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## CHAPTER 21

### DUTIES AND LIABILITIES OF HKSCC

#### **2101. Duty to act in good faith**

HKSCC undertakes to perform only such duties and obligations as are expressly set out in the Rules and the Participant Agreement. For the avoidance of doubt and recognising that the Rules do not constitute a contract of uberrimae fide, HKSCC shall be under a duty to act in good faith in respect of all matters and things to be undertaken or performed by it under the Rules.

#### **2102. Liability for anything not done in good faith**

Except as otherwise expressly provided in the Rules, HKSCC, the Exchange, and a recognized exchange controller which is the controller of HKSCC shall not be liable to any Participant or to any other person in respect of anything done or omitted to be done by it in good faith in connection with the operations of any System, the provision of services and facilities available thereunder, and all other matters as contemplated in the Rules.

#### **2103. Force majeure**

HKSCC, the Exchange, and a recognized exchange controller which is the controller of HKSCC shall not be liable for any action taken or for any failure, hindrance or delay in the provision of services or for any failure to give effect to or delay in giving effect to any instructions from Participants with respect to any nominee, depository or other services of HKSCC (or in the case of Foreign Securities held by an Appointed Depository, with respect to any nominee, depository or other service provided by that Appointed Depository, or in the case of China Connect Securities, with respect to any China Connect Clearing Services) or for the suspension or cessation of the TSF or the failure to provide any FX Services or FX rates for the operation of the TSF or for the suspension or cessation of any Clearing Link or the performance in whole or in part of its obligations under the terms of the Rules or under any Market Contract if such action, failure, hindrance or delay arises out of causes beyond its control.

Such causes may include, but shall not be limited to, acts of God or the public enemy, acts of a civil or military authority, embargoes, fires, floods, explosions, accidents, labour disputes, mechanical breakdowns, computer or system failures or other failures of equipment, failures of or defects in computer or system software, unavailability of or restrictions on any communication media for whatever reason (whether or not such media is used by Participants), interruptions (whether in whole or in part) of power supplies or other utility or service, any law, decree, regulation or order of any government, competent authority or any court or tribunal, and any other causes beyond HKSCC's control including, without limitation to the foregoing, any similar causes affecting the Exchange, Hong Kong Interbank Clearing Limited (whether or not specified in the Exchange Rules or the rules and regulations of Hong Kong Interbank Clearing Limited), the manager or trustee of any Exchange Traded Fund, an Appointed Depository or a China Connect Clearing House.

#### **2104. HKSCC not to be liable**

In the absence of anything not done or not omitted to be done in good faith on the part of HKSCC, HKSCC, the Exchange, and a recognized exchange controller which is the controller of HKSCC shall have no liability for any losses, costs (including legal costs), charges, assessments and damages of any nature whatsoever suffered or incurred directly or indirectly as a result of or in connection with the following matters:-

- (i) a failure by a Participant to comply with the Rules;

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- (ii) the taking by HKSCC of action authorised, permitted or contemplated in the Rules or in any of the arrangements under Rule 703;
  - (iii) the insolvency of the Appointed Depositories, HKSCC's own banker, or any other sub-custodians, depositaries, entities or other clearing entities appointed or used by HKSCC in relation to Eligible Securities (provided that the selection by HKSCC of such persons shall not have been unreasonable);
  - (iv) any delays, acts or omissions of any Designated Bank of, or of any operator of, any clearing house for an Eligible Currency or of any institution or person providing clearing and settlement services in any Eligible Currency or the insolvency of any of the foregoing;
  - (v) the inability of HKSCC to perform as a result of the invalidity or, cancellation of any insurance or assurances effected by HKSCC or the insolvency of such insurers or assurers (provided that the selection of such insurance, assurances or insurers by HKSCC shall not have been unreasonable at the time of selection);
  - (vi) the taking by HKSCC of any action or omission in accordance with the directions of any governmental or regulatory body, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by law;
  - (vii) [Repealed]
  - (viii) any acts or omissions of any Issuer, any agent of the Issuer or any other party involved in a New Issue, including any delay by any Issuer or its agents in notifying HKSCC of (a) the identity of Participants to whom New Issue Shares have been allocated and the number of New Issue Shares allocated to each of them or (b) the identity of Participants whose applications or tender have been unsuccessful in whole or in part and the amounts of the refunds due to each of them or any failure by any Issuer so to notify HKSCC or the insolvency of any Issuer, any agent of any Issuer or any such other party and/or any error, discrepancy, default, failure or delay by any Issuer or its agent in paying the New Issue Brokerage into the General Purpose Designated Bank Accounts of the Clearing Participants which are Exchange Participants or otherwise;
  - (ix) any acts or omissions of the HKMA or the employees or agents of the HKMA including (a) termination or suspension of HKSCC's appointment as a Recognized Dealer or HKSCC's membership of the CMU Service, (b) closure, termination, suspension or freezing of HKSCC's CMU Account or any sub-account(s) under it, (c) cancellation, freezing or suspension of trading in any Exchange Fund Notes, Government Bonds, Specified Instruments or CMU Instruments credited to HKSCC's CMU Account, or tendered or applied for by HKSCC in response to Tender Instructions, (d) the conduct of any issue of Exchange Fund Notes, Government Bonds, Specified Instruments or CMU Instruments, including the tendering or application process and any suspension or cancellation of the issue or the tendering or application process or (e) suspension, failure, malfunction, overload, variation or termination of the CMU Service whether wholly or partially or in a particular case or in respect of one or more processes or transactions;
  - (x) any acts or omissions of the owners and licensees of all hardware and software operated or used by the HKMA or HKSCC for the purposes of or in connection with the CMU (including the CMT Terminal and the hardware referred to in and the software which is the subject of the CMU Software Sub-licence Agreement between Hong Kong Interbank Clearing Limited and HKSCC) (or any acts or omissions of the

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employees or agents of those owners and licensees) or any loss or damage whatsoever or howsoever caused arising directly or indirectly out of or in connection with the use of the CMT Terminal and any such hardware or software or any failure of or error or inaccuracy in the operation of the CMU;

- (xi) any acts, omissions or delays of the issuer of Exchange Fund Notes, Government Bonds, any Specified Instruments or any CMU Instruments, or any arranger, promoter or co-ordinator of any such issue (or any other person involved in any such issue) or the employees or agents of any of the foregoing;
- (xii) any acts, omissions or delays of the manager or trustee of any Exchange Traded Fund or the arranger or promoter of any issue of Units (or any other person involved in their issue) or the employees or agents of any of the foregoing;
- (xiii) any acts, omissions or delays of any Appointed Depositary or its employees or agents;
- (xiv) any proceeding or investigation brought by or on behalf of any government, regulatory body, self-regulatory organization, or other regulatory authority exercising any disciplinary functions to which the Participant is subject;
- (xv) any acts, omissions, defaults or delays of the Issuer of any Eligible Securities, or any other party involved in any Eligible Securities or the employees or agents, representatives or intermediaries of any of the foregoing (including an Issuer's principal or branch share registrar), or the insolvency of any of the foregoing;
- (xvi) the operation of the CMU Service or the taking by HKSCC of any action or omission in accordance with the provisions in the CMU Membership Agreement including the CMU Rules and CMU Manual (as referred to in Rule 703) including compliance with any notice or requirement of the HKMA not to make or allow any transfer, dealing or disposition of CMU Instruments in CMU Account or compliance with directions given by the HKMA thereunder;
- (xvii) any acts, omissions or delays of any entity, as referred to in Rule 823, with which an Overseas Account is maintained or with which HKSCC or its nominee has entered into relevant arrangements, or the insolvency of such entity;
- (xviii) any acts, omissions or delays of any Depositary or its employees or agents;
- (xix) in relation to the provision of FX Services, any acts, omissions, defaults, failure to perform obligations or delays of any TSF Partner Bank or any other person providing RMB to HKD and/or HKD to RMB conversion services and/or liquidity to HKSCC, as TSF operator, or the insolvency of any of the foregoing;
- (xx) the inability of HKSCC to settle any TSF FX Transactions or Stock Release FX Transactions due to any acts, omissions, defaults, failure to perform obligations or delays of any TSF Partner Bank or any other person providing RMB to HKD and/or HKD to RMB conversion services and/or liquidity to HKSCC, as TSF operator, or the insolvency of any of the foregoing;

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- (xxi) any failure, omissions, errors, delays, malfunction, suspension or cessation of operation of any system used by HKSCC or any third party system upon which HKSCC is reliant in the operation of the TSF, publication of FX rates or the provision of FX Services (including any system used by a TSF Partner Bank);
  - (xxii) any suspension of the FX Services, any failure to provide or publish any FX rates or the cessation of operation of the TSF;
  - (xxiii) any defective, incorrect, incomplete or omission of information provided by the Issuer of any Eligible Securities or its employees or agents;
  - (xxiv) any failure, omissions, errors, delays, malfunction, suspension or cessation of operation of SWIFT or any system upon which HKSCC is reliant for the provision of the CA ISO Message Service;
  - (xxv) any acts, omissions or delays of any Synapse User or any failure by any Synapse User to comply with the Synapse Terms and Conditions or any requirements in the Synapse User Guide; and/or
  - (xxvi) any acts, omissions or delays of any user of FINI (including a FINI CP User) or any failure by any user of FINI (including a FINI CP User) to comply with the FINI Terms and Conditions or any requirements in the FINI User Guide.

Nothing in this Rule 2104 shall operate to limit or restrict the operation of Rule 2103.

**2105. No investigation**

HKSCC makes no investigation with respect to and shall have no liability for : -

- (i) the creditworthiness or status of any Issuer or guarantor of any Eligible Security;
- (ii) the validity or binding effect of any Eligible Security or any New Issue Shares or any guarantee thereof or any related document; or
- (iii) any other similar matter.