principal place of business, of the LC in Hong Kong where all of its Regulatory Records kept with the EDSP are fully accessible upon demand by the SFC without undue delay
- Provide details of each branch office of the LC in Hong Kong where its Regulatory Records kept with the EDSP can be accessed

Hong Kong EDSP (company staffed by personnel operating in Hong Kong and provides data storage to LC at data centre located in Hong Kong) - Confirmation, Notice to EDSP and Countersignature by EDSP

Non-Hong Kong EDSP - Notice to EDSP and Undertaking by EDSP

# KEY CONSIDERATIONS (1)

## Use of SaaS platforms for record keeping

- SaaS - a business or service in which customer services — including information, tools and applications — are hosted and delivered via the internet on proprietary software by a digital supplier
- Is SaaS an EDSP?

### Challenges of SaaS set-up under the SFC circular

- Infrastructure may be operated by the SaaS provider (e.g. Bloomberg) or may be outsourced to a third party e.g. cross- jurisdiction data storage and multiple third-parties involvement
- For an LC that is part of a global group, its data may include more than just the SFC regulated entity's data
- The relevant Regulatory Records may not all be available to the EDSP – e.g. encrypted data can only be accessed by the LCs
- The SaaS provider as a data processor vs data owner (GDPR concepts)
- Most SaaS providers do not have a physical presence in HK, they are typically hosted in the UK/US or anywhere else with good network connectivity

# KEY CONSIDERATIONS (2)

## Regulatory Records

### Regulatory Records vs company's data

- Regulatory Records – records or documents that are required by the LC to keep under the SFO or the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)
- Company's data – any information, data record or document relating to the company...

## Alternative solutions

- For EDSPs
  - Bilateral addendum between:
    - An LC and its EDSP and
    - An LC's affiliate or parent and an EDSP
  - Focus will be on preservation of company data, as opposed to its transmission to the SFC
- For group company storage - an intragroup agreement; and intragroup agreement with EDSPs

## KEY CONSIDERATIONS (3)

### MIC impact

- Requirement for two MICs and for MICs to be based in Hong Kong
- Means by which the SFC is provided with effective access to Regulatory Records stored with an EDSP upon demand without undue delay
  - Requirement for EDSP MICs or their delegates to have *“in their possession all digital certificates, keys, passwords and tokens to ensure full access to all Regulatory Records kept with the EDSPs”*.

### Alternative Solutions

#### *Proposals:*

- 1) LCs to appoint a minimum of one EDSP MIC and the EDSP MIC can be based in Hong Kong or elsewhere
- 2) EDSP MICs should not be required to have in possession all certificates, keys, passwords and tokens in their possession but instead they should be required to facilitate the SFC’s access to Regulatory Records stored with the LC’s EDSP



## IMMEDIATE NEXT STEPS

- Identify your Regulatory Records, in what form/format are they held and where are they stored/kept
- What have you previously told the SFC
- Think about plans to notify the SFC
- Keep a close watch on industry developments and ongoing discussions with the SFC, and be ready to implement
- 6-month time extension is something of a 'red herring'. You don't have 6 months longer!
- Compliance with principles in Section E (general obligations of LCs using external data storage or processing services) of the EDSP Circular

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