

Regulatory Requirements for External Electronic Data Storage

The use of external electronic storage (also known as “cloud storage”) (“**EDS**”) for keeping regulatory records¹ (“**RR**”) has become increasingly popular amongst Licensed Corporations (the “**LCs**”) for saving costs. The SFC had on 31 October 2019 issued a circular (the “**Circular**”) listing out the regulatory requirements applicable to EDS. This explanatory note aims to summarize the regulatory requirements for EDS.

Regulatory Requirements for EDS Disapplied

Regulatory requirements for EDS are not applicable where the LCs keep the RRs with external electronic data storage services providers (“**EDSP**”) and hard copy thereof at the premises approved under section 130 of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the “**SFO**”). That is to say, the regulatory requirements for EDS will only apply where the LCs keep the RRs by exclusively using EDS.



Regulatory Requirements for Exclusively Using EDS

The LC, which keeps the RRs by exclusively using EDS, should ensure adherence to the following regulatory requirements:

1. To seek approval for the premises used for EDS under section 130 of the SFO;
2. The EDSP is either a company incorporated in Hong Kong (“**HK Company**”) or a non-Hong Kong company (“**Non-HK Company**”) registered under the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) and their staff operate in Hong Kong;
3. The EDSP provides data storage at a data centre located in Hong Kong and the RRs are kept at such data centre at all times;
4. If the EDSP does not fall within categories specified in paragraph 2 above, the LC must obtain an undertaking by the EDSP to provide the RRs and assistance as per the SFC’s request (the “**Undertaking**”)²;
5. The EDSP should be suitable and reliable in terms of its operational capabilities, technical expertise and financial soundness;
6. The RRs kept exclusively with an EDSP are fully accessible upon demand by the SFC forthwith, and can be reproduced in a legible form³ from the LC’s premises;

¹ Records that are required to be kept under the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of the Laws of Hong Kong)

² A template of the Undertaking can be downloaded from the SFC website

³ Section 9 of the Securities and Futures (Keeping of Records) Rules (Cap. 571O of the Laws of Hong Kong)

7. The EDSP can provide detailed audit trail information⁴ in a legible form, which must be complete provided that the LC can only access the audit trail information by way of “read-only”;
8. The RRs must be kept in a manner that does not impair or result in undue delays to the SFC’s effective access to the RRs; and
9. The LC should designate a minimum of two Managers-in-Charge of Core Functions (“**MICs**”) who have the knowledge, expertise and authority to access all of the RRs kept with an EDSP at any time whose responsibilities include those specified in the Circular.

Procedural and Filing Requirements for EDS

An LC must also complete the following procedural and filing requirements before keeping any of the RRs with an EDSP:

1. Apply for approval under section 130 of the SFO for the data centre(s) used by the EDSP;
2. Provide details of the premises, being the principal place of business⁵, of the LC; and
3. Provide details of each branch office⁶ of the LC where its RRs kept with the EDSP can be accessed.



The LC should also file the following documents when applying for approval under section 130 of the SFO:

	The EDSP is a HK Company	The EDSP is a Non-HK Company
1.	A confirmation to certify that the EDSP is a Hong Kong Company (the “ Confirmation ”)	A copy of the Notice
2.	A copy of a notice from the LC to the EDSP (the “ Notice ”) ⁷ , authorising and requesting the EDSP to provide the RRs to the SFC, duly countersigned by the EDSP.	The Undertaking by the EDSP

General Obligations of LCs Using EDS

1. Where the LCs store the RRs and The Relevant Information⁸ by using EDS, the LCs should have effective policies and procedures for the proper management of risks, and implement information management controls to detect and prevent unauthorised access, insertion, alteration or deletion of The Relevant Information as required under the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission.

⁴ Audit trails information include information on timestamp, affected file, event type, user ID and location

⁵ The principal place of business should be premises approved under section 130 of the SFO

⁶ The branch office should be approved under section 130 of the SFO

⁷ A template of the Notice can be downloaded from the SFC website

⁸ Relevant Information means client data and information relevant to the LCs’ business operations.

2. Regardless of whether the RRs are kept exclusively with an EDSP, an LC using EDS or processing services should implement the control measures for initial due diligence on the EDSP and its controls and monitoring the EDSP's services delivery regulatory.
3. The LCs should maintain a governance process to use and modify The Relevant Information and should also implement appropriate policies to ensure the EDSP protects The Relevant Information (e.g. confidentiality and recoverability of the Relevant Information).
4. Where appropriate (e.g. a high dependency on EDSP services), the LCs should establish contingency plans to ensure operational resilience.

Others

The LCs should notify the SFC of any proposed transition arrangement at least 30 days prior to any termination, expiration, novation or assignment of the service agreement with the EDSP.

This explanatory note is not, and should not be regarded as, a legal advice. Should you have any enquiries, please seek specific advice from legal advisers.

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