



HONG KONG MONETARY AUTHORITY
香港金融管理局

**Consultation Conclusions on
Enhancing the Regulation and Supervision of
Trust Business**

27 May 2022

Contents

I.	Introduction	1
II.	Executive Summary	2
III.	Comments and Conclusions on Conduct Requirements	4
	Scope, Applicability, Exemptions and Non-Compliance	4
	General Principles	14
	Standards of Conduct.....	15
IV.	Comments and Conclusions on Implementation Arrangements	33
	Proposed List of Trust Companies	33
	Proposed Implementation Timeline	35
V.	Conclusions and Way Forward	36

Annex 1 - List of Respondents

Annex 2 - Finalised Code of Practice for Trust Business

Annex 3 - Finalised Code of Practice for Trust Business with Changes Shown

I. Introduction

1. The Hong Kong Monetary Authority (“HKMA”) issued a consultation paper on 10 July 2020 on a proposal on enhancing the regulation and supervision of trust business (“Consultation Paper”).
2. The three-month consultation period ended on 9 October 2020. A total of 14 submissions were received from a variety of sources comprising industry associations, professional associations, a bank group trustee, a law firm and other trust companies. The names of the respondents (except for the two which requested their submissions not to be disclosed) are listed in **Annex 1**.
3. To facilitate better mutual understanding of the comments received during the consultation and to identify suitable way forward to address these comments, the HKMA further engaged in in-depth discussions with some of the respondents and put forward some suggested revisions to the proposal to specific respondents in July to September 2021 to gauge their views as to whether such revisions would be able to address the comments and concerns raised in the consultation. Furthermore, the HKMA conducted a consultation on a draft Supervisory Policy Manual (“SPM”) module on “Regulation and Supervision of Trust Business” (TB-1) for authorized institutions (“Als”) under the Banking Ordinance (Cap. 155) (“BO”) in November to December 2021.
4. This consultation conclusions paper (“Conclusions Paper”) summarises the key comments received from the respondents to the Consultation Paper, the HKMA’s responses to the comments, and the HKMA’s conclusions on implementing the proposal to enhance the regulation and supervision of trust business going forward.
5. This Conclusions Paper should be read together with the Consultation Paper. A summary of the key comments received and the HKMA’s responses are discussed below. The finalised Code of Practice for Trust Business (“Code”) which has incorporated changes made in light of the comments received is appended in **Annex 2**. For ease of reference, the changes made to the original version, i.e. the one appended to the Consultation Paper, are shown in **Annex 3** with mark-ups.

II. Executive Summary

6. The respondents expressed broad support for the HKMA's proposal with a view to reinforcing Hong Kong's position as a premier asset and wealth management centre. They also provided comments on certain practical and implementation aspects, and sought clarifications on several areas. Highlighted below are some of the key comments received during the consultation and the HKMA's responses.

Status of the Code

7. In response to requests for better clarity, the HKMA has added in the Code that the Code supplements all legal requirements and obligations applicable to trustees, and that certain requirements in the Code are subject to the terms of trust governing documents, as appropriate.

Applicability for non-AI trustees

8. Some respondents proposed that non-AI trustees (i.e. trustees that are not AIs or subsidiaries of locally incorporated AIs ("AI subsidiaries")) should be subject to the same regulatory framework including the Code, which would involve a major change to the existing sectoral regulatory approach. The HKMA intends to apply the Code to AI trustees (i.e. AIs and AI subsidiaries that carry on trust business), and to encourage the adoption of the Code among non-AI trustees, so as to reap early benefits in enhancing the standards of trust business in Hong Kong especially in relation to wealth management business.

Definitions of "trust business" and "customers"

9. Some respondents sought clarifications on the definition of "trust business" which falls within the scope of the Code. Elaborations have been provided as appropriate in the Code.
10. Taking into account the respondents' feedback and overseas practices, a definition of "customers" has been added covering "settlers" and "beneficiaries" of the trusts, and appropriate revisions have been made to make it clearer as to whether certain requirements in the Code are applicable to settlers or beneficiaries.

Introducing or referring trustees

11. It was proposed that introduction or referral of trustees to customers will not fall within the scope of the Code but will still be subject to the requirements

to conduct due diligence on the trustee and have an agreement with the trustee on incident handling. Certain respondents raised difficulties they may encounter in complying with such requirements. Having considered those practical issues, the due diligence is now applicable only when recommendation or receipt of commission, fee or similar remuneration is involved, and the requirement to have an agreement has been replaced by the trustee having in place incident management procedures. These requirements will not apply if the relevant trust services fall within the exemption scope of the Code.

Exemptions from the Code

12. Several respondents suggested modifications to the proposed exemptions. In response, we have revised the Code that trustees insofar as the trust services related to registered schemes under the Occupational Retirement Schemes Ordinance (Cap. 426) (“ORSO”) are exempted, taking into account that ORSO schemes are regulated by the Mandatory Provident Fund Schemes Authority (“MPFA”) and the trustees’ duties imposed under the newly amended ORSO. Additional exemption has also been introduced to trustees involving in loan syndications or debenture issuance given that they primarily perform an administrative role (i.e. carrying out the instructions of the lenders or debenture holders), in line with overseas practices.

List of trustees

13. Some respondents disagreed with the suggestion to include non-AI trustees carrying on trust business in Hong Kong and annually declaring to the HKMA compliance with the Code into the list to be published by the HKMA. Their concern was that the HKMA does not have a regulatory handle to verify the compliance of such non-AI trustees or conduct supervisory activities on them. Including these non-AI trustees in the list to be published by the HKMA may lead to a misunderstanding by the public that they are regulated by the HKMA. After considering the comments of the respondents, the HKMA has come to a view that the list will contain only AI trustees and other trustees within an AI group that annually declare that they observe the Code.

Implementation timeline

14. Certain respondents suggested and the HKMA agrees that the implementation timeline should be extended from 6 months to 12 months from the issuance of the Code to enable better preparation for the implementation by all parties.

III. Comments and Conclusions on Conduct Requirements

Scope, Applicability, Exemptions and Non-Compliance

Question 1: Do you have any comments on the proposed scope of the Code?

Question 2: Do you have any comments on the proposed applicability of the Code?

Question 3: Do you agree with the proposed exemptions from the Code? If not, please explain your views.

Question 4: Do you consider any other exemptions necessary? If so, what are they and why are they necessary?

Scope and Applicability

Status of the Code

Comments received

15. Some respondents sought clarification as to whether the general principles (in particular Principles 1, 2 and 3) should be subject or subordinated to the terms of the constitutional documents of a trust, similar to the approach of the statutory duty of care prescribed by the Trustee Ordinance (Cap. 29) ("TO").
16. Two respondents sought clarification on whether trustees are expected to observe the duty of care elements in Principles 2 and 3 and whether trustees can rely on exoneration provisions in the trust constitutional documents to mitigate trustee duties and standards of care, since the Code is expressly not looking to override existing law whereas the statutory duty of care can be modified (or even excluded) by the terms of the trust document.

HKMA's response

17. Further clarifications have been provided upfront in the Code that the Code supplements all existing legal requirements and obligations applicable to the trustees and is not intended to derogate trustees from such legal requirements and obligations.

Applicability for “non-AI trustees”

Comments received

18. Two respondents commented that the lack of regulatory powers over non-AI trustees to enforce the Code would limit the effectiveness of the Code to achieve the objective of enhancing protection of client assets irrespective of whether AI trustees or non-AI trustees are engaged. They also commented that the Code would place AIs and AI subsidiaries on a less favourable position as they are subject to more stringent obligation, greater regulatory scrutiny and hence higher compliance costs as compared with non-AI trustees. These two respondents recommended implementation of a unified regulatory regime that applies to both AI trustees and non-AI trustees. One of the respondents suggested in the meantime the HKMA should work with other agencies e.g. the Companies Registry to enforce the Code on non-AI trustees pursuant to the Trust and Company Service Provider regime under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) and the Trust Company regime under the TO. Two respondents suggested consolidation of all regulations concerning trustees and trust business in Hong Kong under various ordinances.
19. One respondent commented that AIs and AI subsidiaries comprised a small portion of trust business. This respondent commented that if AIs and AI subsidiaries are caught by the Code while non-AI trustees are not, this may shift the trust business to a less regulated sector. This respondent suggested a statutory licensing regime.
20. These respondents also mentioned that in some other jurisdictions with sizable trust business, all trustees are regulated by a single regulator.

HKMA’s response

21. We note some respondents’ suggestions for a unified regulatory approach and introducing a single regulator for trust business, which would involve a major change to the existing sectoral regulatory approach for the financial sector in Hong Kong. To reap early benefits in enhancing the standards of trust business in Hong Kong especially in relation to wealth management business, the HKMA intends to apply the Code to AI trustees and to encourage the adoption of the Code among non-AI trustees.

“Trust business”

Comments received

As regards “business”

22. A few respondents sought clarification on whether the services mentioned under the definition of “trust business” will contribute to a “business” if the

services or activities, for instance, are not provided with a motive for profits.

23. Some respondents commented or enquired about the case of a private trust company (“PTC”), a company incorporated specifically to act as the trustee of the family trust(s) and typically managed by family members, in particular for a PTC serving a single family which is unlikely to be characterised as conducting a trade or business. One respondent asked in such PTC case, whether an AI or AI subsidiary that provides services defined under the Code by being appointed as administrator of the trust or by sitting on the board of the PTC, or the PTC, will fall under the scope of the Code.

As regards “conduct trust business in Hong Kong”

24. A respondent asked whether an overseas affiliated trust company that has a liaison office or representative(s) in Hong Kong to promote or generate trust business, or maintain trust relationship in Hong Kong while booking its trust business outside Hong Kong, will be caught under the Code. Likewise, another respondent asked whether an offshore trustee that relies on Hong Kong staff (e.g. at its Hong Kong branch, or at an entity which is an AI subsidiary) for liaison or client relationship-type activities (or other ancillary activities) would be regarded as conducting trust business outside Hong Kong.

As regards definition of “trust business”

25. For “**(i) setting up a trust**” under the proposed definition of “trust business”, a respondent suggested further consideration should be given on the meaning of this service.
26. In relation to “**(iii) arranging for any person to act as trustee for a trust**” under the proposed definition of “trust business”, a few respondents enquired about what activities would amount to arranging for any person to act as trustee for a trust. One of the respondents commented that wealth management services should not fall within “(iii) arranging for any person to act as trustee for a trust” given that the AI is already subject to the supervision of the HKMA and the Securities and Futures Commission (“SFC”) and that the AI does not provide any other services set out in the definition of “trust business”.
27. In respect of “**(iv) managing the assets held on trust**” under the proposed definition of “trust business”, some respondents commented that inclusion of “managing the assets held on trust” would confuse the role of an institution which provides asset management services, and that investment managers are already subject to the regulation for carrying on a regulated activity under the Securities and Futures Ordinance (Cap. 571) (“SFO”), and hence should be exempted from the Code to avoid regulatory overlap.
28. A respondent suggested exempting trust services offered by family offices if the services are provided only to “family members” or without

remuneration.

29. Some respondents suggested considering whether the definition of trust business should be confined to services with fiduciary duties so that non-fiduciary duties or other “auxiliary” services will not be covered. On “**(v) administration services for a trust**”, a few respondents remarked that trustees may be involved in “administration services for a trust” in a non-fiduciary capacity, or that pure administration services pose very low risk to trust assets and thus exemption should be considered. On the other hand, a respondent considered that regulating trust administration is important and that many foreign law trusts with foreign trustees are administered in Hong Kong with little regulation. The respondent suggested that administration services covered should include management and distribution of trust assets, just like the arrangement in Singapore. There was subsequent enquiry as to whether, in the context of collective investment schemes, the administration services should exclude those delegated by a SFC-licensed fund manager which is responsible for managing these administration services.

Others

30. A few respondents asked whether a person not being the trustee of a trust but carrying on activities under the definition of “trust business” would be caught by the Code. They commented that such activities of a trust could be undertaken by delegates or any other parties, e.g. agents, nominees, custodians and other service providers engaged by the trustee.
31. A respondent specifically asked whether providing administrative support in Hong Kong for an overseas trustee would fall within the scope of the Code. Another respondent asked if group companies or third parties that perform the delegated or outsourced functions are not required to observe the Code if such functions are performed from outside of Hong Kong.

HKMA’s response

32. The trust business services subject to the Code are intended to be those provided by a trustee or prospective trustee (or a party by whatever name called performing the functions of a trustee) of the trust concerned. A trustee has responsibilities over operations and functions outsourced or performed by its delegates, although the outsourced service providers and delegates do not fall within the scope of the Code. The trustee should have a proper oversight of the delegates or other parties and ensure that the operations and functions concerned are performed in accordance with the relevant legal and regulatory requirements (including the Code) and the trust governing documents. Paragraphs 6.5 and 6.8 of the Code spell out the standards required of a trustee in respect of its delegates and other parties appointed or engaged.
33. For the scope of trust business, it remains the HKMA’s intention not to

confine the definition of trust business to services involving fiduciary duties, as there could still be significant impact on the customers if some of the non-fiduciary services are not performed properly.

34. Clarifications have been provided in the Code that “trust business” means provision of the specified services by way of business. Having considered the various comments from the industry and the policy intent of the proposal, the Code has been revised to remove “arranging for any person to act as a trustee” from the definition of trust business.
35. As will be elaborated below, in respect of introduction or referral of a trustee to customers, an AI or AI subsidiary will be required to perform due diligence on the trustee to be introduced or referred to its customers is applicable only if (i) recommendation is made; or (ii) commission, fee or similar remuneration is received or receivable, by the introducing/referring AI or AI subsidiary. A proportionate approach can be adopted in the due diligence, which should take into account whether the trustee follows the Code or requirements comparable to the Code.
36. In considering whether a person carries on a “business”, whether the activity is carried out with a motive for profits or capable of making profits could be an example of relevant factors.
37. It is clarified that a PTC that does not carry on a business in the provision of trust services in Hong Kong will not be subject to the Code. For example, a PTC established to serve a single family, which is not being run as a business, may not be considered as carrying on trust business.
38. For the avoidance of doubt, it has been clarified that the scope of trust business does not cover (i) investment management of the trust assets by a licensed/registered person for Type 9 regulated activity under Schedule 5 to the SFO or (ii) fund administration activities of a collective investment scheme the exercise of which is the responsibility of the management company of the collective investment scheme. Non-exhaustive examples of activities that will be taken into account in considering whether administration service for a trust is involved include keeping of accounting records relating to a trust and preparation of trust accounts; custody of assets; and payment of expenses or remuneration out of a trust.
39. In general, offshore trustees that do not carry on trust business in Hong Kong will not be within the scope of the Code. Depending on the circumstances, pure liaison activities may less likely be regarded as a trust business service.

Definition of customers

Comments received

40. A number of respondents suggested revisions to or sought clarifications on the definition of “customers” in various parts of the Code to differentiate settlors and beneficiaries. Specifically, the following comments were noted:
- (a) The respondents suggested that settlors and beneficiaries of trusts should not be collectively referred to as “customers” because, depending on the trust structure, the duty owed by a trustee to the settlor may be different from the duty owed to the beneficiaries.
 - (b) Three respondents were of the view that it would not be appropriate to state “acting in the interests of customers” or “a trustee should treat the interests of the customers as paramount” in Principle 2 as a trustee should, in most circumstances, act in the interests of the beneficiaries but not necessarily the settlor.
 - (c) Two respondents suggested that “customers” should refer to the party who engages the trustees and agrees the fees with the trustees. Another respondent remarked that a trustee owes contractual obligations to whomever they have entered into a contract with but the trustee also owes duties and obligations to other parties typically beneficiaries depending on the trust structure.
 - (d) One respondent commented that as the Code requires “a trustee to take all reasonable steps to execute requests or instructions from customers promptly and effectively, including the establishment, transfer or closing of business relationships”, if “customers” are referred to as settlors and beneficiaries, this will undermine the nature of discretionary trust that the trustee should exercise its own discretion properly to consider whether a power should be exercised in the interest of any or all of the beneficiaries.

HKMA’s response

41. Taking into account the respondents’ feedback, a dual-limb definition of “customers” is added which covers “settlors” and “beneficiaries”, and appropriate revisions to the Code have been made. The definition of “customer” is to be applied to the individual provisions of the Code according to whether it applies to settlor or beneficiaries only, or settlor and beneficiaries together, or any other applicable trust party, in the given circumstances.

Definition of relevant staff

Comments received

42. Several respondents proposed that “relevant staff” should exclude the staff mentioned below:
- (a) staff with internal corporate functions, or back office staff not directly related to the provision of trustee services such as human resources, information technology, finance, accounting, legal, compliance, internal controls, risk management or internal audit, or staff supporting legal or operations;
 - (b) AI’s private banking unit staff who provide wealth management services with respect to trust assets as they are already registered with the HKMA.

HKMA’s response

43. It is clarified that “relevant staff” only refers to staff engaged by a trustee to provide direct assistance in the provision of trust business. It is also clarified that while operations staff are considered as relevant staff in the Code, staff acting as accountant for the overall book-keeping at the corporate level, providing human resources, general secretarial or administrative support or information technology support at corporate level; and staff performing legal, compliance, or risk control function are not regarded as relevant staff in the Code. The Code has been revised to reflect this.
44. Regarding the comment about staff of private banking unit of a bank (assuming it not being the trustee) who provides wealth management services with respect to trust assets, as mentioned above, the trust business services subject to the Code are intended to be those provided by a trustee or prospective trustee of the trust concerned. As to whether a service performed by a person for a trustee amounts to a trust business service of the trustee, please refer to the HKMA’s responses above about the definition of “trust business”.

Introducing or referring trustees

Comments received

45. A few respondents sought clarification as to whether the following activities would not be regarded as introducing or referring another trustee to its customers for provision of services and would therefore not be required to perform due diligence on that trustee as proposed in paragraph 29(b) or follow paragraph 29(c) of the consultation paper:
- (i) merely passing name(s) of any group or third party trust companies

(such as referring a customer to the proposed list of trust companies to be published by the HKMA) or giving factual information about the capabilities and types of trust services of the trustees being introduced or referred, provided that no specific recommendation of trust companies is made to a customer; or

(ii) no fee or other benefits (monetary or non-monetary) is received for referral.

46. A few respondents asked if the requirements related to referrals could be relaxed if the referee is (i) a group company of the referring AI or AI subsidiary (or even could be exempted from the general principles if the referred company is another AI or AI subsidiary); or (ii) a trustee subject to local or overseas regulation of its trust business.
47. Some respondents raised practical difficulties and sought clarifications on various operational details in conducting due diligence on a trustee or putting in place an agreement with the introduced or referred trustee on how to handle incidents as there are practical difficulties for the AI or AI subsidiary to impose contractual obligations on the introduced or referred trustee in the setting up, operation or administration of the trust.
48. It was suggested that HKMA should require the AI or AI subsidiary to ensure that the introduced or referred trustee has in place incident management procedures for handling incidents properly, in lieu of entering into an incident handling agreement with the introduced or referred trustee.

HKMA's response

49. The requirements for introducing or referring a customer to a trustee are set out in an SPM module which are to be applicable to AIs and AI subsidiaries regardless of whether they themselves carry on trust business.
50. Taking into account industry feedback on the practical issues that they may encounter, the HKMA has revised the requirement such that due diligence is applicable only if (i) recommendation is made; or (ii) commission, fee or similar remuneration is received or receivable, by the introducing/referring AI or AI subsidiary. Furthermore, the requirement to have an agreement has been replaced by the expectation for the introducing/referring AI or AI subsidiary to ensure the introduced/referred trustee has put in place incident management procedures.
51. A proportionate approach can be adopted for an introduced/referred trustee whose trust business is regulated. Meanwhile, it has been clarified in the SPM module that if the introduced/referred trustee is by itself exempted from the Code, such requirements on introduction or referral do not apply to the extent that the relevant trust services fall within the exemption scope of the Code.

Exemptions

Comments received

52. A respondent suggested that exemption should be applied on an entity basis (i.e. trustees which are licensed or registered for the proposed Type 13 regulated activities (“RA13”) under the SFO) as an RA13 licensed or registered depositary should generally have entity level internal controls and essential governance standards in order to comply with the new RA13 regulatory regime and other relevant legal and regulatory requirements. Besides, some respondents proposed that exemption should be granted to depositaries who intend or undertake to apply for being licensed or registered under the proposed RA13 to avoid any confusion or short-term compliance obligation in the case where the Code is becoming effective before the proposed RA13 regime.
53. Likewise, two respondents proposed that exemption should be applied to trustees approved by the MPFA on an entity basis, or trustees of pension schemes registered under the ORSO (“ORSO schemes”) given that registered ORSO schemes are regulated by the MPFA and requirements on trustees’ duties are now imposed under the newly amended ORSO.
54. Three respondents commented that it should not be necessary to make a specific exemption for accountancy firms and law firms. One of the respondents remarked that if the trustee is part of the legal or accountancy profession, it would by definition not likely to be an AI or AI subsidiary and would not need a specific exemption. On the other hand, there was a comment that some accountancy firms and law firms run their trust businesses through an affiliated company and the trust businesses provided to the public may not be managed by qualified accountants or lawyers who are personally subject to professional rules of conduct. Therefore, these firms and their affiliated companies should be encouraged to adopt the Code.
55. Two respondents pointed out that trustees involved in loan syndications or bond issuance (i.e. loan/bond trustees) have little discretion, are not required to and do not make investment decisions regarding the trust assets, take responsibility for the financial performance of investments, or manage client money generally. They primarily perform an administrative role carrying out the instructions of the lenders or bondholders, and should therefore be exempted from the Code.
56. A respondent proposed that personal executors and administrators of estates for family members should be exempted as the trustee services provided by them should not be considered as a business.
57. A respondent suggested exemption for trustees of charitable trusts, foundations and provident funds who act on a voluntary basis.

58. Some respondents commented that Als' foreign trustee subsidiaries regulated outside Hong Kong should be exempted or partially exempted given that the subsidiaries are likely to be subject to comparable conduct requirements.
59. Two respondents suggested exempting escrow services, bare trust, nominee and custodian service, or transfer agents or fund administrators.

HKMA's response

60. The purpose of the exemptions is to carve out the activities of trustees that are currently regulated by the other local regulators. In this connection, the HKMA considers that the currently proposed exemptions for RA13 depositaries and mandatory provident fund approved trustees insofar as the relevant trust services are concerned are appropriate. Given the period between the implementation of the Code and that of the proposed RA13 regime based on the latest developments and the existing requirements imposed by various product codes administered by the SFC, the HKMA agrees to provide an exemption during the interim period for the existing depositaries of SFC-authorized collective investment schemes, to the extent that the trust services are related to the proposed RA13.
61. Having considered the new requirements on the duties on ORSO schemes' trustees imposed under the amended ORSO and the purposes of ORSO schemes, the HKMA agrees to exempt such trustees to the extent that the trust services relate to ORSO registered schemes, and the Code has been amended accordingly.
62. The HKMA agrees on the respondents' comments that specific exemption for accountancy firms or law firms should not be necessary, and the Code has been revised accordingly.
63. Given the nature of business conducted by a loan/debenture trustee, a new paragraph is added in the Code to exempt loan/debenture trustees.
64. Personal executors and administrators of estates acting for family members and trustees of charitable trusts, foundations and provident funds who act on a voluntary basis are not subject to the Code if they do not carry on a business in their provision of trust services.
65. If trustees carry on trust business in Hong Kong, they are within the scope of the Code even if they are regulated outside Hong Kong. Compliance with the Code should not pose much difficulties if the trustees have in place policies, procedures and controls to comply with comparable conduct requirements in carrying on trust business in overseas jurisdictions.
66. A trustee's provision of escrow services, services related to bare trust, nominee and custodian service, or services of transfer agent or fund administrator is not exempted. However, the Code is not intended to cover pure provision of nominee, custodian, transfer agent or administration

service by a non-trustee.

Non-compliance

Comments received

67. A number of respondents sought clarification on the consequences for non-compliance with the Code by trustees that are AIs or AI subsidiaries, or other trustees that voluntarily follow the Code during the transition period or after the Code becomes effective.

HKMA's response

68. The HKMA is issuing a SPM module in the form of a statutory guideline under section 7(3) of the BO which includes the Code. It sets out that the Code applies to AIs and AI subsidiaries that conduct trust business in Hong Kong. Consequences of any non-compliance with the SPM module are the same as non-compliance with other statutory guidelines issued by the Monetary Authority ("MA") under the BO. Other trustees that carry on trust business in Hong Kong are encouraged to voluntarily follow the Code and the HKMA does not have any supervisory powers over them.

General Principles

Question 5: Do you have any comments on the proposed six general principles?

Question 6: Do you think any other general principles are necessary? If so, what are they and why are they necessary?

Comments received and HKMA's response

69. The respondents' feedback on the proposed general principles was generally positive. Respondents sought clarifications or made suggestions on certain areas in the proposed standards under the respective general principles, which are detailed below.

Standards of Conduct

Principle 1: Fairness, honesty and integrity

Question 7: Do you have any comments on the proposed standards for disclosure of relevant information?

Question 8: Do you have any comments on the proposed standards for fees and charges?

Question 9: Do you have any comments on the proposed standards for representations?

Question 10: Do you have any other comments on the proposed standards for the principle on “fairness, honesty and integrity”?

Disclosure of information

Comments received

70. Several respondents commented that the parties' rights to information concerning a trust generally depend on the terms of the trust instruments and the requirements under the governing law of the trust, or there are different levels of disclosure obligations owed by trustees to the settlors, beneficiaries, or other parties of trusts.
71. Two respondents commented that trustees typically do not provide legal or tax advice but advise customers to seek independent advice. In this connection, one of the respondents mentioned that the requirement to disclose key risks should not infer any obligation of a trustee to explain information that will be covered by other professionals advising the customers.

HKMA's response

72. Taking into account the feedback, paragraph 3.3 of the Code has been amended to reflect the need to consider applicable trust laws and regulations and the terms of the trust governing documents in disclosing information to customers.

Fees and charges

Comments received

73. Some respondents asked for clarification on how fees and charges are regarded as “fair and reasonable”, and a respondent suggested that fees and charges should not be bounded, given trust services are generally tailor-made with fees and charges varying accordingly and agreed at the outset.
74. Clarification was also sought about the requirement of giving adequate notice to customers for changes in fees and charges. Some respondents asked whether the requirement regarding fees and charges being transparent should be applicable for the person who engages or has the power to engage the trustee. On the other hand, it was commented that there could be some circumstances in which prior disclosure of the amount of fees and charges to parties other than customers is not feasible.

HKMA’s response

75. The terms “fair and reasonable” and “adequate” provide flexibility to account for varying circumstances, including anything agreed in the trust governing documents. However, in response to the concerns from the respondents regarding circumstances where the prior disclosure is not practically feasible, paragraph 3.4.2(b) of the Code has been revised to elaborate that the requirement applies “where practicable”.

Representations

Comments received

76. One respondent commented that paragraph 3.5.1 of the Code should be amended to require that a trustee’s representation is complete and accurate.

HKMA’s response

77. The focus of this requirement is to ensure representations made by a trustee is accurate and not misleading. The requirement of making adequate disclosure is set out in paragraph 3.3.1 of the Code.

Others

Comments received

78. A couple of the respondents sought clarification on whether and if so, to what extent the standards in paragraph 3.2.3 of the Code apply to the situation where a trustee is engaged to provide administration services and support to a PTC which acts as the trustee of a family trust whose board is

usually constituted by the settlor of the family trust or the settlor's family members and appointees. The PTC has a fiduciary role in managing the trust assets and looking after the beneficiaries' interests, whereas the service agreement for trust administration usually provides that the first mentioned trustee acts on the instructions of the PTC.

79. Comments were received about the difficulty in fulfilling "treat customers fairly" or "strive for a balance between the different objects of the trust and between the interests of the stakeholders". On "treat customers fairly", the trustee's primary fiduciary obligation is towards beneficiaries and the trustee does not necessarily need to act in the best interests of the settlor when there is a conflict of interest between the settlor and the beneficiaries. On "striving for a balance", a trustee may owe different obligations towards different trust objects, and in the case of reserved power trusts, the trustee would have very limited discretion over how it manages the trust assets and the decisions are mainly made by the settlor. It is difficult to act impartially between customers (such as treating beneficiaries of the same class equally and treating different classes of beneficiaries fairly") in all circumstances as it may in fact be contrary to the intentions of the settlor.

HKMA's response

80. In the specific scenario where a trustee acts as an administrator to a PTC which is the trustee of the family trust and the trust administration is performed on the instructions of the PTC which acts in its own fiduciary capacity, the requirements of paragraph 3.2.3 of the Code are not intended to apply to the first-mentioned trustee.
81. Having regard to the suggestions, paragraph 3.2.3 of the Code has been revised to refer to "the trust governing documents", and reference to "act impartially" has been removed.

Principle 2: Due skill, care and diligence

Question 11: Do you have any comments on the proposed standards for prompt execution?

Question 12: Do you have any comments on the proposed standards for acting in the interests of customers?

Question 13: Do you have any comments on the proposed standards for handling conflicts of interest?

Question 14: Do you have any comments on the proposed standards for fitness and propriety of a trustee and its staff?

Question 15: Do you have any comments on the proposed continuous professional training and training hours for individuals engaged in the trust business?

Question 16: What are your views about the industry's need for competency and professional development of trust practitioners? Do you consider the existing local and international development programmes and professional qualifications have met the need? Do you have any suggestions to enhance competency and develop the talent pool for the industry?

Question 17: Do you have any other comments on the proposed standards for the principle on "Due skill, care and diligence"?

Prompt execution

Comments received

82. A respondent commented that a trustee should be given reasonable time to perform its fiduciary duties when vested with investment powers that the trustee should consider whether or not to execute an investment recommendation or to act on an instruction. Similar view was held by some other respondents which suggested rewording paragraph 4.1 of the Code to reflect that there are scenarios where "prompt execution" does not apply.
83. Two respondents recommended to limit the application of the prompt execution standard to cases where the trustee does not have any discretionary power or to scenarios that are relevant.

HKMA's response

84. Taking into account the comments received, paragraph 4.1 of the Code has been revised to highlight the need of a trustee to obtain and consider

relevant information in handling requests from customers. A trustee should comply with requirements in the Code to the extent applicable.

Acting in the interests of customers

Comments received

85. Two respondents suggested that trustees should not be precluded from engaging in outside duties or responsibilities if there are proper segregation from the trust business (for instance, such duties and responsibilities are performed by a different team, or decision making is segregated by proper Chinese wall with adequate checks and balances). One of them considered that the suggestion could help address the practical need of a bank that conducts banking and other businesses on top of trust business.
86. Three respondents mentioned that, in regard to whether a trustee acts on an individual basis when there is more than one trustee in paragraph 4.2.3 of the Code, multiple trustees' general obligations are to act jointly (unless stated otherwise in the trust deed). Another respondent proposed that the duty should be qualified by the provisions of the trust deed in the case of multiple trustees. For the provision in paragraph 4.2.4, two respondents commented that a trustee does not act on behalf of anyone, especially in the case of discretionary trusts.
87. Two respondents commented that the proposed standard of acting on a fully informed basis is too broad in view of the prevailing standards applied in determining whether a trustee has acted negligently in breach of its duty. They shared that under the present law and practice, a trustee exercising a discretion is not obliged to disclose its reasons for making a decision and it is unlikely in practice that a trustee would make decisions departing from the objects and terms set out in the trust governing documents.

HKMA's response

88. Paragraph 4.2.1 of the Code has been revised, in particular, to explain segregation of duties which could cater for multi-businesses within an organisation.
89. There are also some revisions to paragraphs 4.2.3 and 4.2.4 of the Code to address concerns raised by the respondents, including those related to the need to consider the trust governing documents and to the information to be acted upon.

Handling conflicts of interest

Comments received

90. A respondent commented that it may not be practicably feasible to strictly

separate trustee operations from other operations and sought clarification on whether delegating certain operations to affiliates would be acceptable, and what types of segregation would be acceptable. Another respondent sought clarification on the definition of “connected party” in paragraph 4.3.3 of the Code.

HKMA’s response

91. Elaborations are added in paragraph 4.3.2 and concerning “connected party” in paragraph 4.3.3 of the Code. In particular, the measures in paragraph 4.3.2 are only examples for reference, and the circumstances in determining the appropriate actions to handle conflict of interests should be considered.

Fitness and propriety of a trustee and its staff

Comments received

92. Several respondents suggested that further guidance in respect of paragraphs 4.4.1 of the Code is needed, including how to define “fit and proper”, or any prescribed or expected types of professional membership or professional qualifications.
93. Respondents quoted different references to other regulatory regimes that reference could be drawn on for fitness and properness of trustees and their staff, such as the SFC’s Fit and Proper Guidelines, Guidelines on Competence and Guidelines on Continuous Professional Training or the fit and proper standard for a Trust or Company Service Provider Licence.
94. Two respondents considered that trustees should have the flexibility to set out their fit and proper or competence standards having regard to the duties of different types and seniority of staff. Two respondents sought clarification on whether senior roles in the trust business are subject to the standards of fitness and properness.

HKMA’s response

95. To facilitate trustees’ implementation, making reference to other regulatory practices, the Code has elaborated the key attributes in assessing fitness and properness which include financial soundness, competence, honesty, integrity, reputation and reliability. The Code does not mandate professional membership or professional qualifications for fulfilling the fit and proper requirements, but a trustee is expected to ensure compliance based on its own circumstances, for example the types of trust services it provides. For the sake of clarity, we have added in the Code that a trustee should also ensure its key personnel to be fit and proper. Likewise, we have clarified in paragraph 4.4.4 of the Code that the continuous professional training (“CPT”) requirement also applies to individuals principally responsible for the conduct of trust business. In response to a subsequent enquiry, the CPT requirement does not apply to delegated or outsourced

parties but paragraph 6.8 of the Code set out the expectations on the trustee to ensure the competency of delegated and outsourced parties.

Professional development of trust practitioners

Comments received

96. A respondent suggested setting out CPT as an “appropriate” but not mandatory measure.
97. Several respondents suggested not to prescribe minimum CPT hours. They considered that the appropriateness of the topics or amount of actual training required should depend on the nature of the trustee’s business, or the staff’s work duties or seniority.
98. Two respondents suggested that the required CPT hours be adjusted downwards from 10 hours to 5 hours. Two respondents suggested that the professional qualification program for trust practitioners organised by the Hong Kong Trustees’ Association (“HKTA”) or the continuous professional development achieved under the Society of Trust and Estate Practitioners (“STEP”) could be recognised as the relevant CPT hours required under paragraphs 4.4.4 and 4.4.5 of the Code. One of them suggested that CPT hours on trust topics as attained by lawyers, accountants or company secretaries in their professions could be used to count towards the CPT requirements under the Code if they are also in trust business.
99. A couple of the respondents sought clarification on some operational details, such as the acceptable forms of CPT (e.g. luncheon seminars, e-learning), calculation of CPT hour requirement for a staff who joins the trustee during the course of a year and retention period of CPT records.

HKMA’s response

100. In order to ensure competence of trust practitioners, it is important to ensure an appropriate level of CPT hours they attain. While the minimum 10-hour CPT requirement is maintained, it is clarified that the relevant amount of CPT time that the staff has attained by attending other training as long as such training is relevant could be calculated for the purpose of the CPT requirement in the Code.
101. While the Code is principle-based, the acceptable means to attain the CPT requirements include classroom training and other appropriate learning activities such as workshops, seminars, and distance learning which requires submission of assignments or assessments. Considering their nature, it is necessary for a trustee to properly account for the eligible CPT hours for luncheon talks and it is noted that for luncheon talks which normally last for 1 to 2 hours in total, 0.5 hour will be counted as CPT hours under the local securities regime. Pro-rata basis can be applied for calculation of the CPT hours required of a staff who joins the trustee during

the course of a year. In addition, a minimum retention period of 3 years of training records has been set out in the Code, taking account of similar requirements in other regulatory regimes.

Existing professional development programs

Comments received

102. The views received were diverse. Some respondents considered that the existing development programs and professional qualifications offered by the HKTA and STEP could meet the needs in general, while two respondents were of the view that the existing local and international professional qualifications and training programmes might not have sufficiently met the needs of the trust industry in Hong Kong. Another respondent commented that the industry may consider collaboration with other professional bodies and the universities to develop and tailor academic or professional training programme to build a talent pool.

HKMA's response

103. The HKMA noted the comments, and will defer to the industry to review the needs and demands for new academic qualifications and new training programmes, or for enhancing the existing ones.

Principle 3: Management and control of trust assets

Question 18: Do you have any comments on the proposed standards related to ownership and entitlement of trust assets?

Question 19: Do you have any comments on the proposed standards for segregation of trust assets?

Question 20: Do you have any comments on the proposed standards for reconciliation of trust assets?

Ownership and entitlement of trust assets

Comments received

104. Two respondents expressed that in reserved powers trusts or purpose trusts, the underlying company which holds trust assets is not managed by a trustee (“non-managed company” or “designated company”). Only the shares of the non-managed company or designated company are owned by the trustee. The trustee may not have direct physical custody or direct controls of the trust assets. As such, it would be difficult for the trustee to ensure safekeeping of the trust assets which are not held, managed or controlled by it.
105. One respondent suggested wording to address the issue that in some trust relationships, customers, enforcers and protectors may not be entitled to give directions and documents under the trust deeds.
106. A respondent expected adequate procedures a trustee to take if the trust assets are held or managed by a third party or held by an underlying company. Another respondent raised query about the extent of trustee’s liability when the trustee has appointed a delegate to hold assets in custody or otherwise manage the investments. It remarked that the trustee will not be liable for any act of omission of an agent, nominee or custodian acting for the trust if the trustee has discharged the statutory duty of care when appointing the agent, nominee or custodian and when carrying the duties to review.

HKMA’s response

107. Regarding the comments on the responsibilities for safekeeping of trust assets which are not managed or controlled by the trustee, for better clarity, the wording in the requirements has been enhanced to clarify that the assets held on trust that a trustee should exercise care in safeguarding and maintain proper records are those within the trustee’s control.
108. The Code has been revised to address the issue of entitlement to give

directions and documents to the trustee regarding the trust assets.

109. Paragraphs 6.5 and 6.8 of the Code spell out the standards required of a trustee in respect of its delegates and other parties appointed or engaged.

Segregation of trust assets

Comments received and HKMA's response

110. No key comment was received for this standard.

Reconciliation of trust assets

Comments received

111. Several respondents sought clarification on who would be qualified as independent staff to carry out the reconciliation and audit of trust assets and whether there are expectations on such staff's capability.
112. A few respondents were of the view that reconciliation of trust assets and verification of asset ownership may not be feasible as the assets may have no definitive record of title or other satisfactory proof of ownership (in particular where the assets are liquid and tradable (e.g. wine, watches, jewellery, etc.)), or there may not be any third party records against which to undertake a reconciliation regarding ownership if the trustee is holding the assets directly (particularly if they are cash).
113. A few respondents commented that conducting audits at the premises where physical assets are located in different parts of the world may not be feasible. One of the respondents suggested that the audits may be carried out on behalf of the trustee rather than by the trustee.

HKMA's response

114. To clarify that the staff who are responsible for conducting the reconciliation of trust assets should be operationally independent of the regular management and administration of the trust, the Code has been revised accordingly. It is expected that trustees should exercise judgement on the competence of the persons performing the reconciliation and audit.
115. Meanwhile, taking into account the practical difficulties of reconciliation of all different types of assets held within a trust wherever situated and by making reference to the overseas practices, the Code has been revised to focus on reconciliation of client money and introduce flexibility in respect of reconciliation and audits of trust assets.

Principle 4: Corporate governance and internal controls

Question 21: Do you have any comments on the proposed standards for management accountability?

Question 22: Do you have any comments on the proposed standards for confidentiality?

Question 23: Do you have any comments on the proposed standards for managing outsourced activities which are basically in line with the relevant requirements in the SPM SA-2 on Outsourcing?

Question 24: Do you have any comments on the proposed standards for internal controls on managing and administering the trust?

Question 25: Do you have any comments on the proposed standards for complaint handling which are basically in line with the SPM IC-4 on Complaint Handling Procedures?

Question 26: Do you have any comments on the proposed standards for risk management?

Question 27: Do you have any comments on the proposed standards for accounting and other record keeping?

Question 28: Do you have any comments on the proposed standards for professional indemnity insurance cover?

Question 29: Do you have any other comments on the proposed standards for the principle on “Corporate governance and internal controls”?

Management accountability

Comments received

116. A couple of the respondents sought clarification on the applicability of the proposed standards on trustees that are AIs, AI subsidiaries or the rest.
117. A respondent pointed out that a board of directors is not applicable to trustees that are not corporate entities.
118. A few respondents recommended “authorized signatory” of a trustee that is an AI subsidiary be allowed, in addition to the chief executive, for signing the notification on appointment of individuals as required in paragraph 6.6.4 of the Code, or suggested allowing the notifications to be submitted electronically or in paper form.

HKMA's response

119. Paragraphs 6.6.1 and 6.6.2 of the Code are applicable to all trustees. The content specific to AIs or AI subsidiaries has been moved from the Code to the SPM module.
120. It is reckoned that senior management of a trustee are responsible and accountable for day-to-day operations of the trust business. Taking into account operational practice, paragraphs 6.6.1 and 6.6.2 of the Code have been revised that the ultimate responsibility for the operation and conduct of the trust business of a trustee lies with the board of directors or other relevant governing body of that trustee.
121. Details of notification arrangement for appointment of responsible officers are not prescribed to allow flexibility.

Confidentiality

Comments received

122. Certain respondents suggested refining paragraphs 6.7.1 and 6.7.2 of the Code by making reference to the Personal Data (Privacy) Ordinance (Cap. 486); confidentiality obligation conferred by the provisions of the constitutive documents establishing the trust; obligations in handling personal data including storage, protection and destruction; or other situations where a trustee may be obligated to disclose information to a third party beyond compulsion of law or regulation to fulfil its duty as a trustee.

HKMA's response

123. The respondents' suggestions have been adopted in rewording paragraphs 6.7.1 and 6.7.2 of the Code.

Outsourcing

Comments received

124. Some respondents asked for clarification of the definition of outsourcing. One respondent specifically sought clarification as to whether outsourcing is different from delegation. Another respondent suggested that requirements under paragraph 6.8 of the Code only apply to outsourcing of a material nature.
125. A respondent commented that where the trustee is smaller in operating size, the requirements of having outsourcing procedures and controls may be difficult to implement and could be an impediment to voluntary adoption of the Code.

126. Two respondents made a comment that outsourcing should be a disclosable issue between a trustee and its contracting parties.

HKMA's response

127. To provide greater clarity, paragraph 6.8 of the Code has been expanded to cover both delegation and outsourcing. Regarding the suggestion that the requirements should only be applicable to outsourcing of material nature, it is noted that the application in the HKMA's SPM SA-2 on Outsourcing does not differentiate between outsourcing on the basis of materiality.

128. Taking into account the practical difficulties faced by trustees with smaller operating size, the Code has been revised to give smaller companies some flexibility in terms of designing outsourcing control processes and procedures.

129. Regarding the disclosure issue raised, among other applicable requirements, trustees should refer to the terms of appointment or engagement established by the trust governing documents.

Internal controls on managing and administering the trust

Comments received

130. A respondent commented that not all trust-related scenarios involve the procedures and controls mentioned in paragraph 6.9.1 of the Code.

HKMA's response

131. The controls referred to in paragraph 6.9.1 of the Code are not meant to be exhaustive or prescriptive. There is reference to the trust governing documents together with all applicable legal and regulatory requirements as far as a required control is concerned.

Complaint handling

Comments received

132. One respondent commented that the HKMA's SPM IC-4 on Complaint Handling Procedures would not be applicable to all trustees, and the regulator's powers should not oust the jurisdiction of the court.

HKMA's response

133. It is not the policy intent to require a trustee that is not subject to the application of the HKMA's SPM IC-4 on Complaint Handling Procedures to comply with such SPM module. Further, complaint handling in accordance with the SPM module or the Code will not affect customers' recourse to the

courts.

Risk management

Comments received

134. One respondent commented that trustees that are AIs or AI subsidiaries are required to follow and adopt required measures of the group's risk management framework and would like to know whether the AI or AI subsidiary could consider the risk management framework applied to the trust business is in general effective.

HKMA's response

135. Whether the risk management framework of an AI or AI subsidiary applied to its trust business is effective will be considered on a case-by-case basis. If an AI or AI subsidiary's risk management framework applied to its trust business follows that of the group, it should ensure the risk management framework concerned is effective for the trust business.

Accounting and other record keeping

Comments received and HKMA's response

136. No key comment was received.

Professional indemnity insurance

Comments received

137. Two respondents suggested that the required level of insurance coverage should be specified.

HKMA's response

138. The standards are intended to set out high level principles. Following the non-prescriptive approach adopted by the other jurisdictions, it is expected that a trustee sets its own level of coverage according to its own circumstances and self-assessment of its risk profile and ensures the adequacy of coverage.

Principle 5: Compliance with legal and regulatory requirements and standards

Question 30: Do you have any comments on the proposed standards for compliance policies and procedures?

Question 31: Do you have any comments on the proposed standards for compliance function and review?

Compliance policies and procedures

Comments received

139. One respondent sought clarification on whether the requirement of having in place effective compliance policies and procedures is considered as being met if an AI or AI subsidiary adopts its group's applicable compliance policies and procedures. Two respondents sought guidance on the kinds of policies and procedures that are expected, the minimum frequency of review on a compliance policy, or the level that could constitute senior management for the approval of a compliance policy.

HKMA's response

140. The standards set out high level principles that we expect on a trustee as opposed to prescriptive rules. A trustee is expected to make its own judgement in determining the adequacy and relevance of compliance policy and procedures applicable to its trust business for the purpose of compliance with the Code, the frequency for the regular review and the level of authority to constitute senior management for approval of the compliance policy. However, wording has been added to give proportionality according to the scale, complexity and risk profile of the trust business.

Compliance function and review

Comments received

141. The main comments are related to independence of the compliance function, e.g. whether the arrangement of the compliance function of an AI covers both of its banking business and trust business would satisfy the proposed requirement, or whether flexibility on roles and responsibilities could be given to smaller trust business or firms which may not be able to comply with a requirement of compliance staff being completely independent of all business and operational functions.

142. There is also a concern on whether a trustee has to observe guidelines formulated by itself or those by regulators in respect of the escalating and reporting of any material non-compliance.

HKMA's response

143. Recognising different circumstances and scale limitations of trustees and drawing references from the flexibility in the overseas jurisdictions, the Code has been revised such that the compliance function should have appropriate independence commensurate with the scale, complexity and risk profile of the trust business.

144. On escalating and reporting of material non-compliance and other relevant matters, trustees should establish appropriate internal guidelines and ensure observance at both the firm and staff levels. Trustees should comply with both internal requirements and other applicable requirements including those issued by regulators.

Principle 6: Co-operation with regulators

Question 32: Do you have any comments on the proposed standards for notification or reporting to regulators?

Question 33: Do you have any other comments on the proposed standards for “Co-operation with regulators”?

Comments received

145. A few respondents sought guidance on explanation or examples of matters for an AI or AI subsidiary to report or notify the HKMA on its trust business activities. One respondent was in doubt as to whether a non-AI trustee is subject to the reporting obligation.
146. A number of respondents expressed concern about the duty on confidentiality that under some circumstances trustees are legally required not to disclose any information relevant to the trust. In this connection, the respondents suggested that the reporting or notification to regulators should be under the force of law rather than a non-legally binding code to override any duty of confidentiality.
147. Several respondents suggested that reference should be provided in respect of the regulators fallen within “relevant regulators”. One respondent suggested including overseas regulators which trustees should notify of reportable matters, whilst another respondent suggested that the Registrar of Companies could be the regulator of non-AI trustees for this purpose.
148. Two respondents suggested a separate timeline for reporting or notification of relevant matters to the HKMA, preferably being aligned with that set by the MPFA or the SFC.

HKMA’s response

149. While the HKMA does not intend to prescribe what constitutes a reportable matter, the relevant requirement now in paragraph 5.1 of the SPM module, to which only AIs and AI subsidiaries are subject, has been revised for clarity, including streamlining the wording and addition of a dispute or litigation involving the trust parties.
150. Regarding the comments about which regulator a “relevant regulator” is referred to, it is clarified that the requirement pertains to the information or representations made by a trustee to a regulator pursuant to a statutory or regulatory requirement the trustee is subject to.
151. Regarding the issue on confidentiality, the current approach seeks to provide expectations and standards complementary to those set out in other

instruments, legislations and requirements.

152. As specified in paragraphs 5.1 and 5.2 of the SPM module, a trustee that is an AI or AI subsidiary should report to or notify the HKMA material non-compliance with any legal and regulatory requirements, and any other matters that may have material impact on the fitness and propriety of the trustee as soon as reasonably practicable and within any prescribed timeline applicable to the AI.

IV. Comments and Conclusions on Implementation Arrangements

Proposed List of Trust Companies

Question 34: Do you agree that the HKMA will establish and maintain on its website a list of trust companies? Please explain your view.

Question 35: If yes to Question 35, do you agree that trust service providers other than those regulated and supervised by the HKMA should be published on the list (while differentiation may be made by categorising by types of entities)?

Question 36: Do you have any comments and/or suggestions on any basic particulars that could be provided in the list? Please explain your view and suggestions.

Question 37: Do you have any other comments on the “Proposed list of trust companies”?

Comments received

153. Respondents generally supported the HKMA to publish and maintain a list of trustees that conduct trust business in Hong Kong.
154. Respondents have mixed views on whether the list to be maintained should include trustees other than those regulated and supervised by the HKMA. Several respondents suggested the list to be limited to AIs and AI subsidiaries only as other trustees are not regulated and supervised by the HKMA. The HKMA does not have the regulatory handle to verify whether non-AI trustees in fact comply with the Code, and that may mislead the public that non-AI trustees are regulated by the HKMA. Some respondents suggested that, in case the HKMA wishes to include any non-AI trustees in the list, there should be clear differentiation and appropriate disclaimers stated on the website (including a disclaimer that those trustees are not subject to the direct supervision of the HKMA).
155. On the other hand, some respondents supported including trustees other than AIs or AI subsidiaries in the list.
156. One respondent raised concern about confusion brought by a number of lists or registers of trustees in the industry, and the respondent suggested that the HKMA should establish and maintain on its website only one list of trustees including both AI-trustees and non-AI trustees, provided that the latter have submitted to the HKMA a declaration to observe the Code.

Annotations and categorisations could be made on the list to differentiate the different types of entities (AIs vs non-AIs) or different nature of trust businesses.

157. The proposed basic particulars of the trustees (e.g. company name, office address and website address) to be included in the list were generally agreed on. A respondent expressed concern about publishing telephone numbers for fear of data misuse by fraudsters.
158. Two respondents commented that the list should not be a marketing tool and the purpose of the list is for due diligence and verification purposes only.
159. One respondent recommended that clarification should be provided on the circumstances that trigger permanent or temporary removal of the particulars of a trustee from the list, and re-instating its position on the list.

HKMA's response

160. The HKMA reckons and agrees with the respondents' concerns about possible confusion that may arise from a list of trustees including both AIs and non-AIs on which the HKMA has no regulatory handle to verify their compliance with the Code or to conduct supervisory activities on them. Having considered the responses received, the HKMA aims to maintain and publish a list of trustees consisting of AIs and AI subsidiaries that carry on trust business in Hong Kong. The list will also include other trustees within an AI group where the trustees carry on trust business in Hong Kong and annually declare that they observe the Code, if such other trustees wish to be included in the list. Such other trustees refer to a holding company, subsidiary (for AIs incorporated outside Hong Kong) or affiliate of an AI. There will be appropriate remarks to categorise the trustees on the list. It is at the discretion of the HKMA to permanently or temporarily remove the particulars of a trustee at any time from the list if situation warrants including if the HKMA is aware that the trustee on the list does not comply with the Code depending on the circumstances.
161. Given that the purpose is to provide a list of trustees that comply with the Code for reference by the public, a relatively narrow set of information (company name, office address and website address) should suffice.

Proposed Implementation Timeline

Question 38: Do you have any comments on the proposed implementation timeline?

Comments received

162. Certain respondents suggested the implementation timeline be extended from 6 months to 12 months as they need sufficient time to comprehensively review and properly implement the new requirements into their processes and procedures and the control framework and conduct staff training, in particular for trustees of smaller size of operation, although it is believed that the proposed principles and standards in the Code are already much applied in the current industry practice.

HKMA's response

163. Having considered the respondents' comments, the implementation timeline is extended from 6 months to 12 months from the issuance of the finalised Code. AIs and AI subsidiaries are required to comply with the finalised Code as soon as practicable, but not later than 12 months from the date of issuance of the finalised Code. The same timeline applies to non-AI trustees as they are encouraged to observe the principles and standards in the Code to the extent applicable.

V. Conclusions and Way Forward

164. The HKMA is publishing the SPM module on the regulation and supervision of trust business on which a consultation has been separately conducted with the industry.
165. Following the issuance of this Conclusions Paper, the SPM module to which the Code is attached will become effective on 1 June 2023.
166. Going forward, the HKMA will embark on the preparation of the supervisory work, monitor the industry's implementation of the SPM module, and operationalise the list of trustees.
167. The HKMA would like to take this opportunity to thank all the respondents for their comments.